

IN THE COURT OF SESSIONS JUDGE, PANVEL-RAIGAD,
AT : PANVEL
ORDER BELOW EXH.14 IN SPL.MCOC CASE NO.108/2020
CNR NO.MHRG170010232020
(DECIDED ON 07/04/2021)

State
V/s
Barkatali Abdul Kalam Chaudhari and others

1. The applicant/accused No.3 Kalam Shamsuddin Khan has preferred present application for discharge u/sec.227 of Cr.P.C.
2. Heard Ld.Adv. Shri. Iqbal Siddiki for the applicant/accused No.3 who submitted that, the applicant came to be arrested in this matter in the background of complaint lodged by Afzal Khan with allegations that, applicant alongwith other co-accused persons came to godawn and on the point of chopper they looted the complainant and other witnesses. Ld.Adv. submitted that during course of investigation certain cash amounts, mobile phone and SIM cards were shown seized from the accused persons. Ld.Adv.submitted that the applicant and other co-accused persons were arrested on suspicion as there is no direct evidence.
3. Ld.Adv.submitted that just to increase the gravity of offence, the investigation agency in the background of other crimes allegedly committed by the present applicant, purportedly

with other accused persons, secured sanction under the provisions of MCOC Act and forwarded the charge-sheet in the matter.

4. Ld.Adv.submitted that on perusal of the charge-sheet and the background circumstances in which the provisions of MCOC Act have been invoked, it appears that the sanction has been accorded by the concerned authority more casually without taking into consideration the statement of Object and Reasons of MCOC Act. Ld.Adv.submitted that the circumstances under which the applicant arrested alongwith co-accused persons, there are adequate penal provisions available in IPC and there was no need of invoking the provisions of MCOC Act which has stringent provisions of punishment.

5. Ld.Adv. referred the definition part in MCOC Act under section 2 (d), (e) and (f) and submitted that for prima facie establishing the involvement of the applicant under the provisions of MCOC Act there has to be essential ingredients like i) continuing unlawful activities done by individual, singly or jointly, ii) there has to be the organised syndicate of the criminals and iii) there has to be threat of violence or intimidation or coercion of other unlawful means, iv) that such continuing unlawful activity was done with an objective of gaining pecuniary benefits of gaining undue economic or other advantage for the person who undertakes such an activity or any other person or promoting insurgency, v) That such continuing unlawful activity was prohibited by law for time in force and was a cognizable

offence punishable with imprisonment of 3 years and more, vi) that such activity was undertaken either singly or jointly either member of Organised Crime Syndicate or on behalf of such Syndicate vii) that in respect of such continuing unlawful activities more than one charge-sheet has been filed before the competent court within the preceding period of 10 years and that such court has taken cognizance of the offences.

6. Ld.Adv.canvassed his submissions by pointing out the number of charge-sheets filed against the present applicant and submitted that, the investigation agency has used the charge-sheet record of alleged crime more particularly of the jurisdiction of Wada (Now in District Palghar) and submitted that, the alleged crime in such charge-sheet does not pertain to the criminality as the member of Organised Crime Syndicate or on behalf of such Syndicate. Ld.Adv.submitted that, the alleged approval and sanction for invoking the provisions of MCOC Act has been flawed without conformity and compliance to the mandatory ingredients of the law and its objectives.

7. Ld.Adv.submitted that, in the present matter considering the facts and circumstances, even prima facie no case is made out the application of provisions of MCOC Act and further submitted that mere commission of crimes as alleged in another places with number of co-accused persons cannot automatically did to application of provisions of MCOC Act.

8. Ld.Adv.lastly submitted that, the allegations against the present applicant are far from the magnitude of pecuniary gains for advantage which is imperative in application of MCOC Act and there is no element of insurgency in the present matter. Ld. Adv.submitted that, mere mobile phone call details of applicant and another co-accused person does not conclude that, the applicant was in contact with other co-accused persons and had executed criminal activity against society or nation. Ld.Adv. submitted that, the recovery shown in the present matter is a sort of common recovery in IPC matters and it cannot be concluded that the provisions of MCOC Act are aptly applicable and submitted that, the applicant/accused No.3 be discharged from the stringent provisions of MCOC Act and prayed accordingly.

