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

CRIMINAL APPLICATION (BA) NO. 922 OF 2024

Vinayak s/o Daulatrao Mundafale 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. S.P. Sonwane, counsel with Mr. A.A. Thakur, Ms. Shiba Thakur, Mr. K.Y. Mandpe, counsels for applicant.
Mr. K.R. Lule, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 09/12/2024.

1. This is an application for grant of bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 09/04/2023 in connection with the Crime No.69/2023, registered with Police Station Sonegaon, Nagpur for the offences punishable under Section 394, 397, 120(B) and 506(B) read with Section 34 of the Indian Penal Code and under Sections 4 and 25 of the Arms Act and under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred as “MCOC Act” for the sake of brevity).

2. The accusation against the present applicant is on the allegation that the applicant is the Member of Organized Crime Syndicate and in pursuance of the common object of such syndicate, committed the offence of dacoity and therefore, the provisions of the MCOC Act are made applicable.

3. As per the allegations in the First Information Report (FIR) lodged by Suresh Sadashiv Potdukhe that in the intervening night of 03/04/2023 to 04/04/2023, he was sleeping in his bedroom, at the relevant time, three unknown persons entered into his bedroom assaulted him and committed the dacoity by stealing the golden, silver ornaments and cash amount, total worth of Rs.32,00,000/-. On the basis of said report, police have registered the crime against the present applicant. During the investigation, it reveled that the applicant is the member of organized crime syndicate and therefore, in view of Section 23(2) of the MCOC Act, the sanction was granted prior to that the approval was granted in view of Section 23(1) of the MCOC Act.

4. It is submitted by the learned counsel for the applicant that neither the approval granted under Section 23(1) nor the sanction granted under Section 23(2) of the MCOC Act speaks about the material considered by the sanctioning authority to apply the stringent provisions like MCOC Act. There are no criminal antecedents against the present applicant. Except this offence, no other offence is registered against him. There is no nexus between the present applicant and other co-accused. He submitted that the entire investigation papers nowhere reveals that there is any association between the present applicant and other co-accused, as far as the offences registered against the co-accused are concerned.

5. He submitted that the accusations of the present applicant is merely on the basis of the call report. He pointed out that, as per the prosecution, there were 109 calls between the present applicant and other co-accused Vinod Vitthalrao Sontakke. He also pointed out from the charge-sheet that as far as on the day of the incident is concerned, only two calls, one is the incoming call and one is the outgoing call, there is no other calls between him and the other co-accused Vinod. The entire call details nowhere show that there are any calls between the present applicant and other co-accused. He submitted that the amounts seized from the present applicant on the basis of his statement under Section 27 of the Indian Evidence Act also nowhere disclose that there is any corroboration to the effect of the recovery. As per the statement of the informant, the amount which was taken from his house is in the denomination of Rs. 500/-, whereas the amounts seized at the house of the present applicant are in the denominations of Rs. 100/- to Rs. 200/-. He submitted that 109 calls were shown by the prosecution between the present applicant and other co-accused, but except the two calls on the day of the incident i.e. also much prior to the time of the incident, the other calls are prior to three months. Thus the aspect is also not helpful to the prosecution as far as the involvement of the present applicant is concerned. He submitted that the statement of the present applicant is recorded under Section 18 of the MCOC Act, wherein he has explained the said recovery of

the said amount. The said amount was given to him for the treatment of his son. Thus, he has properly explained the possession of the said amount in his possession. He submitted that the seizure of the amount, which is of a different denomination than the denomination described by the informant and the statement of the present applicant under Section 18, sufficiently shows that the amount which was recovered from his house is not the amount which was obtained by him out of the dacoity committed by the other co-accused. Thus, he submitted that there is absolutely no material to establish the nexus or the association of the present applicant with the other co-accused. Now investigation is completed, and the charge sheet is already filed, further incarceration is not required.

6. In support his contention, he placed reliance on the orders passed by the Hon'ble Apex Court in the cases of;

(1) **Maniklal Mehta vs The State of Birhar in Special Leave to Appeal (Crl.) No. 3490/2023 dated 16/05/2023;**

(2) **Syed Asim Ali Vs State of Uttar Pradesh in Criminal Appeal No. 3012/2024 (arising out of S.L.P. (Criminal) No. 6606 of 2024) dated 22/07/2024;**

(3) **Rakesh Babu Chalwadi vs The State of Maharashtra [2021 ALL MR (Cri) 3857];**

(4) Ranjitsing Brahmajeetsing Sharma Vs State of Maharashtra and another [2005 ALL MR (Cri) 1538 (S.C.); (5) Criminal Application (BA) No. 639/2024 dated 23/09/2024.

7. Per contra, learned APP strongly opposed the said application and submitted that the amount is recovered from the present applicant and the statement of the present applicant that the said amount, and in which share in the said dacoity, thus the statement was recorded under Section 27 of the Indian Evidence Act.

8. The other evidence collected during the investigation is that there were 109 calls between the present applicant and the other co-accused Vinod, and the third aspect he pointed out is that the statement of the co-accused Vinod showing the implication of the present applicant in the alleged crime. For that purpose, he relied upon the report submitted to his superior, wherein the reference of the statement of the co-accused is mentioned.

9. He submitted that considering investigation papers and the role attributed to the present applicant, he was part of the conspiracy, and in pursuance of the said conspiracy, dacoity was committed, and the amount was recovered from the present applicant therefore, there is ample evidence on record to show his involvement in the said crime. In view of that, the application deserves to be rejected.

10. 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 as to the dacoity is concerned, admittedly his presence was not required. The allegation against him is that he was part of the conspiracy, and he has informed the other dacoity regarding the availability of the golden ornaments and the cash at the house of the informant. As far as this aspect is concerned, admittedly neither there is a direct evidence nor substantial evidence collected by the investigating agency to show in what nature the said information was provided by the present applicant to the other co-accused, as there is absolutely no material to show that there were any calls between the present applicant and the other co-accused. As far as the calls between the present applicant and the co-accused Vinod are concerned, there were only two calls, one incoming and one outgoing i.e. much prior to the incident. At the time of the incident, there was absolutely no material to show that there was any communication between the present applicant and the other co-accused.

11. The prosecution placed reliance on the statement of the present applicant as well as other co-accused. Learned APP though pointed out that in the said statement the name of the present applicant is mentioned by the other co-accused, but admittedly it is not admissible material as far as the statement under Section 27 is recorded by the investigating agency is concerned. Thus,

except the C.D.R. records, there is no other material collected by the investigating agency to show any nexus between the present applicant and other co-accused. The said nexus is also attempted to be established in view of statement of the present applicant recorded under Section 18 of the MCOC Act. On perusal of the said statement, it reveals that there was a previous acquaintance between the present applicant and other co-accused Vinod Sontakke, as the applicant is Taxi-Driver. It further reveals from the said statement that as the son of the present applicant was taking treatment in the hospital at the relevant time, the other co-accused Vinod, helped him and provided financial assistance, and therefore, there was friendship between them. Thus, the statement recorded under Section 18 is also not helpful to the prosecution, as far as to establish the nexus between the present applicant and other co-accused are concerned.

12. Learned counsel Mr. S.P. Sonwane for the applicant placed reliance on the order passed by the Hon’ble Apex Court in the ***Maniklal Mehta*** referred (supra), wherein the Hon’ble Apex Court has considered the submission and observed that this court has considered the submission of the parties. The petitioner is accused in various offences including offence under 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 the 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.

13. He submitted that in the present case there is no such material to show that the applicant was part of the conspiracy. Admittedly the direct evidence would not be available to show the conspiracy between the applicant and the other co-accused, but there has to be some evidence as far as the meeting of the applicant with other co-accused is concerned.

14. He further placed reliance on ***Syed Ashim Ali*** referred (supra), wherein also, the Hon'ble Apex Court while considering the grounds for bail considered that one of the allegations against the applicant 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 said sense that based on the present case, U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, and it is held that case is made out for enlarging the applicant on bail. He submitted that thus, there are stringent provisions as far as the offence punishable under the UPA is concerned, but this Court has considered that there is no material and released the applicant on bail.

15. 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 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.

16. Thus, the MCOC Act contemplates a situation where a group of persons as members of organized 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 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 the competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

17. Thus, for an activity to be a 'continuing unlawful activity', (i) the activity must be prohibited by law; (ii) it must be a cognizable offence punishable with imprisonment of three years or more; (iii) it must be undertaken singly or jointly; (iv) it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate and (v) in respect of which more than one charge-sheet have been filed before a competent Court.

18. 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 a different modules. A person may be a part of the module which jointly undertakes an organized crime or he may singly or 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.

19. Learned counsel for the applicant vehemently submitted that as far as the involvement of the present applicant in the organized crime syndicate is concerned, there is absolutely no material to connect him with the alleged offence. He submitted that there is no evidence to show that he is associated with the other the co-accused or

the chart placed on record along with the charge-sheet also shows the except the present offence, there is no other offence registered against the present applicant along with the other co-accused and there is no material to show that he has generated illegal wealth by communicating the said act. Thus, the provisions of MCOC Act are not applicable.

20. Learned APP strongly opposed the same and submitted that considering the involvement of the present applicant and his association with the other co-accused sufficiently shows he is a member of the organized crime syndicate.

21. 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, [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.

22. In the light of the above, if facts of the present case are taken into consideration, admittedly, no offence is registered against the applicant except the present offence, to show that he has generated illegal wealth by way of contract killing, extortions, smuggling, and contraband, illegal trade in narcotics, or any other manner. 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.

23. 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.

24. Insofar as the rigor under Section 21(4) of the MCOC Act are concerned, the Hon'ble Apex Court in the case of ***Ranjitsing Brahmajeetsing Sharma vs. 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 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 Hon'ble 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.

25. In the light of the above principles, if facts in the present case considered, admittedly, the evidence which is collected during the investigation is not sufficient to show that there was any association between the present applicant and the other co-accused at a prima-facie stage. Except the phone call details there is no other material

collected whether the phone call details is sufficient to establish that there was any nexus between them is a matter of evidence. At this stage, the applicant has made out a case to show that the applicability of the MCOC Act against him is doubtful, and the nexus between him and the other co-accused is also doubtful.

26. 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 – *Vinayak s/o Daulatrao Mundafale*, shall be released on bail in connection with the Crime No.69/2023, registered with Police Station Sonegaon, Nagpur for the offences punishable under Section 394, 397, 120(B) and 506(B) read with Section 34 of the Indian Penal Code and under Sections 4 and 25 of the Arms Act and under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999, 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 day of 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.]**