2024:BHC-NAG:5605

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

CRIMINAL APPLICATION (BA) NO. 371 OF 2024

ANKUSH GYANSINGH VERMA
Vrs.
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

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Shri R. M. Daga, Advocate for applicant.
Shri D. V. Chauhan, Public Prosecutor for the respondent-sole.

CORAM: URMILA JOSHI-PHALKE, J.
DATE : 08/05/2024.

1. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure along with Section 21(4) of the Maharashtra Control of Organized Crimes Act, 1999 in connection with Crime No.240/2023 registered under Sections 386, 294, 323, 506, 143, 148, 149 of the Indian Penal Code and Sections 3 and 25 of the Indian Arms Act and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crimes Act, 1999 (For short, "MCOC Act").

2. The applicant came to be arrested on 18/08/2023 on an allegation that the complainant who is working as a Manager at the Restaurant namely; Farmhouse Kitchen situated at Bajaj Nagar and in the intervening night of 26/07/2023 and 27/07/2023 at about 01.15 a.m., the applicant and the other co-accused had been at the Restaurant and demanded the food from

him. Since the kitchen of the restaurant was close, the complainant expressed his inability to provide food. By denial of providing food by the complainant, the co-accused Sumit lodged a complaint and demanded Rs.50,000/- by showing gun. It is also alleged that the associate of the co-accused Sumit also assaulted the complainant by means of fist blows and abused him and then left the place. On the basis of the said report, police have registered the crime.

3. Learned counsel for the applicant submitted that there is no material to show that the applicant is running organized crime syndicate. Even, the chart placed on record along with the charge sheet nowhere shows that the applicant committed the offence as member of organized crime syndicate and none of the offences are 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.

4. Learned counsel for the applicant submitted that as far as the provisions of the MCOC Act are concerned which are not applicable against the present applicant, as the name of the present applicant is not mentioned in the FIR. He is not identified during the Test Identification Parade. No overact is attributed to him. In fact, the presence of the present applicant is neither seen in CCTV footage nor narrated by any of the witness. There

is no material to show that he is a member of the organized crime syndicate. Mere filing of the charge sheet against the present applicant along with the other co-accused is not sufficient to show that he is a member of the organized crime syndicate. In view of that, the applicant be released on bail. He further submitted that the nature of the crime which is registered against the present applicant bearing Crime No.539/2021 which is not committed for any pecuniary benefit. He also invited my attention to the order passed by the Single Bench in Criminal Application (ABA) No.516/2021 dated 17/09/2021 and submitted that in the same crime, the present applicant was released by the Trial Court. Considering that there was no prima facie case made out against him, the material collected during the investigation to attract the provisions of MCOC Act are not sufficient and therefore, the rigour under Section 21(4) would not come into the way of the present applicant.

5. Learned Public Prosecutor strongly opposed the application on the ground that considering the rigour under Section 21(4), the Court has to record the reasons that the applicant is not guilty of the offence. At this stage, the statements of the witnesses show the involvement of the present applicant in the alleged offence. The crime chart shows that one offence is registered against him bearing No.539/2021 along with the co-accused which sufficiently shows that he is a member of the organized

crime syndicate and therefore, application deserves to be rejected.

6. After hearing learned counsel for both the parties, perused the investigation papers. On the basis of report lodged by the complainant, crime is registered. During the investigation, the Investigating Officer has sent the proposal under the provisions of the MCOC Act. While granting prior approval, the competent authority has considered the material against other co-accused and satisfied that there is crime syndicate and those persons are members of the organized crime syndicate granted the approval to attract the provisions of the MCOC Act. Subsequently, the sanction was granted by the competent authority to prosecute the present applicant under the provisions of the MCOC Act. As far as the crime chart is concerned, besides the crime No.539/2021, there is no other crime registered against the present applicant. The nature of the offence under Sections 307 and 120-B of the IPC. Thus, the nature of the offence nowhere reveals that the said crime was committed for the pecuniary gain. As far as the investigation in the present case is concerned, admittedly CCTV Footage nowhere shows the presence of the present applicant at the spot of the incident. He is not identified during the Test Identification Parade. On perusal of the statements of the witnesses, which are mostly hearsay in the nature, only the material witness is

the informant who has not named the present applicant in the said FIR.

7. In view of provisions of the MCOC Act, rigour under Section 21(4) is also not attracted. Prima facie case is made out against the present applicant. The definition of continuing unlawful activity which is defined in Section 2(1)(d) of the MCOC Act, which shows that the 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.

8. 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.

9. 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 of 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.

10. 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 e] in respect of which more than one charge sheets have been filed before a competent court.

11. 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.

12. After hearing learned counsel for the applicant and on perusal of the investigation papers, it reveals that besides this crime one crime is shown to be registered against the present applicant wherein he is released on bail by the Trial Court. It is true that there cannot be a direct evidence on the point of conspiracy, but in order to draw inference of conspiracy, there must be at least some material. The statement of witness does not say about participation of the applicant in hatching of conspiracy and by observing this, applicant was released on bail.

13. In the case of **Zakir Abdul Mirajkar Vrs. State of Maharashtra,** reported in **AIR OnLine 2022 SC 1325**, wherein provisions of the MCOC Act are analyzed by the Hon'ble Apex Court. While analyzing provisions, the Hon'ble Apex Court laid down an overview of the MCOC Act by observing as follows :-

"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 statement of objects and reasons contains the reasons which constituted the foundation for the legislature to step in :

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.

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

gain the pecuniary benefits along with the organized crime syndicate.

15. 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.

16. Insofar as the provisions of Section 21(4) of the MCOC Act are concerned, the Hon'ble Apex Court in the case of ***Ranjitsing Brahmajeetsing Sharma Vrs. 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 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.

17. In the light of the above principles, if facts in the present case are considered, admittedly, one crime is registered against the present applicant along with other co-accused. However, in the said crime, he is already

released on bail. As far as the association of the present applicant in the present crime is concerned, the investigation papers show that he was neither witnessed in the CCTV footage nor has named in the FIR. Thus, the investigation papers show that he has not committed any offence for economic gain or pecuniary benefits or other advantages for himself for committing organized crime. Thus, there are certainly reasonable grounds to hold that applicability of the MCOC Act is doubtful.

18. For the reasons recorded above, the application deserves to be allowed. Accordingly, I proceed to pass the following order :-

ORDER

i] The application is allowed.

ii] The **applicant - Ankush Gyansingh Verma** be released on bail in connection with Crime No.240/2023 registered under Sections 386, 294, 323, 506, 143, 148, 149 of the Indian Penal Code and Sections 3 and 25 of the Indian Arms Act and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crimes Act, 1999, on executing P. R. Bond of Rs.50,000/- with one solvent surety of the like amount.

iii] The applicant shall attend the Police Station Bajaj Nagar, Nagpur once in a month i.e. first Saturday of every month between 10.00 a.m. and 1.00 p.m. and the Police Station Officer shall record his presence.

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

v] Contravention of any conditions above leads to cancellation of the bail.

19. The application is disposed of.

[URMILA JOSHI-PHALKE, J.]

Choulwar