9. In support of submissions Ld.Adv.also relied upon following rulings.

1. *Ranjitsing Brahmajeetsing Sharma Vs State of Maharashtra and another, Cri Appeal No.523/2005 Supreme Court decided on 07/04/2005*
2. *Sherbahadur Akram Khand and others Vs The State of Maharashtra Bombay High Court decided on 08/12/2006*
3. *Asif Khan Bashir Khan Vs. State of Maharashtra Cri.Appeal No.749/2007 High Court Bombay, decided on 16/10/2007*
4. *Govind Sakharam Ubhe Vs Manish Nagar, Cri.Appeal No.18/2009 Bombay High Court decided on 11/06/2009*
5. *The State of Maharashtra Vs Rahul Ramchandra Taru Cri.Appeal No.239/2011 High Court Bombay decided on 06/05/2011*

6. **State (NCT of Delhi) Vs. Brijesh Singh @ Arun Kumar and another Cri.Appeal No.1750/2017 decided on 09/10/2017**

10. Ld.PP Shri Salvi relied on the report submitted by the concerned police station at Exh.15 in his reply and submitted that, during course of investigation it has been revealed that, the applicant/accused No.3 has been positively involved in criminal activities alongwith other co-accused persons which can be consider as a organised crime. Ld.PP also pointed out the involvement of the present applicant in the C.R.No.I 205/2017 of Taloja police station on the basis of the recovery and submitted that, the applicant/accused has been identified by the complainant in identification parade. Ld.PP submitted that investigation agency has also produced CDR of mobile phone of accused persons in this matter and submitted that, at the relevant time of offence, the applicant was in contact with other co-accused persons.

11. Ld.PP further submitted that the co-accused Jiya Uddin Khan has given the confessional statement involving the present applicant as well as other co-accused persons with information that, the crime property was distributed amongst themselves after commission of crime. Ld.PP further submitted that, on the basis of the crime record of the applicant and his nexus with other co-accused persons, the matter has been investigated under the provisions of MCOC Act and the competent authority after analysing the record has come to the conclusion that there are circumstances of invoking and applying the provisions under

MCOC Act. Ld.PP further submitted that, the other main co-accused persons of whom the applicant is a member of syndicate are still absconding and after their arrest the investigation would further be in progress. Ld.PP submitted that considering all these aspects there are sufficient material available against the present applicant under the purview of ingredients of section under charge and there is sufficient material for trial against the applicant under the provisions of MCOC Act alongwith other provisions of IPC and Arms Act. Ld.PP submitted that, in the present matter the charge can be framed against the applicant alongwith other arrested co-applicant persons and prayed for rejection of the application.

12. Before analysing issue in hand It is necessary to point out the necessary ingredients of invoking the provisions of MCOC Act which can be readily referred as under ;

While dealing with this case, we must bear in mind the purpose enacting the MCOC Act. This Act was enacted in 1999 since it was felt by the legislature that the existing legal frame was inadequate for coping with the menace of organised crime. The avowed object of the Act was to prevent and control criminal activity by organised crime syndicates or gangs and for matters connected therewith or incidental thereto. The statement of objects and reasons of this Act reads as under:

STATEMENT AND OBJECT Organised crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract killings, 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 organised crime is very huge and has serious adverse effect on our economy. It is seen that the organised criminal syndicates make a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There is a reason to believe that organised criminal gangs are operating in the State and thus, there is immediate need to curb their activities.

It is also noticed that the organized criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

The existing legal frame work i.e. the penal and procedural laws and the adjudicatory system are found to be rather inadequate to curb or control the menace of organised crime. Government has, 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.

Section 2(d) defines the expression continuing unlawful activity thus : "*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 organised 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.

