2024:BHC-NAG:7101

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

CRIMINAL APPLICATION (BA) NO. 515 OF 2024

Rajpal s/o Vasudeo Deshbhratar 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. Nihalsingh Rathod, counsel for the applicant.
Ms. Soniya Thakur, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 05/07/2024.

1. Heard.

2. The applicant has preferred this bail application under Section 439 of the Code of Criminal Procedure alongwith Section 21(4) of the Maharashtra Control of Organized Crime Act, 1999, in connection with Crime No.288/2021 registered with Police Station, Yashodhara Nagar, District Nagpur for the offence punishable under Sections 420, 406, 409, 120-B and 212 of the Indian Penal Code,1860 and Sections 3 and 4 of the Maharashtra Protection of Depositors (In Financial Establishments) Act (in short 'MPID') and Sections 3, 25 of the Arms Act, Section 66(d) of the Information Technology Act, Sections 58(B), 5(A) of the Reserve Bank of India Act, 1934 and Sections 3(i)(ii), 3(2), 3(4), 4 of the Maharashtra Control of Organized Crime Act, 1999 (for short 'MCOC Act'). The applicant is arrested on 24/06/2021 since then he is behind bar.

3. The crime is registered on the basis of report lodged by one Nilesh Mohadikar alleging that the another co-accused Nished Wasnik created a fake company by way of website, namely 'Ithar Trade Asia', and induced the general public at large that they would get a handsome return of the invested amount of their investment within 100 days. The company has floated several schemes and induced the customers to invest in their company. It is further alleged that he has conducted several seminars in five star hotels and provided information to the investors about various schemes of Crypto Currency called 'Eathereum'. Thus, he has accepted the amounts from various investors, and the investors have not received any returns, and the co-accused Nished Wasnik could not return the amount in time, and thus duped the general public at large.

4. Heard learned Counsel Mr. Rathod for the applicant who submitted that, as far as the present applicant is concerned, who is the only employee of the said Nished Wasnik. There is no allegation against him that either he induced the investors or conducted the seminars to induce the investors to make an investment. He further submitted that the allegations regarding the present applicant is that he was obeying the orders of the said Nished Wasnik, with whom he was working. There are no criminal antecedents against the present applicant, the co-accused with the similar role has already been released on bail by this Court. In all 16 persons are arraigned as an accused. Out of which, 14 accused have been arrested, and out of them, 10 have

already been released on bail. He submitted that as far as the allegation of the provisions of MCOC Act are concerned, which are not applicable as there is no single charge-sheet filed against the present applicant except this crime. In view of that, the applicant be released on bail.

5. On the other hand, learned APP invited my attention towards the some statement of the witnesses and submitted that the said statement of the witnesses discloses that the present applicant has played vital role and insisted the various investors to invest the amount. She also placed on record the statement of the co-accused showing the involvement of the present applicant and prays for rejection of the application.

6. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers from which it reveals that, this is the first offence which is registered against the present applicant, as far as the criminal antecedents are concerned, no single charge-sheet is filed against the present applicant. On perusal of the statement of the witnesses also, only it reveals that the seminar which are held by the co-accused Nished Wasnik, present applicant was also present, and he has also induced the various investors to invest the amount. The statement of the co-accused namely Sandesh Punjabrao Lanjewar also shows that he alongwith the present applicant were obeying the orders of the said Nished Wasnik and Rajendra with whom, they were working. Thus from the statement of the

witnesses and the statement of the co-accused, it reveals that present applicant was working with the co-accused Nishad as an employee and therefore, he was attending the said seminars and obeying the directions of his employee.

7. As far as application of the provisions of the MCOC Act is concerned, 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 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 purpose. These activities, as per the definition of organized crime, are continuing unlawful activity prohibited by law. Thus, for an activity to be a 'continuing unlawful activity', the activity must be

prohibited by law; it must be a cognizable offence punishable with imprisonment of three years or more; it must be undertaken singly or jointly; it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate; in respect of which more than one charge-sheet have been filed before a competent Court.

9. Thus, for applying the provisions of MCOC Act, the investigating agency has to show, the nexus between the other members of the organized crime syndicate and the person against whom the provisions of MCOC Act are applied. Even the confessional statement placed on record by the learned APP and the co-accused shows that, present applicant was the employee of the main accused and was obeying the order of his employee. Thus, there is no material in the charge-sheet to show that the applicant has participated in any crime from which he has received any pecuniary gain.

10. As far as the rigor under Section 21(4) of the MCOC Act is concerned, satisfaction is to be recorded by this Court to the effect that, applicant is not guilty for the offence, but the said satisfaction should be prima-facie in nature. Considering the entire statements on record, there is a prima-facie satisfaction that material found against the present applicant is not sufficient to show his involved attracting the offence of the MCOC Act. At the most, the offence made out against the present applicant is that, he was working with the co-accused Nished Wasnik, who was

involved in running the fake currency and accepting the amount from the investors.

11. Thus, there is no prima-facie material found against the present applicant, in the facts of the circumstances of the case, further incarceration of the present applicant is not required and therefore, application deserves to be allowed. Accordingly, I proceed to pass the following order.

ORDER

(i) The application is **allowed.**

(ii) The applicant – Rajpal s/o Vasudeo Deshbhratar be released on bail, in connection with Crime No.288/2021 registered with Police Station, Yashodhara Nagar, District Nagpur for the offence punishable under Sections 420, 406, 409, 120-B and 212 of the Indian Penal Code,1860 and Sections 3 and 4 of the Maharashtra Protection of Depositors (In Financial Establishments) Act (in short 'MPID') and Sections 3, 25 of the Arms Act, Section 66(d) of the Information Technology Act, Sections 58(B), 5(A) of the Reserve Bank of India Act, 1934 and Sections 3(i)(ii), 3(2), 3(4), 4 of the Maharashtra Control of Organized Crime Act, 1999, on executing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned Police Station on first day of every month in between 9.00 am. to 1.00 p.m. till conclusion of the trial.

(iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any of the witnesses who are acquainted with the facts of the present case.

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