



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.886 OF 2021

Abhijit Pradip Shinde ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Ghansham Jadhav, for the Applicant
Mr. Y.Y. Dabake, APP, for the State.
Mr. K.D. Sankpal, Baramati City police station present.

ORDER RESERVED ON : JUNE 23, 2022
ORDER PRONOUNCED ON : JULY 15, 2022
CORAM : N. J. JAMADAR, J.

P.C.:

1. This is an application for bail. The applicant is arraigned in C.R. No. 506 of 2018 registered with Baramati City police station, Pune for the offences punishable under section 395 read with 34 of Indian Penal Code, 1860 and sections 3(1)(ii), 3(4) of Maharashtra Control of Organised Crime Act, 1999 (MCOC).

2. The indictment against the applicant and the co-accused is as under:-

On 25th September, 2018 at about 6 pm Ganesh Suryavanshi (the first informant) accompanied by his friend Dipak Dharme had came to Tandulwadi on a motor-cycle. While they were on their way near Shivanjali Hotel, Airport Road, Tandulwadi at about 7.30 pm five persons intercepted their motor-cycle. One of them started

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assaulting Dipak Dharme purportedly for the reason that he was a police informer. One of them gave a blow by means of iron rod on the left hand of Dipak. Whilst they were dragging Dipak towards a room on the road side, the first informant went to rescue Dipak. One of those assailants assaulted the first informant also by means of wooden log. The first informant was robbed of his wallet containing cash amount of Rs. 2,200/- and other documents including Aadhar card. Dipak was also robbed of the wallet containing cash of Rs. 300/- and Aadhar card. Those persons also forcibly took away the motor-cycle. Diapk informed the first informant that those persons were Dhanya @ Yogesh Kamble, Rohit Jagtap, Abhijit Shinde, the applicant, and Sachin @ Bajya Kale. Dipak had not known the fifth person. Hence, the first informant lodged the report.

3. Investigation commenced. Statements of the witnesses, including Dipak Dharme, the injured were recorded. Dipak Dharme informed that the co-accused Dhanya Kamble assaulted him by means of an iron rod. The co-accused Bajya Kale assaulted the first informant by means of wooden log. The first informant and Dipak were robbed of the wallets. After robbing the first informant of the wallet and the motor-cycle, they fled away.

4. The applicant and the co-accused came to be arrested. As it transpired during the course of investigation that the applicant and the co-accused were indulging in unlawful activities and they formed an organized crime syndicate, and co-accused Dhanya @ Yogesh Kamble was the gang leader. With the prior approval of the competent authority under section 23(1) of the MCOC Act, 1999 the cognizance of the offences punishable under sections 3(1)(2), 3(4) of the MCOC Act, 1999 along with section 395 read with 34 of the Penal Code has been taken.

5. The applicant has preferred this application with the assertion that the invocation of the offences punishable under MCOC Act, 1999 is unsustainable qua the applicant at the time of invocation of the MCOC Act, 1999 in support of only but the offence i.e. C.R. No. 139 of 2017 cognizance was not taken by the jurisdictional Court. Thus the provisions of MCOC Act, 1999 have been unjustifiably invoked. There is no material to indicate that the applicant indulged in continuing unlawful activity. The first informant has given exaggerated account of alleged occurrence. The first informant and the injured sustained minor abrasions. Thus, even a case under section 395 of the Penal Code has not been prima facie made out. The applicant is in custody since 14th

November, 2018. There is no real prospect of trial being commenced and concluded within a reasonable period. Thus, the applicant deserves to be enlarged on bail.

6. An affidavit in reply is filed on behalf of the prosecution. It is alleged that apart from the offence in question, two more offences i.e. C.R. No. 139 of 2017 and C.R. No. 567 of 2018, have been registered against the applicant. There is material to indicate that the applicant is an active member of the organized crime syndicate. As many as 11 crimes have been registered against the gang leader. The invocation of MCOC Act, 1999 is fully justifiable. Resultantly, section 21(4) of MCOC Act, 1999 comes into play and the applicant is not entitled to be enlarged on bail.

7. I have heard Mr. Jadhav, learned counsel for the applicant and Mr. Dabake, learned APP, for the State. With the assistance of the learned counsels for the parties, I have perused the material on record.

8. Mr. Jadhav, the learned counsel for the applicant would urge that an ordinary incident of assault has been converted into the offence of dacoity. The learned counsel further urged that if the

allegations in the first information report are considered in conjunction with the material on record, an inference becomes inescapable that the injured Dipak Dharme had known the assailants from before. Mr. Jadhav laid emphasis on the fact that the injured Dipak Dharme was allegedly assaulted for informing the names of the co-accused to police. Inviting the attention of the Court to the injury certificates which indicate that the first informant had sustained blunt contusion and scratches on right neck region and Dipak Dharme had sustained blunt trauma contusion on right shoulder and swelling at left hand, alna side, which are simple injuries, Mr. Jadhav would urge that the prosecution case, even if taken as it stands, would not travel beyond the offence punishable under section 324 of the Penal Code.

9. The invocation of the sections of MCOC Act was assailed on the ground that on the day of the alleged occurrence, apart from the offence in question, only one crime i.e. C.R. No. 139 of 2018 for the offence punishable under section 4 read with 25 of Arms Act in which the Court had taken cognizance was to the credit to the applicant in which the Court had taken cognizance. Mr. Jadhav invited attention of the Court to the observations of the learned Special Judge in the order dated 28th August, 2020 (whereby the

prayer of the applicant for bail came to be rejected), to the effect that the applicability of the provisions of MCOC Act qua the applicant was doubtful.

10. The learned APP, per contra, would submit that the invocation of MCOC Act, 1999 is wholly in order. Emphasis was laid on the fact that as many as 11 offences have been registered against the gang leader Dhanya Kamble. It is not the requirement of law that more than two charge-sheets in respect of the offence punishable with more than three years imprisonment ought to have been filed against each member of the organized crime syndicate, submitted the learned APP.

11. In view of the provisions contained in Section 21(4) of the Maharashtra Control of Organized Crimes Act, 1999, there is an embargo in releasing a person who is accused of the commission of the offences under the said Act. Sub-section (4) of Section 21 reads as under :

“(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act, shall if in custody, be released on bail or on his own bond, unless -
(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and
(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

12. A bare perusal of the aforesaid provisions would indicate that when an application for bail is made by a person who is arraigned for an offence punishable under the Maharashtra Control of Organized Crimes Act, 1999, the Public Prosecutor must first be given an opportunity to oppose the application and then the twin requirements be satisfied, namely, there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

13. The import of this provision was instructively expounded by the Supreme Court in the case of Ranjitsing Brahmajeetsing Sharma V/s. State of Maharashtra and Anr.¹. The relevant observations of the Supreme Court read thus :

“44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents

1 (2005) 5 SCC 294.

of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.”

14. On the aforesaid touchstone, reverting to the facts of the case, it has to be seen whether there is adequate material to indicate prima facie that the Applicant is a member of organized crime syndicate within the meaning of clause (f) of sub-section (1) of Section 2 of the Maharashtra Control of Organized Crimes Act, 1999. For an answer, it has to be seen whether there is material to show that the Applicant has either singly or collectively indulged in continuing unlawful activities.

15. Under clause (d) of sub-section (1) of Section 2, ‘continuing

unlawful activity' means 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.

16. On the aforesaid touchstone, reverting to the facts of the case, I have carefully perused the allegations in the first information report and the proposal submitted for invoking the provision of MCOC Act. In none of the 11 offences registered against the co-accused Dhanya Kamble, the applicant herein has been implicated as a co-accused. It is true that in RCC No. 238 of 2018 arising out of C.R. No. 139 of 2017, for the offence punishable under section 4 read with 25 of Arms Act, 1959, the Court had taken cognizance. Whereas, C.R. No. 567 of 2018 was under investigation.

17. From the perusal of the material on record, the question of applicability of the provisions of MCOC Act, 1999, qua the applicant appears to be debatable.

18. The matter can be looked at from a slightly different perspective. It is pertinent to note that the statement of the injured indicates that the injured had known four of the five persons who allegedly robbed them. The reason for assaulting the injured appeared to be the suspicion on the part of the assailants that the injured was apprising the police about them. It would be contextually relevant to note that the injury certificate of the first informant Ganesh reveals that the first informant had sustained contusion and scratches on right neck region and both the injuries were simple. Likewise, Dipak Dharme had sustained blunt trauma, contusion on right shoulder and swelling at left hand, alna side. Again the injuries were designated as simple and the probable weapon would be hard and blunt object.

19. In addition to the statement of the first informant and the injured, the prosecution banked upon the discovery allegedly made by the applicant leading to recovery of Aadhar card of the first informant Ganesh and a wooden stick. At this stage, the Court is not expected to delve deep into the aforesaid circumstances sought to be pressed into service against the applicant. It is imperative to note that though 11 offences have been registered against the gang leader, the applicant's name does not figure as the co-accused in any

of those offences. The question as to whether the offences were committed as an organized crime syndicate thus warrants consideration qua the complicity of the applicant as a member of the organized crime syndicate. Resultantly, the applicability of the provisions contained in section 3(1)(ii), 3(4) of MCOA Act, 1999 appears debatable, at least qua the applicant.

20. As regards the subject offence, as indicated above, the injured had known the alleged robbers from before, except fifth person who was stated to be unknown. The reason for the assault, as stated by the injured in the first information report, was primarily the suspicion that the injured was a police informer. From this stand point, the submission on behalf of the applicant that the aspect as to whether the occurrence in question would fall within the tentacles of section 395 of the Penal Code is debatable, and cannot be said to be wholly unsustainable. This issue, in the circumstance of the case, is also a matter for evidence and trial.

21. The applicant is in custody, since 14th November, 2018. The applicant has already undergone more than 3½ years of incarceration. It is unlikely that the trial can be concluded in a near future. Prolonged incarceration of a person as an undertrial

prisoner without a real prospect of conclusion of trial in a near future, falls foul of the constitutional guarantee of speedy trial. For this reason also, I am persuaded to exercise the discretion in favour of the applicant.

22. It is true that, apart from the offence in question, two crimes are shown to have registered against the applicant. However, the nature of accusations in the subject offence and the prolonged period of incarceration cannot be lost sight of. In my view, imposing stringent conditions would serve the purpose.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Abhijit Pradip Shinde be released on bail in connection with C.R. No. 506 of 2018 registered with Baramati City police station, Pune on furnishing a P.R. Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount, to the satisfaction of learned Special Judge.
- 3] The applicant shall attend Baramati City police station on first Monday of every alternate month in between 10 am to 11 am for a period of two years or till the conclusion of the trial whichever is

earlier.

4] The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

5] The applicant shall furnish his permanent address and contact details within eight days of his release from prison, to the Inspector of Police, Baramati City police station and intimate the change, if any.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

(N. J. JAMADAR, J.)