



2024:DHC:5968



\$~92

* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 08.08.2024

+ CRL.M.C. 6128/2024

JAMAL RANJHA

.....Petitioner

Through: Mr.Akshay Bhandari, Mr.Anmol Sachdeva, Ms.Megha Saroa, Mr.Kusal Kumar and Mr.Janak Raj Ambawat, Advocates.

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr.Aman Usman, APP for State with Mr.Sushanth Choudhary, Ms.Sunita Farswan, Mr.G.R. Dhir, Mr.Akshay Choudhary, Mr.Varun Sharma, Mr.Rahul and Mr.Arun Sanwal, Advocates with Insp. Kuldeep Singh, P.S. Seelampur.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

%

J U D G M E N TANOOP KUMAR MENDIRATTA, J (ORAL)CRL.M.A. 23427/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.M.C. 6128/2024

1. Petition under Article 227 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') has been preferred on behalf of the petitioner for setting aside order dated 02.08.2024 passed by learned Additional Sessions Judge-03 (NE), Karkardooma Courts, Delhi, whereby the application preferred by petitioner



2024:DHC:5968



for summoning witnesses No.2 to 9 in defence evidence, in FIR No.351/2013 under Section 3(2) & 3(5) of Maharashtra Control of Organised Crime Act, 1999 (“MCOCA”) registered at P.S.: Seelampur was declined.

2. Issue notice. Learned APP for the State appears on advance notice and accepts notice.

3. Learned counsel for the petitioner submits that vide impugned order dated 02.08.2024 application for examining witnesses from Serial No.2 to 9 in defence evidence was dismissed by the learned trial court. He points out that witness at Serial No.2 was sought to be examined to prove that the petitioner had *bonafide* source of income, and the assets as claimed by the prosecution are not proceeds of crime. He further contends that so far as witnesses at Serial Nos.3 to 9 are concerned, the same were to be examined to prove the judgments passed in respective cases/FIRs to establish that the offences alleged were not committed as a member of an organised crime syndicate. It is urged that petitioner has not been able to obtain certified copies of the same and relevant documents as he is in custody. In support of the contentions, reliance is further placed upon *State of Maharashtra v. Shiva @ Shivaji Ramaji Sonawane & Ors. etc.* Criminal Appeals 458-460/2009 decided by Hon’ble Supreme Court on 24.07.2015.

4. On the other hand, petition is vehemently opposed by the learned APP for the State on the ground that for purpose of registering FIR under MCOCA, it should only meet requirements of Sub-Sections (d), (e) and (f) of Section 2(1) of MCOCA and the concerned court should have taken cognizance thereof in respective cases. It is emphasized that the outcome of aforesaid cases remains irrelevant. Reliance is further placed upon orders passed in Bail Application No.593/2024 dated 30.05.2024 by Coordinate



2024:DHC:5968



Bench of this Court in *Dheerpal Alias Kana v. State Govt. Of NCT of Delhi*. It is urged that *State of Maharashtra v. Shiva @ Shivaji Ramaji Sonawane & Ors. etc.* (supra) is not applicable and has been distinguished in aforesaid case.

5. I have given considered thought to the contentions raised.

As per Section 2(1)(e) of MCOCA, an **‘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, and 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 advantages for himself or any other person or promoting insurgency.

Section 2(1)(d) of MCOCA further defines the term **‘continuing unlawful activity’** to mean 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 organised 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 the said Court has taken cognizance of such offence.

Consequently, **‘continuing unlawful activity’** postulates that there has to be more than one chargesheet, within the preceding ten years in respect of commission of cognizable offence punishable with imprisonment of three years or more and the Court should have taken cognizance of the same.



Further, as per **Section 2(1)(f) of MCOCA**, ‘**organised crime syndicate**’ means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime.

6. For the purpose of bringing the charge within ambit of **Section 3 of MCOCA**, accused must be shown to have singly or jointly, as a member of an organised crimes syndicate or on behalf of such syndicate, committed a cognizable offence punishable with imprisonment of three years or more by use of violence or threat of violence or intimidation or coercion or other unlawful means, **with the objective of**, inter alia, gaining pecuniary benefits or gaining undue economic or other advantages for himself or any other person or promoting insurgency, and for which more than one chargesheets have been filed before the competent Court within the preceding period of ten years **and the said Court has taken cognizance of such offence.**

7. There is no dispute as to the proposition that for the purpose of registration of FIR and criminal case under MCOCA, the registration of FIR meeting the requirement of Sub-Section (d), (e) and (f) of Section 2(1) of MCOCA coupled with the fact that the concerned Court has taken cognizance, is to be satisfied.

However, it may be emphasized that for the purpose of final adjudication, summoning of judgments passed in respective FIRs relied upon for invocation of MCOCA would enable the accused/petitioner to establish or show that the offences alleged in aforesaid FIRs were not committed as a member of an ‘organised crime syndicate’ or on behalf of such syndicate with the objective of *inter alia* gaining pecuniary benefits or gaining undue economic or other advantages for himself or any other person or promoting



2024:DHC:5968



insurgency, even if the ‘acquittal’ or ‘discharge’ in the aforesaid cases may not be relevant for purpose of clause (d) of Section 2(1) of MCOCA. What is important is whether the commission of an offence by the accused would constitute ‘continuing unlawful activity’ as a member of an organised crime syndicate and so long as the said requirement is not met, the conviction under Section 3 of MCOCA may not be upheld. In the aforesaid context, the observations of the Hon’ble Supreme Court in ***State of Maharashtra v. Shiva @ Shivaji Ramaji Sonawane & Ors. etc.*** (supra) in para 8 & 9 may be beneficially noticed:-

“8The filing of charge sheets or taking of the cognizance in the same did not, declared the High Court, by itself constitute an offence punishable under Section 3 of the MCOCA. That is because the involvement of respondents in previous offences was just about one requirement but by no means the only requirement which the prosecution has to satisfy to secure a conviction under MCOCA. What was equally, if not, more important was the commission of an offence by the respondents that would constitute “continuing unlawful activity”. So long as that requirement failed, as was the position in the instant case, there was no question of convicting the respondents under Section 3 of the MCOCA. That reasoning does not, in our opinion, suffer from any infirmity. The very fact that more than one charge sheets had been filed against the respondents alleging offences punishable with more than three years imprisonment is not enough. As rightly pointed out by the 9 Page 10 High Court commission of offences prior to the enactment of MCOCA does not by itself constitute an offence under MCOCA. Registration of cases, filing of charge sheets and taking of cognizance by the competent court in relation to the offence alleged to have been committed by the respondents in the past is but one of the requirements for invocation of Section 3 of the MCOCA. Continuation of unlawful activities is the second and equally important requirement that ought to be satisfied. It is only if an organised crime is committed by the accused after the promulgation of MCOCA that he may, seen in the light of the previous charge sheets and the cognizance taken by the competent court, be said to have committed an offence under Section 3 of the Act.



9. In the case at hand, the offences which the respondents are alleged to have committed after the promulgation of MCOCA were not proved against them. The acquittal of the respondents in Crimes No.37 and 38 of 2001 signified that they were not involved in the commission of the offences with which they were charged. Not only that the respondents were acquitted of the charge under the Arms Act even in Crimes Case No.1 and 2 of 2002. No appeal against that acquittal had been filed by the State. This implied that the prosecution had failed to prove the second ingredient required for completion of an offence under MCOCA. The High Court was, therefore, right in holding that Section 3 of the MCOCA could not be invoked only on the basis of the previous charge sheets for Section 3 would come into play only if the respondents were proved to have committed an offence for gain or any pecuniary benefit or undue economic or other advantage after the promulgation of MCOCA. Such being the case, the High Court was, in our opinion, justified in allowing the appeal and setting aside the order passed by the Trial Court.”

8. It may be noticed that in ***Dheerpal Alias Kana v. State Govt. Of NCT of Delhi*** (supra) referred to by learned APP for the State, Hon’ble Judge observed in para 71 that acquittal of the applicant in concerned cases, at the stage of grant of bail under MCOCA, may not be relevant but the same does not exclude the consideration of grounds of acquittal for determining if the ingredients of Section 3 of MCOCA are satisfied. The same may be beneficially reproduced:

“71. In the present case, therefore, applying the above test laid down by the Supreme Court, though FIR No. 212/2015 ideally cannot be relied upon for bringing home the charge under the MCOCA against the applicant; the applicant having been discharged from the said case by the Court trying the case having found not even a prima facie case being made out against the accused/applicant, at the same time, the mere acquittal of the applicant in the case arising out of the FIR 153/2014, at least at this stage, where the Court is only to consider the grant of bail to the applicant, may not be relevant. The Court trying the case under the MCOCA would have to see the reasons why the applicant was acquitted in that case and whether it was because the witnesses turned hostile due to the threat extended by the applicant and his alleged gang, or for other genuine reasons. In case



2024:DHC:5968



it finds that the witnesses had turned hostile because of the threat(s) extended by the applicant or on his behalf, it would, in fact, fortify the charge under MCOCA against him.”

9. In view of aforesaid position of law, this Court does not agree with the submissions made by learned APP for the State and is of the considered opinion that accused is not precluded from summoning the relevant witnesses at serial No.2 to 9 in his defence.

For the foregoing reasons, order passed by the leaned Trial Court is erroneous and is set aside. Petitioner be accordingly given an opportunity to summon the concerned witnesses as per list filed before the learned Trial Court.

Petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to learned trial court for information and compliance.

ANOOP KUMAR MENDIRATTA, J

AUGUST 08, 2024/v/sd