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

CRIMINAL APPLICATION (BA) NO. 639 OF 2024

Ashwin @ Sintu s/o Nagorao Pradhan **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.M. Daga, counsel for applicant.
Mr. S. S. Hulke, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 23/09/2024.

1. The applicant came to be arrested on 17/08/2023, in connection with Crime No. 831/2023 registered with Police Station, MIDC, Nagpur for the offence punishable under Sections 143, 144, 147, 148, 302, 307, 120(B), 201 read with Section 149 of the Indian Penal Code, 1860; Sections 4, 25 of the Arms Act, 1959; Section 3(1)(ii), 3(2) 3(4) of the Maharashtra Control of Organized Crimes Act, 1999 (for short 'MCOC Act').

2. The crime is registered on the basis of report lodged by Ravi Jaiswal alleging that on 16/08/2023 at about 8.30 p.m. he along with deceased Rakesh Mishra had gone to one Panstall, situated at Rajiv Nagar Main road, at about 9.00 to 9.30 p.m., one Arjun Dandekar along with 4 to 5 persons came and assaulted the deceased Rakesh Mishra and informant Ravi by means of sword and thereafter fled away. It is further alleged that on account of previous dispute of Rakesh Mishra and the employer of the present applicant, Deepak Verma, hatched the

conspiracy and hired the other co-accused and eliminated the deceased. On the basis of said report, police have registered the crime against the Ganesh Dandekar and other unknown person. During the investigation it reveals that Ganesh Dandekar is the gang leader and the present applicant is a member of organized crime syndicate, and in furtherance of that organized crime syndicate, he committed the offence. Therefore, the approval was obtained in view of Section 23(1) of the MCOC Act and sanction was also subsequently obtained in view of Section 23(2) of the MCOC Act.

3. Learned counsel, Mr. R.M. Daga for the applicant, submitted that as far as the present applicant is concerned, who was working with the co-accused Deepak Verma, as Manger-cum-Driver. From the entire investigation papers, his involvement in actual assault is not revealed. Only allegation against him is that, he was aware about the incident and he was along with the co-accused Dipak Verma. At the relevant time, he has also made a phone call to other co-accused, in view of the direction of his employer.

4. He submitted that the recitals of the FIR, and the various statement recorded during the investigation and the CDR Report shows, that applicant was along with co-accused and on the say of accused, he has made phone call to Rahul Meshram. He submitted that as far as the connection with organized crime syndicate is concerned, there is absolutely no material, except the present crime, no other crime is registered against him. There is no evidence to show that, in furtherance

of common object of the organized crime syndicate, he either involved in any crime which are committed for the purpose of pecuniary gain. Thus, considering that absolutely there is no material to connect the present applicant to show that he is a member of organized crime syndicate and in furtherance of the common object of organized crime syndicate, he is involved either in the conspiracy or in elimination of the deceased, the application of the present applicant deserves to be allowed.

5. Learned APP strongly opposed the said application and submitted that, from the investigation papers it reveals that there was a previous enmity between the deceased and the Rakesh Verma with whom the present applicant is working. At the time of incident and prior to the incident as well as after the incident he was continuously along with the co-accused. He invited my attention towards various statements including statement Rahul Kailash Mershram, Afsar Khan alias Abdul Hui and Dinesh Beniram Thakre and submitted that, all these statement clearly shows that the presence of the present applicant along with other co-accused. Thus, there is a sufficient material against the present applicant to interfere that he was member of the organized crime syndicate and was aware about the conspiracy hatched by the co-accused Deepak Verma, and he was associated with the said Deepak Verma. Thus, the material on record sufficiently attract the rigor under Section 21(4) of MCOC Act, in view of that, application deserves to be rejected.

6. After hearing learned counsel for the applicant and learned APP for the State, perused the entire investigation

papers, from which it reveals that as far as the involvement of the present applicant in the actual incident for eliminating the deceased is concerned, there is neither an allegation that he was present at the spot or he was involved in the actual assault. As far as conspiracy is concerned, the statements of the witness Rahul Kailash Meshram, shows that present applicant was along with co-accused Deepak Verma and said Deepak Verma has called the present applicant and asked him to see, location of other boys and they have to execute the act, when the victim is present at the spot. After receipt of the phone of the said Deepak Verma to the present applicant, present applicant made a phone call to somebody else and inquired whether the boys came at zone square, and if they arrived their, they have to call Deepak. The statement of the Afsar Khan alias Abdul Hui also shows that, at the relevant time i.e. on the date of incident on 16/08/2023 at 9.50 p.m. present applicant along with Deepak.

7. Thus, sum and substance of all these statement shows that present applicant was working with Deepak Verma and on the day of incident i.e. prior to the incident and after the incident, he was along with said Deepak Verma. The said Deepak Verma made a phone call to the present applicant, and asked him whether boys are there or not, when the victim is present at the spot. Thereafter, present applicant has made phone call to somebody else and asked them to come. From these statement, at the most it can be inferred that, present applicant was aware about the conspiracy hatched by the co-accused Deepak Verma to eliminate the deceased. More than that, no role is attributed to the present applicant.

8. Learned counsel, Mr. Daga for applicant placed reliance on the order passed by the Hon'ble Apex Court in the case of ***Maniklal Mehta Vs The State of Bihar in Special Leave to Appeal (Crl.) No. 3490/2023 dated 16/05/2023***, wherein the Hon'ble Apex Court has considered the issue and observed that, this court has considered the submissions of the parties. The petitioner is accused of various offences including Sections 302, 304, 307 read with Section 34 of the Indian Penal Code. The record shows that the charge-sheet has been filed. The role attributed to petitioner is that he is one of the conspirators and was in constant communication with one Vikram Mehta. The charge-sheet relies primarily upon telephonic conversation and some quarrel which took place prior to the incident.

He submitted that in the present case, there is no material that present applicant was part of conspiracy. So the present applicant is on the better footing that, the accused whose bail application was considered by the Hon'ble Apex Court.

He further placed reliance on ***Syed Asim Ali vs State of Uttar Prardesh in criminal Appeal No. 3012 of 2024 dated 22/07/2024***, wherein the Hon'ble Apex Court while considering the grounds for bail considered that one of the allegations against the appellant is that he was always in touch with the accused who actually participated in the incident. Another allegation is that his job was to provide legal aid to the accused. There are no other antecedents in the sense that based on the present case, U.P. Gansters and Anti Social Activities

(Prevention) Act, 1986 and it is held that case is made out for enlarging the appellant on bail.

9. He further placed reliance in the case of ***Rakesh Babu Chalwadi Vs State of Maharashtra reported in 2021 ALL MR (Cri) 3857*** wherein by considering the various decisions of the Hon'ble Apex Court, on the facts of the bail, it is observed that he may be guilty of commission of offences in question and can be charged under Section 395 and 396. The bar which would operate under sub-section (4) of Section 21 of the MCOC Act is applicable only qua an offence under MCOC Act, and prima-facie the ingredients of the same being made out and released the applicant on bail. He further placed reliance on the decision of this Court in ***Shahrukh @ Kasai Shaikh Akram Vs State of Maharashtra reported in 2024 ALL MR (Cri) 1912***.

10. Having heard both the sides and on perusal of the investigation papers, as observed earlier the only the evidence available against present applicant is that he was working with the co-accused Deepak Verma, Deepak Verma has made him a phone call, and he also made a phone call to somebody and asked whether any boys came there. The evidence further shows that he was before the incident and after the incident was with co-accused.

11. 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 enforce 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.

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 or any other person. These activities as per the definition of organized crime are continuing unlawful activities prohibited by law. The definition of continuing unlawful activities 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', 1) the activity must be prohibited by law; 2) it must be a cognizable offence punishable with imprisonment of three years or more; 3) it must be undertaken singly or jointly; 4) it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate 5) in respect of which more than one charge-sheet 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 Mr. R.M. Daga for the applicant, submitted that as far as the involvement of the present applicant in the organized crime syndicate is concerned, there is absolutely no material to show that either any offence is registered against him, or he is associated with other co-accused. The chart placed on record along with the charge-sheet nowhere shows that the applicant committed any offence as member of organized crime syndicate and none of offences is

registered to show that the applicant has generated illegal wealth by committing the said crime. Thus, the provisions of the MCOC Act are not applicable.

16. Whereas, learned APP vehemently submitted that the involvement of the present applicant appears from the statements of the various witnesses which shows that he is associated with the other co-accused and mere association is also sufficient to say that he is a member of organized crime syndicate.

17. 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 Hon’ble Apex Court in the case of ***Zakir Abdul Mirajkar vs. State of Maharashtra, reported in AIR OnLine 2022 SC 1325***, wherein the Hon’ble Apex Court has considered the statement of objects and reasons contains the reason which constituted the foundation for the legislature to step in and observed that;

> 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.

18. In the light of the above, if facts of the present case are taken into consideration, admittedly, no offence is registered against the applicant showing that he has either generated illegal wealth by way of contract killing, extortions, smuggling, and contraband, illegal trade in narcotics, and money laundering etc.. There is no material to show that the existing legal framework work and procedural law are inadequate to deal with the present applicant. None of offences are registered against the applicant showing he had committed the offence to gain illegal wealth. In fact, only present offences is registered against the present applicant.

19. 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.

20. Insofar as the rigor under Section 21(4) of the MCOC Act are concerned, the Honourable Apex Court in the case of ***Ranjitsing Brahmajeetsing Sharma vs. State of Mah. and anr, reported in 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 Honourable 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 provision 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 Honourable Apex Court has further observed that it is not the court is required to come to positive finding that the applicant applies for a bail is not guilty of an organized crime before grant of bail.

21. In the light of the above principles, if facts in the present case considered, admittedly, the name of present applicant is not mentioned in the FIR, but the investigation report shows his presence along with the other co-accused. Except his presence and two phone calls, there is no material to show that either he was involved in a conspiracy or actual incident. The crime chart shows that, except this offence no other offence is registered against him.

22. In view of that, there are certainly reasonable grounds to hold that the applicability of the MCOC Act against the present applicant is doubtful. The nexus between the

present offences and the present applicant are not demonstrated on the basis of some material on record.

23. For the reasons recorded above, the application deserves to be allowed, in view of that, I proceed to pass the following order:

ORDER

a. The criminal application is allowed.

b. Applicant – **Ashwin @ Sintu s/o Nagorao Pradhan**, shall be released on bail, in connection with Crime No.831/2023 registered with Police Station, MIDC, Nagpur for the offences punishable under Sections 302, 307, 120(B), 201, 143, 144, 147, 148 read with Section 149 of the Indian Penal Code, 1860; Sections 4, 25 of the Arms Act; and Sections 3(1)(ii), 3(2) 3(4) of the Maharashtra Control of Organised Crime Act, on executing a P.R.Bond in the sum of Rs.50,000/- with one solvent surety of the like amount.

c. The applicant shall attend the concerned police station, twice in a month on 1st and 15th of and every month between 10.00 a.m. to 01.00 p.m., till conclusion of the trial.

d. The applicant shall not leave the jurisdiction of the District Court Nagpur without prior permission of the said court.

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

f. Contravention of any of conditions above leads to cancellation of the bail.

The application is **disposed of** accordingly.

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