The definition of organised crime is stipulated in Section 2(e) of the MCOC Act, : "*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 unsurgency.

Section 2(f) defines the term 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.

13. A perusal of the aforesaid definitions indicates that an organised crime syndicate is a gang which indulges in organised crime. This gang may consist of two or more persons, either acting singly or collectively. Such a gang should be found to indulge in continuing unlawful activity i.e. an activity which is prohibited by law and is a cognizable offence punishable with imprisonment for three years and more. An activity would be termed as a continuing unlawful activity if more than one charge-sheet has been filed

before the competent Court against the members of the gang either individually or jointly within the preceding ten years. However, it must be established that such an offence or unlawful activity is undertaken by a person with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person or for promoting insurgency. Such unlawful activity could include the use of violence or threat of violence or intimidation or coercion.

14. Upon hearing the Ld.Advocates and after minutely going through the citations relied upon by Ld.Advocate of the applicant stated here-in-above, at the stage of framing the charge, the Court is required to evaluate the material and documents on record with a view to finding out, if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence more particularly under the provisions of MCOG Act. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

15. As regards scope of section 227 and 228 of the Criminal Procedure Code, Hon'ble Apex court in its judgment **Sajjan Kumar Vs.CBI reported in (2010) 9 SCC 368** observed as thus:-

... On consideration of the authorities about the scope of section 227 and 228 of the Code, the following principles emerge:-

"(i) The Judge while considering the question of framing the charges under section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case."

16. In the background of above legal principles, if we have prima facie look on the evidence collected by the investigation agency which has been produced before the Court in the form of charge-sheet, it is not disputed that, the applicant/accused No.3 has been shown involved in the crime No.205/2017 of Taloja police station under section 395, 397, 504, 506 of IPC alongwith u/sec.37 (1) 135 of Bombay Police Act and wherein the provisions of MCOG Act have been invoked in the background of the involvement of the applicant/accused in other crimes and showing its nexus with the other co-accused persons to show that, the accused persons in conspiracy has committed those crimes as organised syndicate which attracts the provisions of MCOG Act.

17. Alongwith the reply the investigation agency has also submitted the charge showing analysis of various charge-sheet filed against the present applicant and other co-accused person

which reflects that, all the said matters are related with the theft, robbery, dacoity and including the murder case. All such charge-sheets are during the period of preceding 10 years and admittedly the present applicant has been involved in more than two charge-sheets which are basis ingredients of invoking the provisions of MCOC Act.

18. It is pertinent to note that the main gang leaders of the Organised Syndicate are still absconding and their arrest and investigation will certainly give reflection about the important aspect of economic objectives. It is also to be noted that it is not monitory aspect only to consider that it must be in huge quantity but there are other aspects are also to be taken into consideration such as commission of crime in syndicate alongwith other co-accused persons which can be termed as organised crime.

19. There appears statements of witnesses who have identified the present applicant during course of identification parade and there also appears the substantial recovery under the discovery memorandum of the applicant which shows his involvement in the crime. There is also evidence in the form of CDR of the mobile phone in possession of applicant and other co-accused persons which shows that at the time of commission of crime they were in continuous contact with each other showing that, the offence was conspired amongst themselves and the same was executed.

20. In the background of the statement of witnesses and other evidence collected by the investigation agency there are prima facie circumstances and sufficient grounds for proceeding against the present applicant alongwith other co-accused persons under section IPC as well as under the MCOG Act and opportunity is required to be given to the prosecution to establish the charge against the accused No.3/applicant alongwith other co-accused persons. In the circumstances the application is required to be rejected and matter can be proceeded further by framing charge under section 228 of Cr.P.C. Hence, order.

ORDER

1. The application Exh.14 is hereby rejected.
2. Application is accordingly disposed of.

(Dictated and transcribed directly on office computer and pronounced in open court.)

Panvel
Date :- 07/04/2021

(R.G.Asmar)
Addl.Sessions Judge,
Panvel-Raigad