2024:BHC-NAG:9081

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

CRIMINAL APPLICATION (BA) NO. 594 OF 2024

Mohd. Abid Ansari s/o Mohd. Akram Ansari
Vs.
State of Maharashtra, Through Jaripatka Police Station, Nagpur

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

Mr. R. K. Tiwari, Advocate for applicant.
Mr. U. R. Phasate, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 12/08/2024

1. By this application, the applicant seeks regular bail in connection with crime No.806/2023 registered with Jaripatka Police Station, Nagpur for the offences punishable under Sections 364, 397, 294 of the Indian Penal Code and under Section 3/25 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').

2. The crime is registered on the basis of report lodged by Kamal Anil Naik. As per the allegation on 16.10.2023 at about 12.10 a.m. when he along with his friends Atul Atram and Muzaffar Sheikh visited the house of Samrat Gondane on occasion of his daughter's birthday. When they were standing in front of Ramesh Muttan shop, a white colour car came driving in a rash and negligent manner by co-accused Sumit Thakur and stopped

near to the informant. The informant shouted upon the driver of the said car. The driver stopped the said car at some distance, thereafter the informant along with his two friends went near the car and questioned him about the manner in which he has driven the said car, on that count, the driver replied that his name is Sumit Thakur and whether he has not identified him and also threatened him that he will see him after dropping the girl who was along with him. On that count, there was altercation between them, thereafter the co-accused left the spot. He again came back at about 12.50 a.m. along with the other three persons. The said persons threatened the informant and his friends of dire consequence by pointing out Mauser. Thereafter, the co-accused took the informant and his friends forcefully in the car snatched the amount and their mobiles thereafter they were assaulted. On the basis of the said report, police have registered the crime against the present applicant as well as the other co-accused.

3. Learned Counsel for the applicant submitted that there is no material collected during the investigation to show that the applicant is the member of organized crime syndicate and in furtherance of common object of the said organized crime syndicate, he committed the offence. In fact, the applicant was not having knowledge about the intention of the co-accused. He is Mechanic by profession and used to repair the car of the

co-accused. On the day of incident, when he was proceeding along with his uncle the co-accused approached to him and asked him to sit along with him under the impression that the test drive of the car is to be taken therefore he sat in the car and thereafter he took him at one godown, wherein the informant was assaulted by the co-accused. Thus, it is submitted that he has not even get down from the car, whatever happened between the co-accused and the informant, no single offence is registered against him and there is absolutely no evidence to show that he is either involved in any other crime along with the other co-accused or he has committed any crime in individual capacity. Thus, he submitted that except the confession statement of the present applicant under Section 18 of the MCOC Act, there is no other material to connect the present applicant with the alleged offence. Even the confessional statement is in the nature of exculpatory statement. Thus, considering there is no material against the present applicant, therefore bar under Section 21(4) of the MCOC Act would not attract, in view of that he be released on bail.

4. Per contra, learned APP strongly opposed the said application on the ground that the association of the present applicant with the other co-accused reveals from his statement under Section 18 of the MCOC Act. He further submitted that in view of that bar under Section 21(4) of the MCOC Act

the application of the present applicant deserves to be rejected. He further submitted that the nature of the offences and the crime chart shows the involvement of the organized crime in various illegal activities which are committed by the organized crime syndicate for the pecuniary gain. In view of that the application deserves to be rejected.

5. Having heard both sides and perused the investigation papers from which it reveals that allegation against the present applicant is that on the day of incident, he was along with the other co-accused and the co-accused assaulted the injured. Admittedly, the name of the present applicant is not mentioned in the FIR. The statements of the witnesses namely Muzaffar Sheikh Abdul Sattar and Atul Raju Atram also not named the present applicant as an assailant. It reveals that the statement under Section 18 of the MCOC Act i.e. confessional statement of the present applicant also shows that he sat in the car on the say of the co-accused and he is working as Mechanic and used to repair the car of the co-accused. On the day of incident also he has received the phone call of the co-accused for repairing of his car. On that day, he met the co-accused and co-accused asked him to sit in the car and therefore, he sat in the car and thereafter the co-accused took him at the spot of incident wherein the alleged incident has taken place. It further reveals from the investigation papers that no single

offence except the present crime is registered against the present applicant.

6. 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 chargesheets have been filed. The Stress is on the unlawful activities committed by the organized crime syndicate.

7. 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 advantage 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 chargesheets 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, 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-sheet have been filed before a competent court.

10. 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 chargesheets 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 either 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.

11. Learned Counsel for the applicant submitted that there is no material to show that the applicant is running or a member of an organized crime syndicate. Even, the chart placed on record along with the chargesheet nowhere shows that the applicant committed the offence as member of organized crime syndicate and none of offences are registered against him to show that the applicant has generated illegal wealth by committing the said crime. Thus, the provisions of the MCOC Act are not applicable.

12. 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.

13. In the light of the above, if facts of the present case are taken into consideration, admittedly, no offence is registered against the applicant showing that he has either generated illegal wealth by way of committing such type of crimes or his association with the other co-accused. There is no material to show that the existing legal framework work and procedural law are inadequate to deal with the present applicant. Except present crime, there is no other offence registered against the present applicant showing he had committed the offence to gain illegal wealth.

14. 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.

15. 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 vs. State of Mah. and anr, reported in 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.

16. In the light of the above principles, if facts in the present case are considered, admittedly, the name of applicant is neither mentioned in the FIR nor he is named by the other eyewitnesses. The subsequent statements of the witnesses also nowhere shows his involvement in the crime. There

is no material to show that he had committed the offence as a member of organized crime syndicate. The confessional statement of the present applicant is also exculpatory in nature. The chart shows that none of the offence is registered against the present applicant, except the present crime. The investigation papers nowhere shows that he was either associated with the members of the organized crime syndicate or he has committed any offence to gain economic or pecuniary benefits or other advantages for himself or any other reasons.

17. Thus, there is reasonable grounds to hold that applicability of the MCOC is doubtful. The nexus between the present applicant and the offences which alleged to be committed by the other members of the organized crimes syndicate also not demonstrated that the involvement of the present applicant is with the other members of the organized crimes syndicate.

18. For the reasons recorded above, the application deserves to be allowed. In view of that, I proceed to pass following order:

ORDER

(i) The Criminal Application is allowed.

(ii) Applicant **Mohd. Abid Ansari s/o Mohd. Akram Ansari** shall be released on bail, in connection with crime No.806/2023 registered with Jaripatka Police Station, Nagpur for the offences punishable under Sections 364, 397 and 294 of the Indian Penal Code and under Section 3/25 of the Arms Act and under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999, on his executing a P.R. Bond in the sum of Rs.50,000/- with one solvent surety of the like amount.

(iii) The applicant shall attend the concerned Police Station twice a month on 1st and 15th of every month, till conclusion of the trial.

(iv) The applicant shall not leave the jurisdiction of the District Court Nagpur without prior permission of the said Court.

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

(vi) The contravention of any of the conditions imposed would lead to the cancellation of bail.

19. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate