IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1172 OF 2023

Surjitsingh Bhagatsingh Gambhir
Age: 55 years, Occu.: Business,
R/o Tarakpur, Ahmednagar,
Tq. & Dist. Ahmednagar ..APPELLANT

VERSUS

1. State of Maharashtra
   Through MIDC Police Station,
   Ahmednagar

2. Crime Investigation Department
   Maharashtra State Headquarters
   Near Pune University, Pashan Road,
   Pune

3. Baban Rangnath Ahwad
   Age: 45 years, Occu.: Driver,
   R/o Pangarmal, Ahmednagar
   Presently R/o Room No.1, Chawl No.1,
   Anandwadi, R.V. Tiwarchawl, Suman Kirana
   Store, Kolsewadi, Kalyan (East), Mumbai ..RESPONDENTS

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Mr. G.V. Wani, Advocate h/f Mr. G.M. Kumar More, Advocate for appellant
Mr. S.D. Ghayal, Addl.P.P. for respondent nos. 1 and 2
Mr. S.D. Hiwrekar, Advocate for respondent no.3

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CORAM : R.G. AVACHAT AND NEERAJ P. DHOTE, JJ.
RESERVED ON : 18th DECEMBER, 2024
PRONOUNCED ON : 07th JANUARY, 2025

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. This is an appeal under Section 12 of the Maharashtra Control of Organised Crime Act, 1999 (‘MCOCA’). The challenge in this appeal is to an order dated 18th January, 2023 passed by the Special Court, Ahmednagar, in

Special Case No. 570 of 2020, refusing to grant the appellant discharge from the case.

2. The facts in brief, giving rise to the present appeal, are as follows :-

The elections for the memberships of Zilla Parishad, Ahmednagar were held in February 2017. One Bhagyashree Mokate and Mangal Avhad were in the fray on behalf of a political part, “Shivsena”. Both the candidates held a party (wining and dining) for their followers on 12th February, 2017. The liquor served in the said party was found to have been spurious. As a result thereof, nine persons lost their lives and thirteen suffered grievous injuries. A crime vide C.R. No. 31 of 2017 was, therefore, registered with MIDC Police Station for the offences punishable under Sections 304 and 328 read with Section 34 of the Indian Penal Code (‘I.P.C.’). During investigation, it was revealed that co-accused viz. Mohan Duggal, Jagjit Singh Gambhir and Zakir Shaikh would run the Civil Hospital Canteen. The trio with the assistance of other co-accused viz. Hamid Shaikh, Shekhar Jadhav, Bharat Joshi, Dada Wani, Ajit Sevani, Yakub Shaikh, Navnath Dhadge, Amit Gotiyani, Rajendra Ghuge would prepare/manufacture illicit liquor and sell it to the consumers. Considering the Zilla Parishad elections, the co-accused had prepared such hooch in large scale and sold it. The hooch was served in the party that was held by Bhagyashree Mokate and Mangal Avhad. As a result, the tragedy took place.

3. During investigation, it was revealed that Jagjit Singh Gambhir , Mohan Duggal and Zakir Shaikh were the members of an organised crime syndicate. Jagjit Singh Gambhir was the head of syndicate. Provisions of MCOCA were, therefore, invoked against them. Meaning thereby, they were alleged to have committed an organised crime punishable under Section 3 of the MCOCA and related offences thereunder besides offences under I.P.C.

4. In this appeal, we are concerned with the role of the appellant in the alleged crime. As per the case of prosecution, the canteen of Civil Hospital was leased out to the present appellant. The lease period was over by the end of the year 2014. Fresh tender was floated. Since no response was received, the appellant was asked to continue the canteen. Instead running the canteen by himself, he sub-let it to the prime accused – Zakir Shaikh. In short, according to the prosecution, the appellant has committed the offence of abetment of organised crime.

5. Learned counsel for the appellant would submit that there was no shred of material to indicate that post 2014, the appellant run the canteen or he himself paid the rent to Civil Hospital. According to him, there are no other allegations against the appellant. Learned counsel relied on following authorities to ultimately urge for allowing the appeal :-

