IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 192 OF 2023

Vijay s/o Nandlal Rahangdale V/s State of Maharashtra

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Mr. Nitesh Samudre, counsel for the applicant.
Mr. M.J.Khan, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSE FOR ORDER: 15/04/2024.
DATE OF DECISION: 18/04/2024

1. By this application, the applicant is seeking regular bail in connection with Crime No. 275/2017 registered with Police Station, New Kamptee, District Nagpur for the offence punishable under Sections 379, 392, 341, 414, 411, 201 read with Section 34 of the Indian Penal Code, 1860 and Sections 3(1)(ii), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as “the MCOC Act”) for the sake of brevity.

2. The accusation against the present applicant is on the basis of report lodged by the informant, on an allegation that on the day of the incident, he was proceeding on his motorcycle at Kanhan Railway Bridge. On the way, his motorcycle was restrained by three unknown persons and they snatched his mobile phone, a cash amount of Rs. 6,500/- and marital string of gold of his wife and they fled away. On the basis of said report, the police have registered the offence

under Sections 397, 392, 341, 411, 414, 201 read with Section 34 of the Indian Penal Code, 1860. During the investigation, it revealed to the investigating officer that the present applicant is the leader of an organized crime syndicate, and in furtherance of the common object of the said syndicate, he is involved in series of offences of similar nature, which are committed for economical gain, and thereby the provisions of MCOC Act are applied by obtaining the approval. After due investigation, the charge-sheet came to be filed and now the trial is commenced.

3. It is submitted by the learned counsel for the applicant that as far as the application of the provision of the MCOC Act is concerned, which are not applicable, as the applicant is not involved in any organized crime. He further submitted that there are no allegations against the applicant which would constitute the offence under the provision of the MCOC Act. The ingredient of Section 2(d) of the MCOC Act are not complied and there is no commonality of the accused and the offence. The alleged crimes registered against the present applicant are in the individual capacity. He further submitted that the name of the applicant has not been mentioned anywhere in the FIR. Now, the investigation has been completed and charge-sheet has been filed, the trial is also commenced. The prosecution witnesses have left the loyalty towards the prosecution and not supported the prosecution case. Since the date of arrest i.e. 22/07/2017 when the applicant is behind bar, there is no progress in the trial. For the offences alleged, the punishment provided is upto

five years, and the applicant is behind bar for more than five years. Considering all these facts, he be released on bail.

4. Learned APP strongly opposed the said application on the ground that all 26 offences are registered against the present applicant, and all the offences are committed by the applicant as a member of an organized crime syndicate. There is a rigor under Section 21(4) of the MCOC Act, to release the applicant on bail, mere long incarceration is not sufficient to release the applicant on bail. He further submitted that all the offences committed by the applicant are for economical gain. Considering the nature of the offences and the rigor under Section 21(4) of the MCOC Act, the application deserves to be rejected.

5. Having heard learned counsel for the applicant and learned APP for the State, perused the investigation papers. Admittedly, the crime was registered initially against unknown persons. During the investigation, the investigating officer has arrested the present applicant and other co-accused. From the present applicant, one mobile phone which was stolen at the time of the incident was recovered owned by the informant. The applicant is also identified during the test identification parade. In all 26 offences are registered against the organized crime syndicate. Out of which, 12 offences of a similar nature are registered against the present applicant.

6. Considering the continuous involvement of the present applicant in the alleged offence, by seeking appropriate approval to apply the provisions of MCOC Act.

The crime chart shows that in all 26 offences are registered against the present applicant and other members of the organized crime syndicate. Out of 26 offences, the applicant is involved in all 12 offences. The various statements recorded by the investigating agency of the witnesses shows the involvement of the present applicant in the similar nature of the crime. The applicant was put in a test identification parade, during which, the applicant was identified by the informant and the other witnesses. If the crime chart is seen, the applicant is continuously involved in the crime chart like Sections 394, 392, 397, 379 of the Indian Penal Code, 1860, and Sections 4 and 25 of the Arms Act, 1959. After going through the investigation papers, it reveals that the applicant and the other co-accused are involved in crimes like road robbery, theft and dacoity.

