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

CRIMINAL APPLICATION (BA) NO. 435 OF 2024

Akash s/o Dharmpal Tasare
Vs.
State of Maharashtra, Through Police Station Officer, Wadi Police Station, Nagpur
AND

CRIMINAL APPLICATION (BA) NO. 443 OF 2024

Bablu s/o Diwakar Wankhede
Vs.
State of Maharashtra, Through Police Station Officer, Wadi Police Station, Nagpur

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

Mr. R. K. Tiwari, Advocate for applicants in both the applications.
Ms. H. N. Prabhu, APP for respondent/State in BA. No.435/2024.
Mr. N. B. Jawade, APP for respondent/State in BA. No.443/2024.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08/07/2024

1. By these applications, the applicants are seeking bail under 439 of the Code of Criminal Procedure read with 21(4) of the Maharashtra Control of Organized Crimes Act, 1999. The applicant Akash s/o Dharmpal Tasare in Criminal Application No.435/2024 is arrested on 13.05.2023 whereas the applicant Bablu s/o Diwakar Wankhede is arrested on 25.04.2023, in connection with Crime No.193/2023 registered under Sections 307 read with Section 34 of the Indian Penal Code and Section 135 of the Maharashtra Police Act and Sections 4 and 25 of the Arms Act and Section 3(1)(ii), 3(2), 3(4) of the

Maharashtra Control of Organized Crimes Act, 1999 (hereinafter referred as "MCOC Act").

2. As per the allegation in the FIR that on 23.04.2023 at about 11.30 p.m., the complainant was standing in front of his house and he noticed that some women were running here and there. He therefore, went near the Prajapati General Stores to see what exactly happened and saw Pradip and Akash i.e. applicant in Criminal Application No.435/2024, the co-accused Pradip stopped the complainant and assaulted him by means of knife on his neck. The complainant caught hold of his hand at that time co-accused Akash gave one blow on his hand by some weapon, but the complainant rescued himself and on the way, he met his father and his father took him in the hospital. On the basis of the said report, police have registered the crime against the present applicants.

3. During the investigation, it revealed to the investigating agency that the applicants are involved in the organize crime and therefore, the provisions of the MCOC Act are applied.

4. Learned Counsel for the applicants Mr. Tiwari submitted that there is no dispute as to the facts that four offences are registered against the applicant Akash, whereas six offences are registered against the applicant Bablu. He submitted that all

these crimes are registered against them in their individual capacity. None of the offence shows that the alleged crimes are committed for any pecuniary gain. He submitted that there is no material to show that the existing framework of the penal code is inadequate to deal with the present applicants. He submitted that even the statements of the witnesses nowhere discloses that the applicants were members of the organized crime syndicate and in perusal of the common object of this syndicate, they have committed the offences for the pecuniary gain. Thus, he submitted that considering the allegation against the present applicants, the provisions of MCOC Act are not applicable and therefore, bar under Section 21(4) is not attracted. In support of his contention he placed reliance on **Shahrukh @ Kasai Shaikh Akram Vs. State of Maharashtra** reported in **2024 ALL MR (Cri.) 1912**.

5. Per contra, learned APP Mr. Jawade and Ms. Prabhu for the State submitted that as far as the requirement to attract the provisions of the MCOC Act is concerned, is fulfilled as more than one charge-sheet is filed against the present applicants on the day when the provisions of the MCOC Act are applied. They further submitted that the statements of the witnesses also show that the applicants are the members of the organized crime syndicate and in furtherance of the common object of the said organized crime syndicate, they have committed

various offences, in view of Section 21(4) the rigor is attracted. In view of that, both the applications deserves to be rejected.

6. After hearing the learned Counsel for the applicants and learned APP for the State, perused the investigation papers from which it reveals that the allegation against the present applicants is that on 23.04.2023 they were proceeding from the house of the informant and informant has witnessed that some ladies are running here and there. Therefore, he went to see what happened, at that time he was assaulted by applicant Akash as well as co-accused Pradip. Due to which, the informant sustained the grievous injuries.

7. During the investigation, the Investigating Officer has recorded the statements of the witnesses. The informant was also referred to the medical examination. The history narrated by the informant before the Medical Officer shows that he was assaulted by unknown persons. From the statements of the witnesses, it reveals that the present applicants are involved in various crimes. The secret witnesses also disclosed that they are in habit of abusing and assaulting the persons without any reason. As far as the statements of these witnesses are concerned it revealed that the applicant Akash and co-accused Pradip had snatched 150/- from him for consuming the liquor. Except one statement of

secret witness, there is no other material to show that present applicants have committed the offence for pecuniary gain.

8. Learned APP placed reliance on the decision in **State of Maharashtra** vs. **Jagan Gagansingh Nepali @ Jagya & Anr and Smt. Sandhya Prafulla Patil** reported in **2011 ALL MR (Cri) 2961**, wherein this Court has considered the ingredients which are required to be established for making out the case of an organized crime. It is observed that there has to be a continuing unlawful activities, that such an activity will have to be by an individual, singly or jointly, that such an activity is either by a member of an organized crime syndicate or on behalf of such syndicate, that there has to be use of violence or threat of violence or intimidation or coercion or other unlawful means, that such an activity has to be with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for the person who undertakes such an activity or any other person or promoting insurgency. The ingredients of continuing unlawful activities would be, that such an activity should be prohibited by law for the time being in force, that such an activity is a cognizable offence punishable with imprisonment of three years or more and that such an activity is undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate, that in respect of such an

activity more than one charge-sheet must have been filed before a competent Court.

9. As far as the ingredients of the offences are concerned, admittedly there are offences registered against the present applicants out of which in two offences the charge-sheet is filed against both the applicants along with the other co-accused. As far as the other ingredients that the said violence is committed by them for pecuniary benefits or gaining undue economic or other advantage for the person who undertakes such activity or any other person of promoting insurgency concerned, there is no material to establish the same.

10. 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 to be filed. The stress is on the unlawful activities committed by the organized crime syndicate.

11. 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 indulge in activities of organized crime.

12. 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.

13. 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.

14. In the light of the above, if the facts of the present case are taken into consideration, admittedly, four offences are registered against applicant Akash and six offences are registered against the applicant Bablu. Admittedly, no offence is registered against the applicants showing that they have 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 law are inadequate to deal with the present applicants. None of the offences are registered against the applicants showing they have committed the offence to gain illegal wealth.

15. 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 applicants 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.

16. 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 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. 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.

17. In the light of the above principles, if facts of the present case are considered, admittedly, there are offences registered against the present applicants, but none of the offence shows that these offences are committed by the applicants for pecuniary gain or economic gain or they have stored any illegal wealth by committing such offences. There is no material to show that they have committed an offence as a members of an organized crime syndicate. The chart shows that all offences are registered against the applicants are in their individual capacity, considering the same, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

i) The Criminal Application (BA) No.435 of 2024 and Criminal Application (BA) No.443/2024 are allowed.

ii) The applicant **Akash s/o Dharmpal Tasare** in Criminal Application (BA) No.435 of 2024 and the applicant **Bablu s/o Diwakar Wankhede** in Criminal Application (BA) No.443 of 2024, shall be released on bail, in connection with Crime No.193/2023 registered under Sections 307 read with Section 34 of the Indian Penal Code and Section 135 of the Maharashtra Police Act and Sections 4 and 25 of the Arms Act 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/- each with one solvent surety of the like amount.

iii) The applicants shall attend the concerned Police Station till conclusion of trial.

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

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

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

18. Both the applications are disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate