2024:BHC-NAG:1431

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

CRIMINAL APPLICATION (BA) NO.1032/2023
Vijaykumar @ Raju s/o Shyamlal Dube
..vs..
State of Mah., thr.its PSO PS Ramnagar, Gondia, Maharashtra

Office Notes, Office Memoranda of Coram, appearances, Court orders or directions and Registrar's orders	Court's or Judge's Order

Shri M.M.Awode, Counsel for the Applicant.
Shri S.S.Hulke, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 30/01/2024
PRONOUNCED ON : 05/02/2024

1. Heard.

2. By this application under Section 439 of the Code of Criminal Procedure, the applicant seeks bail in connection with Crime No.320/2020 registered with the non-applicant/police station for offences punishable under Sections 307, 364-A, 326, 397, and 120-B of the Indian Penal Code read with Sections 4 and 25 of the Arms Act and under Section 3(1)(ii), 3(2), and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act).

3. Complainant Amar Surjeetsingh Gandhi, lodged a report with Ramnagar Police Station, Gondia on 10.10.2020. As per the report, he runs a school and co-accused Amit Pande was working as clerk in the school on contract basis prior three

years of lodging of the report and, thereafter, he left the job. Said co-accused Amit Pande contacted the complainant to employ him on the said post or alternatively he be compensated Rs.10.00 lacs. However, the job was not given to him and, therefore, he demanded the amount, but the complainant refused to pay the amount. In September 2020, the complainant received a phone call of the applicant and was asked to pay the money to co-accused Amit Pande and also threatened him. On 9.10.2020, at about 6:00 pm, the complainant had been to Super Market wherein 5-6 persons entered and assaulted the complainant by iron rods and fist blows. The accused also abducted the complainant and taken to the house of the applicant and confined him in one room. Due to the assault, the complainant sustained fracture injuries. A brother of the complainant came to know about the said incident and, thereafter, the complainant was rescued and was taken to the hospital. On the basis of the said report, the police registered the crime against the applicant.

4. During investigation, it revealed to the investigating officer that the applicant formed a gang and is continuously involved in unlawful criminal activities and organized crime syndicate. More than one chargesheet is filed against him and other members of the organize crime syndicate for which

punishment more than 3 years is provided and, therefore, the investigating officer obtained approval under Section 23(1) of the MCOC Act.

5. Learned counsel Shri M.M.Awode for the applicant, submitted that provisions of the MCOC Act are not applicable against the applicant as on the date of the First Information Report, no charegesheets were filed against the applicant for which punishment of three years is provided. He further submitted that as per Crime Chart, three offences were registered against the applicant and out of the said offences, in Crime No.353/2017 the applicant is acquitted. For evoking provisions of the MCOC Act, the prosecution has to establish that activities of the applicant are prohibited by law and such activities are cognizable offences punishable with imprisonment of three years or more and such activities are undertaken either singly or jointly as member of organized crime syndicate. The co-accused is already released on bail as offence under the MCOC Act is not made out and, therefore, rigor of section 21(4) will not come into play. As such, the applicant be released on bail.

6. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

1. Mohd.Iliyas Mohamad Bilal Kapadiya vs. State of Gujarat, reported in (2022)13 SCC 817;

2. Prafulla s/o Uddhav Shende vs. State of Mah., reported in 2009 ALL MR (Cri) 870, and

3. Order passed by this court in Criminal Application (BA) No.641/2021 on 18.11.2021.

7. Learned Additional Public Prosecutor Shri S.S.Hulke for the State strongly opposed the application on the ground that several offences are registered against the applicant and organized crime syndicate and in view of rigor under Section 21(4) of the MCOC Act, the application deserves to be rejected. He further submitted that while granting approval, authority has considered criminal records of the applicant and, thereafter, approval was granted. As such, the application deserves to be rejected.

8. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on the decision of this court in the case of **Govind Sakharam Ubhe vs. State of Maharashtra, reported in 2009(3) Mh.L.J. (Cri.) 131.**

9. Before going into the controversy involved in the present application, it is necessary to see certain provisions of the MCOC Act and its preamble. The preamble states that it is an Act to make special provisions for prevention and control of,

and for coping with the criminal activity by organized crime syndicate or gang, and for matters connected therewith and incidental thereto. The MCOC Act, states the preamble, makes special provisions for prevention and control of, for coping with, criminal activity by organized crime syndicate or gang. Essentially, therefore, the MCOC Act targets the unlawful activities of the organized crime syndicate. The objects and statements of the MCOC Act show that organized crime has for quite some years come up as a very serious threat to the society. It knows no national boundaries and is fueled by illegal wealth generated by contract, killing, extortion, smuggling in contrabands, illegal trade in narcotics kidnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organized crime being very huge, it has had serious adverse effect on our economy. It was seen that the organized criminal syndicates made a common cause with terrorist gangs and foster terrorism which extend beyond the national boundaries. There was reason to believe that organized criminal gangs have been operating in the State and, thus, there was immediate need to curb their activities.

10. The legislatures felt that the existing legal framework i. e. the penal and procedural laws and the

adjudicatory system was found to be rather inadequate to curb or control the menace of organised crime. Government, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime. It is the purpose of this Act to achieve its objects.

11. Section 2(1)(f) of the MCOC Act defines "organized crime syndicate' to mean a group of two or more persons who, acting singly or collectively, as a syndicate or gang indulged in activities of organized crime.

12. Section 2(1)(e) of the MCOC Act defines "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.

13. The definition of continuing unlawful activity within meaning of Section 2(1)(d) states an activity prohibited by law

for the time being in force, which is a cognizable offence punishable with imprisonment of three or more, undertaken either singly or jointly, as a member of organized crime syndicate or on behalf of such syndicate in respect of which more than one chargesheet has been filed before a competent court within the preceding the period of ten years and that court has taken cognizance of such offence.

14. Thus, for an activity to be a `continuing unlawful activity', a) the activity must be prohibited by law; b) it must be a cognizable offence punishable with imprisonment of three years or more; c) it must be undertaken singly or jointly; d) it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate, and e) in respect of which more than one charge- sheet have been filed before a competent court. Therefore, the MCOC Act contemplates a situation where a group of persons as members of organized crime syndicate indulge in organized crime. That is, 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 activity prohibited by law.

15. This Court in the case of **Govind Sakharam Ubhe vs. State of Maharashtra** *supra* in paragraph No.37 defines “continuing unlawful activity”. This court observed that 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. This is evident from section 3(4) of the MCOC Act which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum of fine of Rs.5 lacks. It is further held that what is important is the nexus or the link of the person with organized crime syndicate. The link with the ‘organized crime syndicate' is the crux of the term `continuing unlawful activity'. If this link is not established, that person cannot be roped in.

By giving hypothetical examples, it is held that what is contemplated under Section 2(1)(d) of the MCOC Act is that activities prohibited by law for the time being in force which are 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. Stress is on the unlawful activities committed by the organized crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate.

16. In the light of the above well settled legal position and provisions enumerated therein, if facts of the present case and the material collected during the investigation are considered, it reveals that the entire incident happened in Super Market. The CCTV footage panchanama also shows that the applicant along with other co-accused came in the Super Market and were witnessed in the CCTV footage dragging the complainant out of the Super Market and assaulting him by iron rods and fist and kick blows. The statement of the complainant also shows that he was assaulted by the applicant in the Super Market. During the investigation, the statement of one Prince Gandhi was recorded, who is brother of the complainant, who came to know that his brother was abducted by the applicant and confined in a room in the house and, therefore, he approached the applicant and the applicant took him in the said

room wherein his brother was kept and he was also assaulted.

17. Thus, *prima facie* material shows involvement of the applicant in the alleged offence.

18. During the investigation, the investigating officer obtained approval of higher officer for evoking provisions of the MCOC Act. The authority has considered that more than one chargesheet is filed against the applicant and other members of organized crime syndicate. The Crime Chart shows that in all three offences are registered against the applicant with Ramnagar Police Station vide Crime No.160/2017 under Sections 4 and 25 of the Arms Act; Crime No.234/2017 under 394, 397, 386, and 506B of the Indian Penal Code from which the applicant is acquitted, Crime No.329/2019 under Sections 307, 324, 452, 294, 143, 144, 146, 147, 148, and 149 of the Indian Penal Code and under Sections 4 and 25 of the Arms Act and the present crime is registered as the aforesaid.

19. Thus, on the date of lodging of the First Information Report, two offences were registered against the applicant vide Crime No.160/2017 and Crime No.329/2019 in which chargesheets are filed and cognizance by the competent court is taken for which punishment of more than three years is

provided.

20. Perusal of investigation papers shows that the applicant has committed offences like dacoity and extortion for gaining economic or pecuniary benefits and other advantages for himself or for any other person.

