2024:BHC-NAG:6621

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

CRIMINAL APPLICATION (BA) NO. 296 OF 2024

Tanmay s/o Raju Jadhav
Vs.
State of Maharashtra, Through A.C.P. Crime Branch, Nagpur

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. D. M. Dixit, Advocate for applicant.
Mr. Ganesh Umale, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 25/06/2024

1. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure along with Section 21(4) of the Maharashtra Control of Organized Crimes Act, 1999 in connection with Crime No.128/2023 registered under Sections 307, 394, 384, 201 read with Section 34 of the Indian Penal Code and Sections 3(1)(ii), 3(2), 3(4) 4 of the Maharashtra Control of Organized Crimes Act, 1999 (hereinafter referred as "MCOC Act")

2. It is submitted by the learned Counsel for the applicant that as far as the offences under Sections 384, 394 and 201 are concerned, which are not attracted against the present applicant. He invited my attention towards the recital of the FIR and submitted that as per the allegation in the FIR on 18.02.2023 when the informant has opened his shop

along with his brother, at the relevant time, at about 5.30 p.m. he returned back and at the relevant time, two persons came in his shop and assaulted him as well as his brother by fists and kick blows. It is alleged that one of the accused i.e. the present applicant has given a blow by beer bottle on the head of the brother of the informant. It is further alleged that the present applicant has attempted to gave a blow by that beer bottle on the abdominal portion of the informant, but he was rescued by the persons gathered there. On the basis of the said report, police have registered the crime.

3. After registration of the crime, the Investigation Officer has applied the provisions of the MCOC Act alleging that the applicant is the member of the organized crime syndicate and involved in various types of the crime. It is further alleged that the present applicant is involved in the offences under Sections 302 and 307 of Indian Penal Code and he has committed the offences for the pecuniary gain.

4. Learned Counsel for the applicant invited my attention towards the crime chart and submitted that two offences alleged to have committed by the present applicant vide Crime Nos.1306/2018 and 653/2020. The bail orders passed in both crimes shows that the applicant was implicated in the said offences merely on the basis of hearsay information.

There was no direct evidence against the applicant and therefore, he was released on bail in both the crimes. He submitted that besides the crime chart, there is no other material to connect the present applicant with the alleged offence, therefore prosecution has no evidence to show that the applicant is involved in the offences which are committed for the pecuniary gain. He submitted that as the primary considerations for applying the MCOC Act is not fulfilled and therefore, the rigour under Section 21(4) is not applicable in the present case. Considering the nature of the evidence collected during the investigation, no offence is made out under the provisions of the MCOC Act and therefore, there is no hurdle in releasing the present applicant on bail and prays for releasing the applicant on bail.

5. Learned APP strongly opposed the said application and submitted that the crime chart shows the involvement of the present applicant in the crime registered under Section 302 his continuous involvement in the offences which are of serious nature and therefore, in view of Section 21(4), there is rigour to grant bail to the present applicant, in view of that application deserves to be rejected.

6. After hearing the learned Counsel for the applicant and learned APP for the State, perused the recitals of the FIR, which shows that at the instance of the co-accused the alleged incident has taken

place. As far as the present applicant is concerned, it is alleged that he along with the co-accused was involved in the subsequent incident. The allegation against the present applicant that he has assaulted by means of the beer bottle on the head of the brother of the informant. The injury certificate of the brother of the informant shows that he has sustained simple injury i.e. also in the nature of the abrasion and trauma at the back. Both the injuries are simple in nature.

7. The another contention of the learned APP is that in view of Section 21(4) the rigour is attracted and therefore, the applicant is not entitled to be released on bail.

8. In view of the provisions of the MCOC Act rigour under Section 21(4) will apply if it is established that the applicant is member of organized crime syndicate and undertaken either singly or jointly as a member of organized crime syndicate, the activity which is prohibited by law, unless there is a satisfaction recorded by this Court that the applicant is not guilty of the offence, he cannot be released on bail.

9. In the light of the above settled legal position, if the previous offences are considered which are registered against the present applicant, the bail orders passed by the Sessions Court shows

that the applicant was implicated in those offences merely on the hearsay information. The another bail application in connection with Crime No.653/2020 shows that there was no direct evidence to show the involvement of the present applicant and therefore, he was released on bail.

10. 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.

11. Thus, the MCOC Act contemplates a situation where a group of persons as members of organized crime 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 of any other person. 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 a competent

Court within the preceding period of ten years and that Court has taken cognizance of such offence.

12. 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 e] in respect of which more than one charge-sheets have been filed before a competent Court.

13. 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.

14. in the case of **Mohamad Iliyas Mohamad Bilal Kapadiya Vs. The State of Gujarat, Special**

Leave to Appeal (Crl.) No.1815/2022 dated 30.05.2022, wherein the Hon'ble Apex Court has dealt with the provisions of the MCOC Act and held that the following conditions will have to be fulfilled:

(i) that such an activity should be prohibited by law for the time being in force;

(ii) that such an activity is a cognizable offence punishable with imprisonment of three years or more;

(iii) that such an activity is undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate;

(iv) that in respect of such an activity more than one charge-sheet must have been filed before a competent Court; and

(v) that the charge-sheet must have been filed within a preceding period of ten years; and

(vi) that the Courts have taken cognizance of such offences.

15. The Hon'ble Apex Court held that undisputedly, in the present case only one charge-sheet was filed in respect of an activity which can be said to have been undertaken by the applicant as a member of organized crime syndicate and released him on bail.

