(2016) 07 BOM CK 0055

In the Bombay High Court

Case No : Criminal Application (BA) No. 424 Of 2016

Dinesh Bhondulal Baisware APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 07-07-2016

Acts Referred:

Citation : (2016) ALLMRCri 3517 : (2016) 4 BomCR(Cri) 149

Hon'ble Judges : S.B. Shukre, J.

Bench : Single Bench

Advocate : Shri D.V. Chauhan, Advocate, for the Appellant; Shri A.V. Palshikar with Shri S.S. Doifode, APP, for the Respondent

Final Decision : Allowed

Judgement

S.B. Shukre , J.—Heard learned counsel for the applicant and learned A.P.P. for the respondent/State.

2. The allegation made against the present applicant is that he along with four other accused persons, being a member of an organised crime syndicate, was a part of the group, which took active part in carrying out a dangerous assault upon the complainant Amol Mehar on 29.5.2015 in which assault, Amol Mehar, however, managed to escape, though he suffered grievous injuries to his person. On the basis of complaint, offences punishable under Sections 307, 143, 144, 147, 148, 294 and 427 read with Section 149 of the Indian Penal Code and also Sections 3,4,25 and 27 of the Indian Arms Act were initially registered. Later on, as the investigation progressed, the Investigating Officer also found that this applicant and four other persons formed an organised crime syndicate which indulged in various activities prohibited under the law. It was also found that this crime syndicate was headed by accused No.1 Gijrya Lonare and this applicant was one of the members of that crime syndicate. It was also noticed that at least two charge-sheets were already filed against said crime syndicate headed by Gijrya Lonare. Therefore, on 9.10.2015, permission was granted by the competent authority for proceeding against all the members of the organised

crime syndicate including the applicant under the provisions of the Maharashtra Control of Organised Crime Act, 1999 (in short, "MCOC Act"). Accordingly, offence punishable under Section 3(4) of the MCOC Act has been additionally registered against the applicant and other members of the crime syndicate.

3. Learned counsel for the applicant submits, by placing reliance upon the law laid down by the Hon''ble Apex court in the case of Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and another, reported in AIR 2005 SC 2277 that the applicant is entitled to be released on bail on two counts, firstly, there is no prima facie culpability or mens rea seen on the part of the present applicant in the incident, which took place on 28.5.2015 and secondly, there is no material placed on record from which it can be prima facie said that if released on bail, the applicant is likely to commit any offence under the MCOC Act. He submits that the Hon''ble Apex Court has interpreted Section 21(4) of the said Act as referring to the possibility of commission of an offence under the provision of the MCOC Act and not any other offence, whether minor or major. He also submits that same law has been laid down by the Hon''ble Apex Court in the latest judgment rendered in the case of Prasad Shrikant Purohit v. State of Maharashtra, reported in (2015) 7 SCC 440.

4. Learned A.P.P. has vehemently opposed the application. He submits that there is prima facie evidence showing that the applicant is a member of the organised crime syndicate, that the applicant had by his conduct has shown that he is prone to commit offences against human body and that in the present crime also the applicant had taken active part in making an assault upon the complainant thereby showing his prima facie culpability in the offences so registered against him. Therefore, he submits that the prohibition prescribed under Section 21(4) of the MCOC Act would come into play which would disentitle the applicant from seeking his release on bail. He also submits that the result of previous charge-sheet is not relevant and in support he refers to me the case of Anil Murlidhar Deshmukh v. State of Maharashtra, reported in 2006(1) Bom.C.R. (Cri.) 371.

5. On perusal of the complaint dated 29.5.2015 and also the statements of relevant witnesses Aniket Bagde and Kartik Sharma to whom my attention was invited by the learned counsel for the applicant, I find that this is not a case wherein it could be prima facie said that this applicant did not play any role in the assault that was made upon the complainant on 28.5.2015. It is seen from the statements of the witnesses that this applicant was carrying a sword in his hand, when he got down from Maroti Omni and that he ran after one of the witnesses carrying sword in the hand. Then, there is also a prima facie material showing that at least two charge-sheets were filed against the crime syndicate headed by the main accused Virendra alias Gijrya Lonare. These charge-sheets have been filed in Crime Nos.161/2012 and 280/2012 registered previously. This would make it clear to us that at least two of the parameters prescribed under Section 21(4) of the MCOC Act, i.e. existence of prima facie evidence showing involvement of the applicant in the offence registered under Section 3 of the

MCOC Act and two charge-sheets having been filed are met in this case. This is because, as stated earlier, charge-sheets have been filed against two co-accused, who have been alleged to be members of the crime syndicate, with one of them alleged to be the leader.