I) ***P. Vijayan Vs. State of Kerala, AIR 2010 SC 663***

II) ***Sajjan Kumar Vs. Central Bureau of Investigation, 2011 AIR SCW 3730***

III) ***State of M.P. Vs. Sheetla Sahai and Ors., 2009 AIR SCW 5514***

IV) ***Central Bureau of Investigation Vs. K. Narayan Rao, 2012 AIR SCW 5139***

6. Learned A.P.P. would, on the other hand, submit that a serious offence took place. Nine persons lost their lives and thirteen persons were seriously affected. During investigation, it was revealed that it was the appellant, who was running the canteen for the year 2013-14. After the lease period was over, he was asked to continue to run the canteen. The appellant unauthorisedly sub-let the canteen to prime accused – Zakir Shaikh. Our attention was drawn to the police statement of the Superintendent and other officials of the civil hospital. Confessional statements of the co-accused have also been relied on. Some bank documents indicating the appellant to have received a sum of Rs.21,000/- way back in 2014 from the prime accused – Zakir Shaikh towards premium for sub-letting of the canteen were also relied on. Learned A.P.P. would submit that prima facie involvement of the appellant was made out. He relied on the judgment of this Court in case of ***Govind Sakharam Ubhe Vs. State of Maharashtra, AIR OnLine 2009 Bom 2***. He, therefore, urged for dismissal of the appeal.

7. Section 227 of the Code of Criminal Procedure reads thus :-

> *"227. Discharge.— If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."*

8. In the case of Govind Ubhe (supra), after having referred to a few judgments of the Apex Court, it has been observed thus :- (Para 25)

> *“25. The principles laid down by the Supreme Court in the above cases need to be summarized. It is settled law that at the stage of Section 227 of the Code, the court has power to sift the materials collected by the prosecution to find out whether there is prima facie case against the accused or not. The court has to be satisfied that there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him. The Court's enquiry must not be directed to find out whether the case will end in conviction. However, though roving enquiry is not permissible, the court can consider whether the material collected by the prosecution if accepted as it is without being subjected to cross-examination gives rise to strong and grave suspicion for presuming that the accused has committed the offence and that unrebutted material will lead to a conviction. If at the stage of Section 227 or Section 228, the scales as to the guilt or innocence of the accused are even then the court must proceed to frame a charge. There is no question of giving benefit of doubt to the accused and discharge the accused at that stage because the scales are even. That can be done only at the conclusion of trial. If there is a strong suspicion which leads the court to think that there is a ground for presuming that the accused has committed an offence, then the court will proceed to frame the charge. But if two views are possible and the court is satisfied that the evidence gives rise to some suspicion but not grave suspicion against the accused, the court will be within its right to discharge the accused. Suspicion has to be strong and grave suspicion leading the court to presume that the accused has committed an offence. While basic infirmities and broad probabilities can be considered, the court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it is conducting a trial. Probative value of the material cannot be gone into at that stage.”*

9. In the case of ***Union of India Vs. Prafulla Kumar Samal, AIR 1979 SC 366***, it has been held as follows (reference of paragraph 17 of Govind Ubhe’s judgment (supra)) :-

> *“17. In Union of India v. Prafulla Kumar Samal, the Supreme Court reiterated the same principles but added that at the stage of Section*

227 of the Code, the Court has power to sift and weigh the evidence to find out whether there is prima facie case against the accused but if two views are equally possible and the Judge is satisfied that the evidence gives rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. The Supreme Court further observed that the Judge cannot act as a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence, any basic infirmities in the case and so on. The Supreme Court clarified that this however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

10. The facts of Govind Ubhe's case (supra) would indicate that he had made a demand of extortion amount. He was present during the talks when money was to be handed over. He accepted the money and handed it over to the person and thereafter the witness stopped receiving threats from that time onwords, was found to be sufficient material to prima facie indicate his complicity. He was, therefore, denied discharge.

11. The charge against the present appellant is that he abetted commission of an organised crime. Section 2(a) of the MCOCA defines the term 'abet' as under :-

"abet", with its grammatical variations and cognate expression, includes,-
(i)the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate;
(ii)the passing on or publication of, without any lawful authority, any information likely to assist the organised crime syndicate and the passing on or publication of or distribution of any document or matter obtained from the organised crime syndicate; and
(iii)the rendering of any assistance, whether financial or otherwise, to the organised crime syndicate;

12. In case of ***Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and Ors., AIR 2005 SC 2277***, it has been observed as under :-

