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

CRIMINAL APPLICATION (BA) NO. 781 OF 2024

Tejas @ Kohinur Prabhakar Zalke
Vs.
State of Maharashtra, Through Police Station Officer, Wadi, District Nagpur

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

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Mr. R. P. Dixit, Counsel for the applicant.
Mr. N. B. Jawade, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07/10/2024

1. The applicant came to be arrested on 06.01.2024 in connection with Crime No.3/2024 registered with Police Station, Wadi, District Nagpur for the offences punishable under Sections 294 and 397 of the Indian Penal Code and under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as 'the MCOC Act'), under Section 4 and 25 of the Arms Act and under Section 135 of the Maharashtra Police Act.

2. The crime is registered on the basis of report lodged by Swapnil Suresh Chokhandre on an allegation that on 04.01.2024 at about 12.20 a.m. when he was present in Rohit Bar and Restaurant along with his friends, while drinking liquor, the accused Nos.1 and 2 along with 3 to 4 persons came to the said Rohit Bar and Restaurant and started

abusing the hotel's staff present at the Bar counter. At the relevant time, one of the co-accused Amit @ Morbi Manohar Andarsahare along with the accused No.2 and other 3 to 4 persons, came near the table of the complainant and threatened him as well as asked him to pay their bills of liquor. When complainant refused to pay the bills of the liquor of the accused, they started abusing him and also assaulting, due to which, he sustained injuries. During this incident, they have also snatched the amount of Rs.12,500/- from the pocket of the complainant. On the basis of the said report, police have registered the crime against the present applicant.

3. During the course of the investigation, it was revealed that the applicant is a member of gang led by co-accused and in furtherance of the common object of the organized crime syndicate, his involvement is in the offences which are committed for the pecuniary gain. After obtaining the approval and necessary sanction, the provisions of the MCOC Act are applied and after completion of the investigation, the charge-sheet was filed.

4. Heard learned Counsel for the applicant, who submitted that as far as the allegation regarding the present applicant that he is a member of organized crime syndicate is concerned, which is false one as he was implicated only because he was

present in the said Bar. He submitted that now the investigation is completed and charge-sheet is filed. As far as the involvement of the present applicant with the organized crime syndicate is concerned, there is no material collected by the investigating agency to show the same. He submitted that two crimes were allegedly committed by the present applicant wherein the complainant is the same. He further submitted that there is no commonality between the present applicant and the other co-accused, therefore, the application of the provisions of the MCOC Act itself is doubtful. In view of that, the application deserves to be allowed.

5. Learned APP strongly opposed the said application and submitted that not only the commonality between the present applicant and the co-accused is there, but during the investigation, the Investigating Officer has collected the information regarding the registration of the crime. In Crime No.1/2024 and 3/2024 present applicant is involved along with the other co-accused. Thus, for application of the provisions of the MCOC Act, the association of the present applicant along with the other co-accused was revealed. There are several offences registered against the leader of the gang as well as two offences are registered against the present applicant including the present one. Thus, his association with organized crime syndicates revealed from the investigation papers. During the

test identification parade, the present applicant is identified. Thus, sufficient material is there to connect the present applicant with the alleged offence. In view of rigour under Section 21(4) of the MCOC Act, the application deserves to be rejected.

6. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers, from which it reveals that two crimes are registered against the present applicant bearing No.1/2024 along with the co-accused Amit @ Morbi Manohar Andarsahare and Baba @ Suraj Pradip Kaithvas and Roshan Ashokrao Katole. The co-accused Amit Andersahare alleged to be the leader of the organized crime syndicate. Thus, his association revealed with the present applicant on the basis of the crime chart. Admittedly, both the crimes are under investigation. As far as the other accused are concerned, against whom more than one charge-sheets are filed before the Court of which cognizance is already taken. The present applicant is identified during the identification parade, during the investigation. The statement of the co-accused is recorded and on the basis of his statement. The weapon of the offence is also recovered during the investigation.

