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

CRIMINAL APPLICATION (BA) NO.1186/2023
Kartik s/o Surajbhan Balguher
..vs..
State of Mah., thr.PSO Ajani PS, Nagpur

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

Shri R.K.Tiwari, Counsel for the Applicant.
Shri S.S.Hulke, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 14/02/2024
PRONOUNCED ON : 20/02/2024

1. By this application under Section 439 of the Code of Criminal Procedure, the applicant seeks regular bail in connection with Crime No.200/2023 registered with the non-applicant/police station for offences punishable under Sections 395, 452, 354, 336, 337, 323, 294, 427, 504, and 506-II of the Indian Penal Code and 3(1)(ii), 3(2), and 3(4) of the Maharashtra Control of Organized Crime Act (MCOC Act).

2. The accusations against the applicant are on the basis of report lodged by Prity Sandeep Tayde (complainant) who alleged that her nephew Rohit had taken hand loan Rs.10,000/- from Shiva (co-accused). However, he could not repay the amount within prescribed period. The co-accused was repeatedly demanding the amount. On 1.4.2023, when the co-accused along with other co-accused visited her house and demanded amount Rs.40,000/-, she asked him to

come after her husband returns. However, the co-accused pushed her and entered into her house and took away Rs.17,000/- by threatening and abusing her. It is further alleged that the applicant and other co-accused also ransacked the house of Ankit Doifode. Initially, crime was registered under provisions of the Indian Penal Code. During course of investigation, it revealed that the applicant is member of organized crime syndicate and in furtherance of common intention of the said syndicate committed various offences for gaining pecuniary benefits and other advantages and more than one chargesheet is filed for which punishment of more than 3 years is prohibited. The appropriate authority granted sanction and, therefore, the crime was registered under provisions of the MCOC Act and the applicant was arrested on 1.6.2023. As such, the applicant approached this court for grant of bail.

3. Heard learned counsel Shri R.K.Tiwari for the applicant and learned Additional Public Prosecutor Shri S.S.Hulke for the State.

4. Learned counsel for the applicant submitted that no specific role is attributed to the applicant in the alleged crime. Perusal of entire chargesheet shows, except presence of the applicant with the co-accused, no other material is brought on record. There is no material on record to show

that he is a member of organized crime syndicate and in furtherance of common object of the said syndicate he committed the offence. The confessional statements cannot be used against him as provisions of the MCOC Act are not attracted. In fact, there is no iota of evidence to show that the applicant is member of the organized crime syndicate and in further of common object he committed the said offence. The entire chargesheet shows that the applicant is implicated falsely merely because he was present along with other co-accused. There is no link to show that he is member of organized crime syndicate and more than one chargesheet is filed against him. He submitted that though the prosecution placed reliance on crime chart, the said chart shows that three offences are registered against the applicant vide Crime No.161/2017 under Section 392 read with 34 of the Indian Penal Code in which he is acquitted; Crime No.37/2020 under provisions of the Gambling Act, and the present crime in question. Thus, criterion of filing of chargesheet more than one is not fulfilled. He further submitted that as far as the First Information Report is concerned, the name of the applicant is not mentioned. In view of the same, the applicant be released on bail.

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

1. Mohammad Iliyas Mohamad Bilal Kapadiya vs. The State of Gujarat, reported in 2022 LiveLaw (SC)538;

2. Dinesh Bhondulal Baisware vs. The State of Maharashtra, reported in 2016 ALL MR (Cri) 3517;

3. Prasad Shrikant Purohit vs. State of Maharashtra, reported in AIR 2015 SC 2514;

4. Mohammad Wajid & anr vs. State of UP and ors, reported in 2023 LiveLaw (SC) 624, and

5. Criminal Application (BA) No.85/2023 (Vishal s/o Raju Chavan vs. State of Mah.) passed by this court on 19.1.2024.

6. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application on the ground that during investigation, statements of witnesses were recorded wherein the name of the applicant is mentioned. During investigation, it transpired that the applicant is engaged in various unlawful activities and three crimes are registered against him. The confessional statement of the accused is recorded which shows his involvement in the alleged offence. The investigation by investigating agency clearly shows that the applicant is member of organized crime syndicate and he committed offences as member of organized crime syndicate.