> *"30. The interpretation clause as regard the expression 'abet' does not refer to the definition of abetment as contained in Section 107 of IPC. It refers to such meaning which can be attributed to it in the general sense with grammatical variations and cognate expressions. However, having regard to the cognate meaning, the term may be read in the light of the definition of these words under Sections 107 and 108 of the Indian Penal Code. The inclusive definition although expansive in nature, "communication" or "association" must be read to mean such communication or association which is in aid of or render assistance in the commission of organized crime. In our considered opinion, any communication or association which has no nexus with the commission of organized crime would not come within the purview thereof. It must mean assistance to Organized crime or Organized crime syndicate or to a person involved in either of them. It, however, includes (a) communication or (b) association with any person with the actual knowledge or (c) having reason to believe that such person is engaged in assisting in any manner, an Organized crime syndicate. Communication to, or association with, any person by itself, as was contended by Mr. Sharan, would not, in our considered opinion, come within meaning of the aforementioned provision. The communication or association must relate to a person. Such communication or association to the person must be with the actual knowledge or having reason to believe that he is engaged in assisting in any manner an Organized crime syndicate. Thus, the offence under Section 3(2) of MCOCA must have a direct nexus with the offence committed by an Organized crime syndicate. Such abetment of commission of offence must be by way of accessories before the commission of an offence. An offence may be committed by a public servant by reason of acts of omission and commission which would amount to tampering with the investigation or to help an accused. Such an act would make him an accessory after the commission of the offence. It is interesting to note that whereas Section 3(2) having regard to the definition of the term 'abet' refers directly to commission of an offence or assisting in any manner an Organized crime syndicate, Section 24 postulates a situation where a public servant renders any help or support both before or after the commission of an offence by a member of an Organized crime syndicate or abstains from taking lawful measures under this Act.*

31. Interpretation clauses contained in Sections 2(d), 2(e) and 2(f) are inter-related. An 'Organized crime syndicate' refers to an 'Organized crime' which in turn refers to 'continuing unlawful activity'. As at present advised, it may not be necessary for us to consider as to whether the words "or other lawful means" contained in Section 2(e) should be read "exude generics"/ "noscitur-a-sociis" with the words (i) violence, (ii) threat of violence, (iii) intimidation or (iv) coercion. We may, however, notice that the word 'violence' has been used only in Section 146 and 153A of the Indian Penal Code. The word 'intimidation' alone has not been used therein but only Section 506 occurring in Chapter XXII thereof refers to 'criminal intimidation'. The word 'coercion' finds place only in the Contract Act. If the words 'unlawful means' is to be widely construed as including any or other unlawful means, having regard to the provisions contained in Sections 400, 401 and 413 of the IPC relating to commission of offences of cheating or criminal breach of trust, the provisions of the said Act can be applied, which prima facie, does not appear to have been intended by the Parliament

32. ….

33. Furthermore, mens rea is a necessary ingredient for commission of a crime under MCOCA.

34. In Shri Ram v. The State of U.P., [1975] 2 SCR 622 , it was stated:

> *"6...Thus, in order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107."*

13. We have now to peruse the police papers to find whether the act of the appellant in sub-letting the canteen to the co-accused – Zakir Shaikh

prima facie amounts to commission of an offence of abetment of organised crime. True, there are statements of the officials of office of Civil Hospital, Ahmednagar indicating the canteen was leased out to the present appellant. The appellant also did not dispute the said fact. The lease was said to have been continued up to the mid of 2014. After the lease period was over, until a fresh arrangement was made or new lease agreement is created, the appellant was asked to continue to run the canteen.

14. The 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.

15. In the case in hand, the co-accused are alleged to have committed an organised crime in the nature of manufacturing illicit liquor and sell thereof, on consumption of which nine persons lost their lives and thirteen were badly affected. The illicit liquor was allegedly said to have been manufactured at the canteen premises. The incident took place on 12th February, 2017 i.e. about two and half years after the lease period was over and the appellant sub-let it to one of the co-accused – Zakir Shaikh. We do not come across any shred of material to indicate the appellant to have been privy to the activities of the members of the organised crime syndicate or he was in the know or had reason to believe that his act of sub-letting the canteen was such that he thereby engaged himself in assisting the organised crime syndicate.

16. We are conscious of the parameters to be considered for grant or refusal to grant discharge. Even prima facie, the act of the appellant in sub-letting the canteen premises in no way could be termed to be an act of abetment of organised crime syndicate. At the cost of repetition it is stated that the crime took place in the year 2017 while the act of sub-letting the canteen precedes by two and half years of the incident.

17. At the cost of repetition it is observed that we have not come across any other material nor has anything been brought to our notice to suggest the applicant to have assisted the organised crime syndicate in commission of organised crime in relation to which the charge-sheet has been filed. In view of the same, we find the appellant entitled for grant of discharge.

18. In the result, appeal succeeds in terms of following order :-

Impugned order dated 18th January, 2023 passed by the Special Judge, Special Court (MCOCA) & Additional Sessions Judge, Ahmednagar in Special Case no. 570 of 2020 is hereby quashed and set aside. The appellant is hereby discharge from Special Case no. 570 of 2020, pending on the file of the Special Judge, Special Court (MCOCA) & Additional Sessions Judge, Ahmednagar, registered vide F.I.R. No. 36 of 2017 dated 14th February, 2017 with MIDC Police Station, Ahmednagar. Record and Proceedings be sent back to the trial Court forthwith.

(NEERAJ P. DHOTE, J.) **(R.G. AVACHAT, J.)**

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