6. But, there is yet another criterion, criterion of possibility of commission of offence under the MCOC Act, which must be shown to be satisfied by the prosecution so as to disentitle the applicant from the relief sought by him. In the case of Ranjitsing Brahmajeetsing Sharma (supra), the Hon''ble Apex Court has laid down that in order to examine whether the case of the applicant falls within the scope of Section 21(4) or not, it is necessary that the Court must be satisfied that there is prima facie evidence against the applicant indicating commission of the offence under the provisions of the MCOC Act and that there should also be a reasonable possibility of the applicant committing the crime under the said Act. This can be seen from the observations made by the Hon''ble Apex Court in paragraph 49 of the judgment, which are reproduced thus:

"We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision."

So, what now remains to be seen is as to whether or not there is any material from which one can record a prima facie finding regarding fulfilling of the said third criteria. According to the learned A.P.P., involvement of the applicant in commission of two offences in the past for which he was prosecuted in the Crime Nos.29/2010 and 71/2014 is sufficient to show the propensity of the applicant in committing the offence under the Act. According to the learned counsel for the applicant, these offences will have to be considered as having been registered against the applicant only in individual capacity and that they do not have any nexus whatsoever with the activities of the crime syndicate and, therefore, could not be taken into account for recording a finding in respect of said third criteria. I think, learned counsel for the applicant is right. Although, for being a member of the organised crime syndicate, it is not necessary that the accused must be convicted in the charge-sheets previously filed, as held in the case of Anil Murlidhar Deshmukh (supra), presence of nexus between those offences and activities of crime syndicate, however, would be relevant for determining whether the accused is likely to indulge in commission of the crime under the MCOC Act. The charge-sheets that were previously filed against the present applicant were characterised by individuality and it is seen from the crime chart appended to the present charge-sheet that in those charge-sheets, no other person or none of the co-accused of the applicant was made accused person. Had it been the case of the prosecution that out of four accused at least one or two was or were also co-accused in those previous charge-sheets, I would have accepted the contention of the learned A.P.P. that there is some material on the basis of which it could be said that if released on bail, there would be a reasonable possibility of the applicant committing the crime under the said Act. So, if the charge-sheets were filed only in individual capacity against the present applicant and not as being a member of crime syndicate, it would have to be seen whether he had involved himself previously in commission of any Act prohibited under the law, in order to examine the possibility of applicant committing offence under the MCOC Act. For ascertaining this fact, it would have to be seen as to what happened in those charge-sheets. The crime chart indicates that in those charge-sheets, this applicant was acquitted. Therefore, it would have to be said that so far as the present applicant is concerned, there is no record or no material available on record giving rise to a possibility of the applicant indulging in an offence under the MCOC Act in a reasonable manner. Thus, the third criteria necessary for denying relief of bail to the applicant in such a case is absent in this case and, therefore, in my view, the applicant would be entitled to be released on bail.

7. Of course, the conditions on which the applicant would have to be granted bail must be stringent, in order to rule out even the remote possibility of the applicant misusing the liberty.

8. In the circumstances, I am inclined to grant this application and it is granted accordingly.

9. It is directed that the applicant be released on bail on his furnishing a PR Bond in the sum of Rs.25,000/together with two solvent sureties in like amount on following conditions :

i) the applicant shall reside in Gondia till the trial is over and till that time shall not enter the city limits of Nagpur except on the dates which are fixed for his attendance in the case filed against him;

ii) the applicant shall, within 3 days of his release, submit his detailed address together with telephone numbers to the City Police Station, Gondia;

iii) the applicant shall not tamper with the prosecution witnesses;

iv) the applicant shall regularly attend the dates fixed by the Court in his case, unless exempted in accordance with law; and

v) the applicant shall cooperate with the Court in expeditious disposal of the case.