16. In the present case, two crimes are shown to be registered against the present applicant and the bail orders passed by the Sessions Court shows that the applicant was implicated merely on the basis of hearsay information and no direct evidence was available against him. Thus, there is no single charge-sheet filed against the present applicant showing that he is either associated with the other members or he was a member of an organize crime syndicate.

17. In the case of **Zakir Abdul Mirajkar Vrs. State of Maharashtra, [AIR OnLine 2022 SC 1325]**, wherein provisions of the MCOC Act are analyzed by the Hon'ble Apex Court. While analyzing provisions, the Hon'ble Apex Court laid down an overview of the MCOC Act by observing as follows :-

> "The Maharashtra Control of Organized Crime Act, 1999, as its long title indicates, is "an Act to make special provisions for the prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang and for matters connected therewith or incidental thereto". The statement of objects and reasons contains the reasons which constituted the foundation for the legislature to step in :
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> Firstly, organized crime which is in existence for some years poses a serious threat to society; Secondly, organized crime is not confined by national boundaries;

> Thirdly, organized crime is fuelled by illegal wealth generated by contract killing, extortion, smuggling and contraband, illegal trade in narcotics, kidnapping for ransom, collection of protection money and money laundering, and other activities;
>
> Fourthly, the illegal wealth and black money generated by organized crime pose adverse effects on the economy;
>
> Fifthly, organized crime syndicates make common cause with terrorists fostering narcoterrorism which extends beyond national boundaries;
>
> Sixthly, the existing legal framework in terms of penal and procedural laws and the adjudicatory system were found inadequate to curb and control organized crime; and Seventhly, the special law was enacted with "stringent and deterrent provisions" including in certain circumstances, the power to intercept wire, electronic or oral communication."

18. In the light of the above facts, if the facts of the present case are taken into consideration, admittedly, the offences registered against the present applicant nowhere shows that either he has generated illegal wealth by way of contract killing, extortion, smuggling, and contraband, illegal trade in narcotics, and money laundering etc. There is no material to show that the existing legal framework and procedural law are inadequate to deal with the present applicant. None of the offences are

registered against him showing that he had committed any offence to gain the pecuniary benefits along with the organized crime syndicate.

19. For enabling the Court to exercise its discretion in favour of a person the accused of having committed an offence punishable under the MCOC Act, what is required is 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 is to be on the basis that there are reasonable grounds for believing that the accused is not guilty. The phrase "reasonable ground" is not similar to the sufficient grounds.

20. Insofar as the provisions of Section 21(4) of the MCOC Act are concerned, the Hon'ble Apex Court in the case of **Ranjitsing Brahmajeetsing Sharma Vrs. State of Maharashtra and another [2005 ALL MR (Cri) 1538 (SC)]** held that the restriction imposed by Section 21(4) of the MCOC Act on the powers of the courts cannot be pushed too far. It is not as if a person can be released on bail only if there would be no ground for proceeding against him at all on the charge of an offence punishable under the MCOC Act. The provisions are required to be interpreted in a reasonable manner. They cannot be interpreted in such a manner so as to make the grant of bail impossible. It is not the court is required to

come to positive finding that the applicant claiming bail is not guilty of an organized crime. A careful analysis of the relevant provisions and the observations made by the Hon'ble Apex Court it reveals that the legal position in that regard is that for enabling the court to exercise its discretion in favour of person accused of having committed an offence punishable under the MCOC Act, what is required is existence of reasonable grounds for believing that applicant before the court is not guilty of an organized crime. The satisfaction that the accused is not guilty is not contemplated by the relevant provisions and what is required is that the satisfaction that there are reasonable grounds for believing the accused to be not guilty. The phrase "reasonable grounds" should not be confused with the phrase "sufficient grounds". It cannot be lost sight of the fact that the special court would be entitled to discharge an accused if it considers that there is no sufficient ground for proceeding against the accused. The tests, that are applied while considering bails, are that whether positive finding can be recorded that the accused is not guilty for such an offence. The Hon'ble Apex Court has observed in the case cited supra that it is not the court is required to come to positive finding that the applicant for bail is not guilty of an organized crime before grant of bail.

21. In the light of the above observation and on the basis of the principles, if facts in the present case are considered, admittedly, some offences are registered against the present applicant, but the orders passed by the competent Court shows that his implication was only on the basis of the hearsay material and no direct evidence was available. The investigation papers in the present case nowhere shows that he was associated with the members of the organize crime syndicate. Thus, considering the material collected during the investigation which is not sufficient to show the involvement in the organize crime. Thus, there are certainly reasonable grounds to hold that the applicability of the MCOC Act is doubtful.

22. For the reasons recorded above, the application deserves to be allowed. Accordingly, I proceed to pass the following order :-

i) The application is allowed.

ii) The applicant **Tanmay s/o Raju Jadhav** shall be released on bail in connection with Crime No.128/2023 registered under Sections 307, 394, 384, 201 read with Section 34 of the Indian Penal Code and Sections 3(1)(ii), 3(2), 3(4) 4 of the Maharashtra Control of Organized Crimes Act, 1999, on executing P.R. Bond in the sum of Rs.50,000/- with one solvent surety of the like amount.

iii) The applicant shall attend the concerned Police Station once in a month i.e. first Saturday of every month between 10.00 a.m. and 1.00 p.m. and the Police Station Officer shall record his presence.

iv) Contravention of any conditions above leads to cancellation of the bail.

23. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate