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

CRIMINAL APPLICATION (BA) NO. 452 OF 2024

Adnan Khan s/o Roshan Khan
Vs.
State of Maharashtra, Through Police Station Officer, Police Station Tahsil, 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. M. Daga, Advocate for applicant.
Mr. Abhijeet Mate, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/06/2024

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.872/2023 registered under Sections 302, 120-B, 385, 386, 201 read with Section 34 of the Indian Penal Code, under Sections 3, 25, 4, 5, 27 and 29 of the Indian Arms Act, under Sections 3(1)(i), 3(2), 3(4), 4 of the Maharashtra Control of Organized Crimes Act, 1999 (hereinafter referred as "MCOC Act") and Section 135 of the Maharashtra Police Act.

2. The applicant came to be arrested on 31/10/2023 on an allegation that the informant Nahida Pravin along with her husband Jamil Ahmad was residing in a building namely Mehrunisa complex,

and in the said building Jamil Ahmad was carrying hotel business and lodging in the name of ALKARIM Guest House. Jamil Ahmad was also involved in the business of property dealing, in which accused Mohammad Parvez and his father used to assist him. On 24.10.2024 when informant was in her house and her husband was present in the hotel at about 1.50 a.m., someone knocked her door and told her that Jamil Bhai had fallen down. Thereafter, she rushed to the reception counter of the hotel and saw that her husband Jamil Ahmad was lying in unconscious condition and lying in the pool of the blood. One Ahmad Majid and Mujaffar Hussain informed her that accused Mohammad Parvez with two other persons came in the hotel holding pistol and sickle in their hands and they fired a bullet towards Jamil Ahmed and also inflicted blow of sickle on his neck and thereafter fled away. Due to the assault, Jamil Ahmad succumbed to the injury.

3. On the report of Nahida Pravin initially police have registered the offences under the provisions of the Indian Penal Code. Subsequently during the investigation, it revealed to the Investigation Officer that present applicant is a member of organized crime syndicate therefore, they approached to the competent Authority for obtaining the approval and provisions of MCOC Act are applied.

4. During the investigation present applicant is also arrested on an allegation that he has assisted the co-accused Mohammad Parvez for fleeing away and also assisted for concealing and screening from the legal punishment and thereby, committed an offence punishable under Sections 201 and 212 of the Indian Penal Code.

5. After obtaining the relevant sanction, the Investigating Officer has filed charge-sheet against the present applicant. After filing of the charge-sheet, present application is filed for grant of bail.

6. Learned Counsel for the applicant submitted that as far as the provisions of the MCOC Act are concerned, which are not applicable against the present applicant, as he is not at all involved in the offence of murder. Whatever alleged against him is that after the incident, he received a telephonic call of the co-accused Mohammad Parvez and on his request, he has transferred the amount of Rs.4,000/- to the co-accused. The another circumstance on which prosecution relied upon is that at the instance of the present applicant one DVR which was handed over by the present applicant to the Mohammad Parvez was seized. He submitted that there is no material to show that the present applicant is the member of the organized crime syndicate. Mere criminal antecedents against the present applicant is

not sufficient to attract the provisions of the MCOC Act. He submitted that all the offences which are mentioned in the charge-sheet against the present applicant are in the independent capacity.

7. He further submitted that as far as the crime chart is concerned, on which prosecution relied upon, the present applicant is not an accused in Crime No.428/2021. After perusal of the list of the crimes, it reveals that none of the offences are committed by the present applicant for the pecuniary gain and therefore, the provisions of MCOC Act are not applicable and therefore, the bar under Section 21(4) is also not attracted. In view of that, the applicant be released on bail.

8. Learned APP strongly opposed the said application on the ground that considering the rigour under Section 21(4), the Court has to record the reasons that the applicant is not guilty of the offence. At this stage, the statements of the witnesses show the involvement of the present applicant in the alleged offence. The crime chart shows that in all including the present crime five crimes are registered against the present applicant. The involvement of the present applicant shows that he was associated with the other members who have formed the organized crime syndicate. Thus, being a member of the organized crime syndicate, the provisions of MCOC Act are applied against him.

9. Having heard the learned Counsel for the applicant and learned APP for the State, perused the investigation papers. On the basis of report lodged by the complainant crime is registered under Sections 120-B, 302, 385, 386, 201 read with Section 34 of the Indian Penal Code along with provisions of the Indian Arms Act and under Sections 3(1)(i), 3(2), 3(4) and 4 MCOC Act. As per the prosecution case, the allegation against the present applicant is that he has assisted the co-accused by transferring the amount of Rs.4,000/- after the incident. To substantiate the said contention prosecution placed reliance on the account statement of the present applicant which shows that after the incident he has transferred some amount i.e. Rs.4,000/- by UPI to the co-accused. Thus, it reveals from the investigation papers, that as far as the actual incident of eliminating the deceased is concerned, there was no presence of the present applicant. As far as the criminal conspiracy is concerned, admittedly, direct evidence would not be available to show the involvement of the present applicant in a criminal conspiracy, but there should have been some material to show that the applicant was the member of the said criminal conspiracy and there was a meeting of minds between them and in reference to the said meeting of minds, they have hatched the plan to eliminate the deceased and the act was executed by other accused. Thus, there is no single circumstance to show that the applicant was present

along with the other co-accused before the incident or there was any meeting of minds between them to hatch the conspiracy. Thus, the evidence shows that the present applicant was not present at the time of incident as well as there is no material to show that he was the party to the conspiracy. The only two circumstances on which prosecution relied upon are that he transferred some amount to the co-accused and the another circumstances that one DVR was seized from the present applicant which was given by him to the co-accused Mohammad Pravez.

10. In view of the provisions of the MCOC Act rigour under Section 21(4) 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.

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 indulged 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. 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.

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. 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.

15. Learned Counsel for the applicant placed reliance on the order passed by the Hon'ble Apex Court in the case of **Mohamad Iliyas Mohamad Bilal Kapadiya Vs. The State of Gujarat, Special Leave to Appeal (Crl.) No.1815/2022 dated 30.5.2022,** 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.

16. 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.

17. Learned Counsel for the applicant submitted that in the present case, there is no single charge-sheet filed against the present applicant along with the other co-accused to show that he is either associated with the other members or he was a member of an organize crime syndicate.

18. He further placed reliance on the order passed by the Co-ordinate Bench in the case of **Rakesh Babu Chalwadi Vs. The State of Maharashtra** reported in **2021 ALL MR (Cri) 3857**, wherein also the Single Bench has considered the provisions of MCOC Act and released the applicant on bail.

19. He further placed reliance on the order passed by this Court in **Criminal Application (BA)Case No.249/2024 (Avala Shriniwas & Sonu s/o Shankar Reddy Vs. State of Maharashtra) dated 03.04.2024** and submitted that the consistent view is that there should be material to show that the applicant is either associated with the members of organized crime syndicate and in furtherance of the common object of that syndicate involved in the offence of pecuniary gain.

20. 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."

21. In the light of the above facts, if the facts of the present case are taken into consideration, admittedly, no offence is registered against the applicant showing 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.

22. 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.

23. "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 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."

24. In the light of the above principles, if facts in the present case are considered, admittedly, some offences are registered against the present applicant but none of the offence is registered along with the other co-accused. Thus, the investigation papers shows that he was not present at the time of incident, only circumstance on which prosecution relied upon is that he has transferred some amount to the co-accused, which is not sufficient to show his involvement in the organized crime. Thus, there are certainly reasonable grounds to hold that the applicability of the MCOC Act is doubtful.

25. 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 - **Adnan Khan s/o Roshan Khan** be released on bail in connection with Crime No.872/2023 registered with Police Station Tahsil Nagpur, District Nagpur for the offences punishable under Sections 302, 120-B, 385, 386, 201 read with Section 34 of the Indian Penal Code, under Sections 3, 25, 4, 5, 27 and 29 of the Indian Arms Act, Sections 3(1)(i), 3(2), 3(4), 4 of the Maharashtra Control of Organized Crimes Act, 1999 and Section 135 of the Maharashtra Police Act, 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 Police Station Tahsil Nagpur 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) The applicant shall not indulge in the similar type of activities.

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

26. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate