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

CRIMINAL APPLICATION (BA) NO. 721 OF 2024

Rishabh @ Harish Wankhede **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. P.S. Dhenge, counsel for applicant.
Mrs. Sneha Dhote, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19/09/2024.

1. The applicant came to be arrested on 13/07/2024, in connection with Crime No. 216/2022 registered with Bajaj Nagar Police Station, Nagpur for the offence punishable under Sections 143, 147, 148, 302, 395, 397, 201 read with Section 149 of the Indian Penal Code, 1860 and Section 3(1)(ii), 3(2), 3(4), 25 of the Maharashtra Control of Organized Crime Act, 1999 (for short 'the MCOC Act').

2. The crime is registered on the basis of a report lodged by Pratik Anil Dhanorkar on an allegation that the informant had visited the Bharat Petrol Pump at Shankar Nagar at about 10.45 p.m. at night on 13/07/2023 to fill the fuel tank of his two-wheeler. He witnessed that one Hyundai Verna Car was parked at the entry point of the petrol pump from Shankar Nagar square to Bajaj Nagar square, and due to a dash between the car and autorickshaw, a scuffle took place between the deceased and one co-accused, who was wearing black colored pants and T-shirt. The other four to five persons were also there, and they assaulted the deceased. It is alleged

that the co-accused No.2-Suraj alias Sandip Dhiraj Hiranwar, thrown paver block on the head of the deceased and caused his death, and other co-accused assaulted the deceased by fist and kick blows. On the basis of said report, police have registered the crime against the present applicant.

3. During the investigation, the investigating officer sent a proposal to apply the provisions of the MCOC and obtained the approval under Section 23(2) of the MCOC Act and also obtained the sanction, and the provisions of the MCOC Act are applied.

4. Heard learned counsel for the applicant. He submitted that the co-accused with similar role is already released by this Court by observing that the role attributed to him is only to the extent of assault by fist and kick blows. He submitted that a similar role is attributed to the present applicant. Now, the investigation is already completed and charge-sheet is already filed. As far as the rigor under Section 21(4) of the MCOC Act is concerned, there is no material to show that applicant was associated with organized crime syndicate or he has committed any offence in pursuance of the common object of the organized crime syndicate. He submitted that merely because he was present along with other co-accused, he is arraigned as an accused. Now the investigation is completed and charge-sheet is filed, on the ground of parity, the applicant shall be released on bail.

5. Learned APP strongly opposed the said application and submitted that the applicant was a member of an

organized crime syndicate, and in pursuance of the common object of the organized crime syndicate, he and other co-accused assaulted the deceased and caused his death. There are various offences registered against the leader of the organized crime syndicate. It is not the requirement that against every member one or more charge- sheets should be filed. She submitted that, in view of that rigor under Section 21(4) of the MCOC Act, the 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 due to the clash between the two vehicles, the alleged incident has taken place. The entire incident was recorded in the CCTV footage. The CCTV footage panchanama shows that the co-accused, namely Suraj alias Sandip Dhiraj Hiranwar, thrown paver block on the head of the deceased and caused his death. On perusal of the crime chart, it reveals that except the present crime there is no other crime registered against the present applicant. During the investigation, his clothes are seized by the investigation officer. He was also placed for the T.I. Parade, and during T.I. Parade, he was identified by the witnesses. Thus, as far as his presence on the spot of incident is concerned, there is sufficient material to show that he was present at the spot of incident. The statements of various witnesses are recorded, from which it reveals that the involvement of the present applicant is in the assault on the deceased by fist and kick blows.

7. Whether the provisions of MCOC Act are applicable or not to be ascertained on the basis of material collected by the investigating agency during the investigation. Before adverting towards the material collected during the investigation, it is necessary to consider the provisions of MCOC Act. The expression "continuing unlawful activity" in Section 2(1)(d) as follows:

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. Thus, 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 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.

9. 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.

10. After scrutinizing the material on record on the background of rigor under Section 21(4) of the MCOC Act, as far as the present applicant is concerned, there is absolutely no material to show that he was associated with the organized crime syndicate or in pursuance of the object of the said organized crime syndicate, he has committed the offence to gain a pecuniary gain or the economical gain.

11. 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 ground for believing that the accused is not guilty. The phrase "reasonable ground" is not similar to the sufficient ground. After considering the requirement, except the present offence, admittedly there is no other offence registered against the present applicant to show that he is associated with the organized crime syndicate.

12. In so far as the submission of the learned APP as the provision of Section 21(4) of the MCOC Act are concerned, the Hon'ble Apex Court in the case of ***Ranjitsing Brahmajeetsing Sharma vs State of Maha. and another, reported in 2005 ALL MR (Cri) 1538 (SC)*** held that 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 who applied 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 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 Honourable 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 is not guilty of an organized crime before grant of bail.

13. In the light of the above principle, if the facts of the present case are considered, admittedly, there is no material to show that the applicant was a member of an organized crime syndicate and he had committed the offence as a member of organized crime syndicate. The chart shows that except this crime, there is no other crime is registered against

the applicant. There is no material to show that he has committed any offences to gain pecuniary benefits or undue economic or other advantage for himself or any other person. Thus, there are certainly reasonable grounds for believing that the applicant is not guilty of any of the offences covering under the organized crime. In fact, applicability of the MCOC Act itself is doubtful. In the light of the above facts and circumstances and considering the role attributed to the present applicant which only to the extent of assault by fist and kick blows and he has not caused the death of the deceased. In view of that and considering the fact that, investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required.

14. For the reasons recorded above, the application deserves to be allowed. Hence, I proceed to pass following order:

ORDER

a. The criminal application is **allowed.**

b. The applicant **Rishabh @ Harish Wankhede**, shall be released on bail, in connection with Crime No. 216/2022 registered with Bajaj Nagar Police Station, Nagpur for the offence punishable under Sections 143, 147, 148, 302, 395, 397, 201 read with Section 149 of the Indian Penal Code, 1860 and Section 3(1)(ii), 3(2), 3(4), 25 of the Maharashtra Control of Organized Crime Act, 1999, on executing P.R.Bond in the sum of

Rs.50,000/- with one solvent surety of the like amount.

c. The applicant shall attend concerned Police Station first day of every month, till culmination of the trial.

d. The applicant shall not leave the concerned jurisdiction of the District Court without prior permission of the concerned Court.

e. The applicant shall not induce, threat or promise any witnesses who are not acquainted with the facts of the case.

f. The applicant shall not indulge in a similar types of activities.

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

The criminal application stands **disposed of.**

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

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