21. Thus, in view of the definition of Continuing Unlawful Activity within the meaning of Section 2(1)(d), the applicant is involved in the activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three or more, undertaken either singly or jointly, as a member of organized crime syndicate or on behalf of such syndicate in respect of which more than one chargesheet has been filed before a competent court within the preceding the period of ten years and that court has taken cognizance of such offence.

22. Thus, *prima facie* involvement of the applicant is revealed in unlawful activities. While granting approval under provisions of the MCOC Act, the competent authority had considered various crime details registered against gang leaders and other members and granted approval.

23. As observed by this court in the case of **Govind Sakharam Ubhe vs. State of Maharashtra** *supra* having hypothetical examples, what is contemplated under Section 2(1)(d) of the MCOC Act is that activities prohibited by law for the time being in force which are 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 chargesheet has been filed. Stress is on the unlawful activities committed by the organized crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate.

24. As observed earlier, that the provisions of the MCOC Act are special provisions for prevention and control of, and for coping with the criminal activity by organized crime syndicate or gang, the statements and the objects of the Act to control illegal activities of the said gangs. Keeping the above objects and reasons and various principles in mind and statutory provisions of the MCOC Act, if restrictions for the grant of bail and the materials placed by the prosecution are considered, the applicants have not made out the case for grant of bail because in view of Section 21(4) of the MCOC Act, which bars the court from releasing accused of offence punishable under the said Act subject to the conditions prescribed in clauses (a) and (b)

therein. Sub-section (4) of Section 21 of the MCOC Act mandates that it is incumbent on the part of the court before granting bail to any persons accused of an offence punishable under the MCOC Act and there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence while on bail. As observed earlier, that the provisions of the MCOC Act are special provisions for prevention and control of, and for coping with the criminal activity by organized crime syndicate or gang, the statements and the objects of the Act to control illegal activities of the said gangs. Keeping the above objects and reasons and various principles in mind and statutory provisions of the MCOC Act, if restrictions for the grant of bail and the materials placed by the prosecution are considered, the applicants have not made out the case for grant of bail because in view of Section 21(4) of the MCOC Act, which bars the court from releasing accused of offence punishable under the said Act subject to the conditions prescribed in clauses (a) and (b) therein. Sub-section (4) of Section 21 of the MCOC Act mandates that it is incumbent on the part of the court before granting bail to any persons accused of an offence punishable under the MCOC Act and there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence while on bail. Considering the material, particularly in the light of the bar under Section 21(4) of the MCOC Act prima facie case is made out against the applicant.

25. Considering the material, particularly in the light of the bar under Section 21(4) of the MCOC Act, *prima facie,* case is made out against the applicant.

26. As observed by the Honourable Apex Court in the case of **The State of Maharashtra vs. Vishwanath Maranna Shetty (Cr.Appeal No.1689/2012 decided by the Honourable Apex Court on 19.10.2012**, while dealing with a special statute like MCOC Act having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organized crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he has possessed of the requisite *mens*

rea. It is further observed by the the Honourable Apex Court that while dealing with application for grant of bail, in addition to broad principles to be applied in prosecution for the offences under the Indian Penal Code, the relevant provision in the said statute, namely, sub-section (4) of Section 21 has to be kept in mind.

27. Thus, satisfaction contemplated in clauses (a) and (b) of sub Section (4) of Section 21 of the MCOC Act, regarding accused being not guilty, has to be based on reasonable grounds. Though expression reasonable grounds has not been defined, it requires something more than a *prima facie* ground.

28. Thus, to grant bail to accused, the court has to come to conclusion that accused is not guilty of offence on the basis of reasonable grounds.

29. As observed, the expression “reasonable ground” has not been defined in the MCOC Act, but it connotes substantial probable causes for believing that accused is not guilty of offence he is charged with. The reasonable belief on the existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that accused is not guilty of alleged crime. Thus, recording of satisfaction on these aspects

is *sine qua non* for grant of bail.

30. In the light of the above well settled legal position, at this stage, there is sufficient material on record to hold that the applicant is guilty of the offences. It is difficult to come to conclusion that he is not guilty of the offence and, therefore, the case is not made out for grant of bail.

31. The evidence available on record *prima facie* discloses complicity of the applicant to show that he is a member of organized crime syndicate. As such, the application deserves to be rejected and the same is **rejected**.

The application stands **disposed** of.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!