7. To apply the provisions of the MCOC Act, it is necessary to consider the expression 'continuing unlawful activity'.

In view of Section 2(1)(d) of the MCOC Act, activities prohibited by law for the time being in force punishable as described therein have been undertaken either singly or jointly as a member of organized crime syndicate and in respect of which more than one charge-sheets have been filed. The stress is on the unlawful activities committed by the organized crime syndicate.

Section 2(1)(f) of the MCOC Act defines 'Organized Crime Syndicate' means a group of two or more persons who, acting singly or collectively, as a syndicate or a gang indulged in activities of organized crime.

8. Thus, the MCOC Act contemplates a situation where a group of persons as members of organized syndicate indulge in organized crime. That they indulge in use of violence, threats of violence, intimidation, etc. to gain pecuniary benefit or undue economic or other advantage for themselves or any other purpose. These activities as per the definition of organized crime are continuing unlawful activity prohibited by law. The definition of continuing unlawful activity is defined in Section 2(1)(d) which means that an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before the competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

9. Thus, for an activity to be a 'continuing unlawful activity', (a) the activity must be prohibited by law; (b) it must be a cognizable offence punishable with imprisonment of three years or more; (c) it must be undertaken singly or jointly; (d) it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate and (e) in respect of which more than one charge-sheet have been filed before a competent Court.

10. Thus, Section 2(1)(d) of the MCOC Act defines 'continuing unlawful activity' set down a period of ten years within which more than one charge-sheets have to be filed. The members of the crime syndicate operate either singly or jointly in commission of organized crime. They operate in different modules. A person may be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situations, the MCOC Act can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOC Act.

11. Learned counsel for the applicant vehemently submitted that there is an inordinate delay in disposal of the trial. The speedy trial is right of the accused. Due to the delayed trial, prejudice is caused to the applicant as his liberty is curtailed. He further submitted that the applicant is involved in a crime like Sections 3(1)(iii), 3(4) of the MCOC Act, the punishment for the said offence is not less than five years but which may extend to imprisonment for life and shall also be liable to be found. But considering the long incarceration of the present applicant entitles him to be released on bail.

12. To apply the provisions of the MCOC Act, it is necessary to consider the expression of continuing unlawful activity. As observed earlier, from the crime chart, it reveals that the applicant is continuously involved in a crime which are committed for economical gains, either as a member of an

organized crime syndicate or in an individual capacity. After scrutinizing the material on record, in view of the rigor envisaged under Section 21(4) of the MCOC Act, it is well settled principle that the stringent provisions fetter, to a large extent, the discretion of the Court to grant bail unless the material on record warrants recording the satisfaction of existence of reasonable grounds to believe that the accused may not be involved in the offence punishable under the MCOC Act, and the accused is not likely to commit an offence under the MCOC Act if released on bail.

13. The satisfaction that reasonable grounds exists to believe that the accused is not involved in an offence under the MCOC Act, enjoins upon the Court a duty to probe deeper into the material on record. A case which is stronger than a prima facie case, and the existence of substantial cause and circumstances which individually may impel the Court to record the satisfaction which is envisaged, is necessary to unshackle the fetters. However, it is equally well settled, that the fetters cannot be stretched too far and the Court is not expected to record a finding of innocence. If on broad probabilities which emerge from the material on record, satisfaction is to be recorded that the accused is not likely to be convicted, the Court would be justified in granting bail.

14. Learned counsel for the applicant placed reliance on the various decision of this Court in the case of [a] **Criminal Application (BA) No. 619 OF 2023** (Pankaj Suresh Harode V/s State of Maharashtra) Decided on 30/11/2023 and [b]

Criminal Application (BA) No. 476 OF 2021 (Vanish Dharampal Meshram V/s State of Maharashtra) Decided on 15/11/2021.