7. In support of his contentions, he placed reliance on **Criminal Application (BA) No.1032/2023** (Vijaykumar

@ Raju s/o Shyamlal Dube vs. State of Mah., thr.its PSO PS Ramnagar, Gondia) decided by this court on 5.2.2024 and **Govind Sakharam Ubhe vs. State of Mah., reported in 2009(3) Mh.L.J. (Cri) 131.**

8. Having heard both sides and perused investigation papers, it reveals that allegation against the applicant is that on the day of the incident i.e. 1.4.2023 he along with other co-accused entered into house of the complainant and demanded amount Rs.40,000/- and forcefully taken amount Rs.17,000/- by threatening and abusing her. Recital of the First Information Report shows that the name of the applicant is not mentioned. During investigation, various statements of witnesses were recorded wherein they have stated that the applicant was present along with the co-accused and entered into vicinity by holding wooden logs in his hands. Insofar as allegation against the applicant is concerned, it is only to the extent that he was present along with other co-accused and no specific role is attributed to him. For applying provisions of the MCOC Act, the appropriate authority relied upon three offences vide Crime No.161/2017 under Section 392 read with 34 of the Indian Penal Code in which he is acquitted; Crime No.37/2020 under provisions of the Gambling Act, and the present crime in question.

9. For applying 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.

10. Thus, the MCOC Act contemplates a situation where a group of persons as members of organized syndicate indulges in organized crime that it indulges 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 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 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 chargesheet has been filed before the competent court within the preceding period of ten years and that court has taken cognizance of such offence.

11. 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.

12. Thus, Section 2(1)(d) of the MCOC Act defines 'continuing unlawful activity' as sets down a period of ten years within which more than one chargesheet has 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 situations, the MCOC Act can be applied. It is membership of organized crime syndicate which makes a person liable under the MCOC Act.

13. I have scrutinized the material on record on the rigor envisaged under Section 21(4) of the MCOC Act. It is well settled principle that stringent provisions fetter, to a large extent, the discretion of the Court to grant bail unless the material on record warrants recording a satisfaction of existence of reasonable grounds to believe that the accused may not be involved in offence punishable under the MCOC Act and the accused is not likely to commit an offence under the MCOC Act, if released on bail.

14. The satisfaction, that reasonable grounds exist to believe that the accused is not involved in an offence under the MCOC Act, enjoins upon the court a duty to probe deeper into the material on record. A case stronger than a *prima facie* case and existence of substantial cause and circumstances which individually may impel the court to record the satisfaction which is envisaged, is necessary to unshackle fetters. However, it is equally well settled that fetters cannot be stretched too far and the court is not expected to record a finding of innocence. If on broad probabilities which emerge from the material on record, a

satisfaction can be recorded that accused is not likely to be convicted and the court would be justified in granting bail.

15. Insofar as the applicant is concerned, earlier, two offences are registered against him and out of them in one crime he is already acquitted and another crime is registered under provisions of the Gambling Act. Thus, criterion of filing of chargesheet more than one is not fulfilled. Moreover, it is apparent that the said crimes are registered against him in an individual capacity and not being as member of organized crime syndicate.

16. Considering the material on record, on the basis of which, according to the prosecution, role of the applicant is reflected, admittedly, his name is not mentioned in the First Information Report. The role attributed against him, on the basis of statements, shows his presence in the alleged crime. No offence is registered against him showing that he has generated any illegal wealth by involving himself in a continuous illegal activity. There is no material to show that existing legal frame work and procedural law are inadequate to deal with the applicant.

17. Thus, there is nothing on record to show that the applicant committed an offence to gain illegal wealth.

18. For enabling the court to exercise its discretion in favor 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.

19. Insofar as the provisions of Section 21(4) of the MCOC Act are concerned, the Honourable Apex Court in the case of **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and anr, reported in 2005 ALL MR (Cri) 1538 (SC)** held that restriction imposed by Section 21(4) of the MCOC Act on the powers of 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 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 favor 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 Hon’ble 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 for bail is not guilty of an organized crime before grant of bail.

20. In the light of the above principles of law, if facts in the present case and observations of the Honourable Apex Court in the case of **Mohammad Iliyas Mohamad Bilal**

Kapadiya *supra* are considered, the activities undertaken must be shown either singly or jointly as member of organized crime syndicate and second one is that in respect of such activity more than one chargesheet must have been filed in preceding ten years which are not fulfilled in the present case. Thus, there are certainly reasonable grounds to hold that applicability of the MCOC Act is doubtful.

21. For reasons recorded above, the application deserves to be allowed, as per order below:

ORDER

(1) The criminal application is **allowed**.

(2) Applicant - Kartik s/o Surajbhan Balguher, be released on bail on his executing a P.R.Bond in the sum of Rs.50,000/- with one solvent surety of the like amount in connection with Crime No.200/2023 registered with the non-applicant/police station for offences punishable under Sections 395, 452, 354, 336, 337, 323, 294, 427, 504, and 506-II of the Indian Penal Code and 3(1)(ii), 3(2), and 3(4) of the Maharashtra Control of Organized Crime Act.

(3) The applicant shall attend the concerned police station on 1st day of every month, till culmination of the trial.

(4) The applicant shall not leave the jurisdiction of the Nagpur district without prior permission of the court.

(5) The applicant shall not indulge in similar type of activities.

(6) Contravention of any of conditions above leads to cancellation of the bail.

The application stands **disposed** of.

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

!! BrWankhede !!