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

CRIMINAL APPLICATION (BA) NO. 636 OF 2024

Sandesh Punjab Lanjevar (in jail) 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. Parth Malviya, counsel h/f Mr. C.B.Barve, counsel for applicant.
Mr. C.A. Lokhande, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 14/08/2024.

1. The applicant has preferred this bail application under Section 439 of the Code of Criminal Procedure, in connection with Crime No.288/2021 registered with Police Station, Yashodhara Nagar, District Nagpur for the offences 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 (hereinafter referred as ‘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 19/02/2022 and since then he is behind bar.

2. 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.

3. Heard learned for the applicant who submitted that, as far as the present applicant is concerned, who is the 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 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 accused 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, he be released on bail.

4. Per contra, learned APP strongly opposed the said application on the ground that, the investigation papers reveals that the present applicant was working with the said Nished Wasnik, has also received the pecuniary gain from the investors as amounts are deposited in the account of the present applicant also. He further submitted that during the investigation, it is further revealed from the statement of the present applicant that, he has received some amount as investors have invested the amount in his account. He further submitted that considering the prima-facie case against the present applicant, and in view of the rigor under Section 21(4), the application deserves to be rejected.

He further submitted that, in view of the law laid down by this Court in the case of ***Govind Sakharam Ubhe vs The State Of Maharashtra, [2009 SCC OnLine Bom 770]***, the nexus with the organized crime syndicate is enough to invoke the provision of the MCOC Act in view of that, application deserves to be rejected.

5. 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 offence wherein the allegation against the present applicant is that he has received the pecuniary gains by committing the offence under Sections 406, 420, 409, 120-B and 212 of the Indian Penal Code, 1860. As far as the criminal antecedents are

concerned and from the reply of the State, it reveals that initially the offence registered against the present applicant are under Section 302, 201, 364, 120-B read with Section 34 of the Indian Penal Code and under Sections 294, 506, 427 read with Section 34 of the Indian Penal Code, 1860 read with Sections 4 and 25 of the Arms Act. Thus, it reveals that, earlier the offences were registered against the present applicant are not in order to pecuniary gains or economical gain received by the present applicant.

6. 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 present as an employee. There is no allegation that either he induced the various investors to invest the amount. The statement of the present applicant recorded under Section 18 of the MCOC Act only shows that some of the investors have invested the amount in his account. Thus, it reveals from the statement of the present applicant and the statement of the other witnesses, his involvement in the alleged offence is only because, he was working with the co-accused Nished Wasnik as an employee. As far as the attending of the seminars and the inducement to the investors is concerned, there is no allegation made by the witness.

7. Moreover, 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 advantages 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.

09. 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 which shows that, some investors have invested the amount in the account of the present applicant, however the investigating agency has not produced on record, the relevant accounts statement to show that these amounts are deposited in the account of the present applicant. Thus, there is no material in the charge-sheet to show that the applicant has participated in the present crime from which he has received any pecuniary gain. As far as the criminal antecedents are concerned, which are against the present applicant in his individual capacity.

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 under 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 company, received the pecuniary gains and accepting the amount from the investors.

11. Thus, considering the 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. Moreover, the co-accused who has played the similar role is already released on bail by this court. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order.

ORDER

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

(b) The applicant – **Sandesh Punjab Lanjewar** shall be released on bail, in connection with Crime No.288/2021 registered with Police Station, Yashodhara Nagar, District Nagpur for the offences 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 (hereinafter referred as '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.

(c) 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.

(d) 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.]**