2024:BHC-NAG:7864

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

CRIMINAL APPLICATION (BA) NO. 355 OF 2024

Ravindra s/o Rameshrao Umate **Vs** 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. R.K. Tiwari, counsel for the applicant.
Mrs. H.N.Prabhu, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19/07/2024.

1. The applicant came to be arrested on 21/01/2024, in connection with Crime No. 476/2023 registered with Ganeshpeth Police Station, District Nagpur for the offences punishable under Sections 120-B of the Indian Penal Code, 1860; and Sections 3 and 25 of the Arms Act, 1959; and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crimes Act, 1999.

2. As per the accusation and during the course of the investigation of Crime No. 872/2023 registered with Tahsil Police Station, the co-accused, Firoz Khan, who was under arrest in connection with the said crime, disclosed to the police that he had sold several country-made pistols to many persons. In pursuance of this information, the police led him to several places and recovered many firearms. During the course of the investigation, the police arrested one Rishabh Sharma, who allegedly purchased the gun from Firoz Khan. The said Rishabh Sharma allegedly gave a disclosure statement under Section 27 of the Indian Evidence Act, 1872

stating that he had kept the gun with the present applicant. Therefore, the present applicant is arrested.

3. During the course of the investigation, the investigating agency found that the present applicant is a member of the organised crime syndicate, and therefore, by obtaining approval as well as sanction, the provisions of the MCOC Act are applied. It is alleged that the applicant and the other co-accused, who are members of the organised crime syndicate, in pursuance of their common object of the said syndicate, they have committed various offences for the pecuniary gain. It is further alleged that two or more charge-sheets are filed against the co-accused, for which the imprisonment of three years or more have been provided, and therefore, there is a requirement of Section 3 of the MCOC Act which is fulfilled, and therefore, bar under Section 21(4) of the MCOC Act attracted.

4. Learned counsel Mr. R.K. Tiwari for the applicant submitted that, as far as the present applicant is concerned physical custody is not required, as gun is recovered from his car and which is not in working condition. He submitted that the crime chart shows that, except this crime, no offence is registered against him. Except the statement of the co-accused and the statement of the accounts, there is no other material to connect the present applicant to show that he is involved in the organised crime syndicate, and in pursuance of the crime syndicate, he or the other members committed the offences for pecuniary gains. He submitted

that even the facts of the present case are also shows that the statement of the co-accused reveals that he has kept the said gun with the present applicant, which was in the non-working conditions, and the same was recovered from the vehicle of the present applicant. As far as the provisions of the MCOC Act are concerned, they are not applicable as the ingredients of Section 3 of the MCOC Act are not complied with. He submitted that, therefore, the bar under Section 21(4) is not attracted, in view of that the application deserves to be allowed.

5. Per contra, the learned APP for the State submitted that the applicant's association with the organised crime syndicate reveals from the money transaction between the present applicant and the co-accused, Rishabh Sharma. She further submitted that the gun is also recovered from the vehicle of the present applicant. Learned APP has also relied on the mobile CDR between the present applicant and co-accused. She also relied on the WhatsApp Chat between co-accused – Vijendra and Co-accused No.2 Imran. The bar under Section 21(4) of the MCOC Act is attracted, and therefore, the application deserves to be rejected.

6. In support of his contention, learned counsel for the applicant placed reliance in the case of ***Shahrukh @ Kasai Shaikh Akram Vs State of Maharashtra [2024 ALL MR (Cri)1912] and Criminal Application No. 435 of 2024 and Criminal Application No.443 of 2024, decided on 08/07/2024*** and submitted that wherein this Court has

considered the aspect of the continuing unlawful activity and organised crime syndicate. He submitted that, as there is no material to connect the present applicant with an organised crime syndicate, the bar under Section 21(4) is not attracted, and therefore, the applicant to be released on bail.

7. Having heard both the sides and perused the investigation papers, it reveals that the allegation against the applicant is that one pistol was recovered from the vehicle of the present applicant. During the course of the investigation, one Rishabh Sharma was interrogated by the police, and allegedly, in his disclosure statement, he made a statement that he had kept the gun with the present applicant. In pursuance of the said statement, the pistol was recovered from the present applicant..

8. As per the case of the prosecution, there was a money transaction between the present applicant and the co-accused, Rishabh Sharma. For that purpose, the investigating officer has collected the statement of the account to show that some amounts were transferred by the present applicant to the said Rishabh Sharma and submitted that this transaction sufficiently shows the association of the present applicant with the co-accused, who is a member of an organised crime syndicate.

9. 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.

10. 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 or 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.

11. Thus, for an activity to be a `continuing unlawful activity', i) the activity must be prohibited by law; ii) it must be a cognizable offence punishable with imprisonment of three years or more; iii) it must be undertaken singly or jointly; iv) it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate; v) in respect of which more than one charge-sheet have been filed before a competent court.

12. Thus, Section 2(1)(d) of the MCOC Act defines "continuing unlawful activity" which 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.

13. In the light of the above, if the facts of the present case are taken into consideration, admittedly, no offence is registered against applicant showing that either he has generated illegal wealth by way of contract killing, extortion, smuggling, contraband, illegal trade in narcotics,

and money laundering etc. There is no material to show that the existing legal framework and procedural laws are inadequate to deal with the present applicant. None of the offences are registered against the applicant showing he had committed the offence to gain illegal wealth.

14. 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 are 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 are not guilty. The phrase "reasonable ground" is not similar to the sufficient grounds.

15. Moreover, in the case of ***Ranjitsing Brahmajeetsing Sharma Vrs. State of Maharashtra and another [2005 ALL MR (Cri) 1538 (SC)]*** wherein the Hon’ble Apex Court 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 for bail is not guilty of an organized crime before grant of bail.

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 is 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.

16. In the light of the above principles, if facts of the present case are considered, admittedly, no single offence is registered against the present applicant. The involvement of the present applicant reveals from the statement of the co-accused. As far as the transaction between the applicant and the co-accused is concerned, which is not sufficient to connect the present applicant to show that he is a member of organized crime syndicate. The chart shows that no single offence is registered against the present applicant to show

his involvement in the offences which are committed for economical or pecuniary gain. Thus, there are certainly reasonable ground to hold that applicability of the MCOC Act is doubtful, therefore the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

i) The Criminal Application is allowed.

ii) The applicant- **Ravindra Rameshrao Umate**, shall be released on bail, in connection with Crime No. 476/2023 registered with Ganeshpeth Police Station, District Nagpur for the offences punishable under Sections 120-B of the Indian Penal Code, 1860; and Sections 3 and 25 of the Arms Act, 1959; and Sections 3(1)(ii), 3(2), 3(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 week of Sunday between 10.00 a.m. to 01.00 p.m. till conclusion of trial.

iv) The applicant shall not leave the jurisdiction of District Court Nagpur without prior permission of the Court.

v) The applicant shall not indulge in similar type of the activities.

vi) The contravention of any conditions imposed above leads to the cancellation of the bail.

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