15. I have gone through the facts of the cited case, in the case of Criminal Application (BA) No. 619/2023, it is observed that considering the above-referred facts, it is difficult to accept that the trial Court would examine 101 witnesses and conclude the trial within six months. Even if it is taken that the prosecution would not examine or the 101 witnesses but will examine 20 or 30 witnesses out of 101 witnesses, the trial could not conclude in the near future and released him on bail.

16. In the case of Criminal Application (BA) No. 476/2021, the released of the accused on bail is on the ground that there was delay in holding the identification parade. Recently, in ***Gurwinder Singh Vs State of Punjab and another reported in [2024] 2 S.C.R. 134***, the Hon'ble Apex Court considered the provisions of the Unlawful Activities (Prevention) Act, 1967 (for short 'the UAP Act') and observed that the exercise of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D (5) of the UAP Act 'shall not be released' in contrast with the form of the words as found in Section 437(1) Cr.P.C. - 'may be released' – suggests the intention of the legislature to make bail, the exception and jail, the rule.

17. It is further observed by the Hon'ble Apex Court that in view of the provisions, bail must be rejected as a 'rule', if after hearing the public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima-facie true. It is only if the test for rejection of bail is not satisfied that the courts would proceed to decide the bail application in accordance with the 'tripod test' that is flight risk, influencing witnesses, tampering with the evidence. This position is made clear by Sub-section (6) of the Section 43D, which lays down that the restrictions, on granting of bail specified in Sub-Section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force. The Hon'ble Apex Court has also considered the delay in trial and observed that a mere delay in trial pertaining to the grave offences as one involved in the instance case cannot be used as a ground to grant bail.

18. Similar is the position, as regards to the provisions of the MCOC Act, there is a rigor under Section 21(4) of the MCOC Act. In view of the said rigor, the provision states that no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless-(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and (b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

19. Thus, the court has to record the satisfaction of the existence of reasonable grounds to believe that the accused may not be involved in the offence punishable under the MCOC Act. Thus, Court has to record the satisfaction of the existence of reasonable grounds to believe that the accused may not be involved in the offence punishable under the MCOC Act and the accused is not likely to commit an offence under the MCOC Act if the accused is released on bail.

20. In the light of the well settled provisions, the Court can exercise its discretion in favour of the person, if the accused of having committed an offence punishable under the MCOC Act, the Court is required to record the reasons as to the existence of reasonable grounds for believing that applicant before the court is not guilty of an offence of organized crime. The satisfaction that the accused is not guilty, on the basis of that there are reasonable grounds for believing that the accused is not guilty. The phrase reasonable grounds is not similar to sufficient grounds.

21. In the light of the above principles, if the facts of the present case are concerned, admittedly during the investigation, it reveals that the applicant is involved in a series of the offences which are committed by him as a Member of an organized crime syndicate for the economical gain. The statements of the witnesses, identification parade, wherein the applicant is identified and the recovery of the articles from the present applicant shows his involvement in the alleged crime. There is no material on record to show that

he is not guilty as there are reasonable grounds for believing that he is not guilty. In fact, the investigation papers sufficiently shows his involvement in the alleged crime including the crime chart. Thus, there are certainly reasonable grounds to hold that the applicability of the MCOC Act is on the basis of evidence collected by the investigating officer. The nexus between the present offences and the earlier offences committed by the applicant is also demonstrated on the basis of material evidence on record.

In the above facts and circumstances of the case, the application deserves to be rejected. Accordingly, I proceed to pass the following order:

The criminal application is **rejected.**

[**URMILA JOSHI-PHALKE, J.]**

Later on

As prayed by learned counsel for the applicant, the applicant is behind the bars and, therefore, the trial Court shall expedite the trial, being the offence is of the year 2017, and shall make every endeavour to conclude the trial as early as possible and preferably within a period of six months from today.

[**URMILA JOSHI-PHALKE, J.]**