7. It reveals that after obtaining an approval under Section 23(1) of the MCOC Act, provisions of the MCOC Act are applied against the applicant and

other co-accused. Insofar as involvement of the applicant in the incident is concerned, not only in the First Information Report and in the statements of witnesses, but on the basis of the test identification parade also his involvement in the alleged offence was revealed. The Investigating Officer has also placed on record the crime chart which shows that along with the other co-accused the present crime and Crime No.1/2024 is registered against the present applicant. As far as the nature of the offence is concerned, it reveals that the nature of the offence is like that it is committed for the pecuniary gain as the crime under Section 397 is registered against him.

8. 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.

9. 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 these objects.

10. 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.

11. 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.

12. 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 for a term 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 chargesheets have been filed before a competent Court within the preceding the period of ten years and that Court has taken cognizance of such offence.

13. 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-sheets 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.

14. This Court in the case of **Govind Sakharam Ubhe** vs. **State of Maharashtra**, reported in **2009(3) Mh.L.J. (Cri.) 131**; in paragraph No.37, defined "continuing unlawful activity". This Court observed that 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.

15. In another decision in **Prasad Shrikant Purohit** vs. **State of Maharashtra**, reported in **(2015) 7 SCC 440**, wherein it is observed that:

> *"A reading of para 31 in Ranjitsing Brahmajeetsing Sharma shows that in order to invoke MCOCA even if a person may or may not have any direct role to play as regards the commission of an organised crime, if a nexus either with an accused who is a member of an "organised crime syndicate" or with the offence in the nature of an "organised crime" is established that would attract the invocation of Section 3(2) of MCOCA. Therefore, even if one may not have any direct role to play relating to the commission of an "organised crime", but when the nexus of such person with an accused who is a member of the "organised crime syndicate" or such nexus is related to the offence in the nature of "organised crime" is established by showing his involvement with the accused or the offence in the nature of such*

"organised crime", that by itself would attract the provisions of MCOCA. The said statement of law by this Court, therefore, makes the position clear as to in what circumstances MCOCA can be applied in respect of a person depending upon his involvement in an organised crime in the manner set out in the said paragraph."

16. It is further held that "in paras 36 and 37, it was made further clear that such an analysis to be made to ascertain the invocation of MCOCA against a person need not necessarily go to the extent for holding a person guilty of such offence and that even a finding to that extent need not be recorded. But such findings have to be necessarily recorded for the purpose of arriving at an objective finding on the basis of materials on record only for the limited purpose of grant of bail and not for any other purpose. Such a requirement is, therefore, imminent under Section 21(4)(b) of MCOCA."

17. Thus, the settled law is that if a person may or may not have any direct role to play as regards the commission of an organised crime, if a nexus either with an accused who is a member of an "organised crime syndicate" or with the offence in the nature of an "organised crime" is established that would attract the invocation of Section 3(2) of MCOCA. Therefore, even if one may not have any direct role to play relating to the commission of an "organised crime", but when the nexus of such

person with an accused who is a member of the "organised crime syndicate" or such nexus is related to the offence in the nature of "organised crime" is established by showing his involvement with the accused or the offence in the nature of such "organised crime", that by itself would attract the provisions of MCOC Act.

18. By applying this ratio laid down by the Hon'ble Apex Court in the present case, not only the association of the present applicant with the other co-accused, but his involvement in two offences along with the other co-accused is reflected from the investigation papers. Thus, the material on record *prima facie* shows the association of the applicant along with the co-accused involved in the organized crime syndicate. Moreover, the statements of witnesses, who are eyewitnesses, and the test identification parade shows the involvement of the applicant in the alleged offence.

19. 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. 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 applicant has 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 him on bail. 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.

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

21. 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.

22. Considering the entire material on record, which shows the involvement of the applicant in the alleged offence and his connection with the organized crime syndicate, for granting bail, not only that his involvement is also revealed on the basis of the statement of the eye witnesses, as well as the identification parade during which he is identified. Thus, at this stage, it is difficult to observe that the applicant/accused is not guilty of the alleged crime and the satisfaction cannot be recorded that he

would not be involved in such type of the crime in future. Thus, for recording of satisfaction on these aspects is *sine qua non* for grant of bail. In view of that, the application deserves to be rejected. Accordingly, I proceed to pass following order:

ORDER

The application is rejected.

(URMILA JOSHI-PHALKE, J.)

Sarkate

Signed by: Mr. A.R. Sarkate
Designation: PA To Honourable Judge
Date: 18/10/2024 16:37:50