(2007) 08 DEL CK 0255

In the Delhi High Court

Case No : Bail Application No. 2033 of 2006

Kamal Jeet Singh	APPELLANT
Vs	
State	RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2)
Evidence Act, 1872 — Section 27
Immoral Traffic (Prevention) Act, 1956 — Section 4, 5, 8
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21
Penal Code, 1860 (IPC) — Section 120B, 34, 376, 420

Citation : (2007) 08 DEL CK 0255

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Harjinder Singh, Yogesh Kumar Saxena and Shikha Tyagi, for the Appellant; Anil Soni, APP, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The petitioner herein is facing trial under Sections 4, 5 and 8 of the Immoral Traffic (Prevention) Act (in short the ''ITP Act'') , Section 420/120B IPC and Section 3/4 of Maharashtra Control of organized Crime Act, 1999 (in short ''MACOCA''). There are certain persons along with the petitioner, who are accused in the aforesaid case. These accused persons, including the petitioner had moved applications for bail before the learned ASJ, who dismissed their applications vide order dated 23.5.2006. The petitioner has, Therefore, preferred this application seeking his bail. Since the allegations on the basis of which the petitioner is facing trial under the aforesaid provisions are taken note of by the learned trial court in detail and there is no dispute over the same, I may refer to the same hereinafter.

2. On 19.4.2005 SI Sajjan Singh had information that Kamaljit Singh and his associate Pappi supply girls to clients for prostitution in five star hotels and carry on their business through mobile No. 9810645454. SI Sajjan Singh informed ACP

Kumar Gyanesh about the same, who directed him to strike a deal. Therefore, SI Sajjan Singh contacted Phone No. 26109027 of ARC Office Crime Branch and upon talking to the person receiving the call identified himself as Pappi and agreed to provide girl for sexual purposes for two hours which would cost Rs.20,000/- and he asked SI Sajjan Singh to call again on the said telephone number after two minutes. Again when SI Sajjan Singh contacted on the aforesaid telephone number he was told that he would meet him outside the main gate of Taj Palace Hotel at 4:00 pm. Pappi demanded Rs.5,000/- as advance for the chosen stuff. On this information, a raiding party was formed and a DD No. 9 was got recorded regarding the information. The raiding party reached and one person, namely, Charan Singh son of Jagdish Prasad was joined in the raiding party. His personal search was conducted by SI Ashok Kumar and nothing was recovered from the personal search of witness. Thereafter, 10 currency note in the denomination of Rs.500/- signed by the IO were handed over to the public witness Charan Singh vide a memo. Charan Singh was briefed to enter into a deal for sexual intercourse by using the given currency note as advance and he was directed to give fixed signal, once the deal was struck. SI Sajjan Singh was made a shadow witness to hear conversation carefully between Pappi and Charan Singh and also to watch the transaction between them. The staff was also briefed to take position in and around the main gate of the hotel.

3. At about 4:15 pm, one Maruti Car No. DL 3CG 0609 stopped at the main gate of the hotel and two girls and a man got down from the car and started conversing with Charan Singh. Five minutes later Charan Singh gave the signal, whereupon IO along with the staff rushed to the car and the man, who was identified as Arvinder Pal Singh @ Pappi was overpowered and the girls were also overpowered by the lady HC Saroj, whose name was revealed as Pooja @ Billi and Sonali. The decoy customer Charan Singh clarified that Arvinder Pal Singh @ Pappi while presenting both the girls Pooja and Sonali told him that to have sex with them Rs.20,000/- each would be charged and Rs.5,000/- had to be paid in advance. Meanwhile, Pooja winked her left eye and stretched herself made gestures presenting herself for sex and Sonali displayed vulgar gestures. Arvinder Pal Singh demanded advance money and Charan Singh handed over the said 10 currency note in the denomination of Rs.500/- which Arvinder Pal Singh kept in shirt pocket. SI Sajjan Singh also corroborated the fact, who was a shadow witness. Thereafter, on search of Arvinder Pal Singh by SI Ashok he was found in possession of the same 10 numbered currency notes in the denomination of Rs.500/- signed by the IO. The said currency notes were kept in white polythene sealed with the seal of SSY and taken into possession. They were all apprehended and arrested u/s 4/5 ITP Act. During investigation accused Arvinder Pal Singh had made a disclosure statement that he was carrying out a business of prostitution at the behest of accused Kamaljit Singh, who is a known pimp. That out of the money received from the customers the major share of 50% goes to Kamaljit Singh, whereas the remaining amount was equally shared between him and the chosen girl. The accused Puja @ Billi and Sonali Parveen

also disclosed during interrogation that they had been working for the past few months for accused Kamaljit Sing and was indulging in the dubious trade of prostitution and under the directions of Kamaljit they offered themselves for sexual intercourse to various clients at Five Star Hotel, Guest Houses, Posh Colony Flats. They further disclosed that girls from various cities such as Mumbai, Calcutta and Bangalore etc., were also engaged in this business by Kamaljit Singh, with Arvinder Pal Singh, acting as conduit for Kamaljit Singh, who would receive them and also fetch them to various hotels in his vehicle. He further disclosed that accused Kamaljit Singh had a wide network and was assisted by Maya Keshwani @ Varsha, Mrinal Kumar, MK Menon, William, Tejinder Singh Walia etc., who were the active associates of Kamaljit Singh. He also disclosed that accused Kamaljit mainly used to contact college girls, models who offered their services to his clients and used to charge exorbitantly. This business was mainly coordinated through mobile phones of Kamaljit Singh and his associates. Later on, a raiding team was constituted and raid was conducted at H. No. 102, Jal Vaiyu Vihar, where accused Kamaljit Singh was arrested. During investigation, it revealed that accused Kamaljit Singh was involved in prostitution racket since 1985-86 and had amassed huge property both movable and immovable out of this trade. So far accused Arvinder Pal Singh is concerned, during the investigation two mobile phones 9810224004 and 9810645454 were seized from his possession, which were registered for billing in the name of Kamaljit Singh and the third phone 9871047373 seized from Kamaljit Singh was in the name of Raj Kumar Rana and during call analysis it was found that 911 calls were made from mobile No. 9810224004 to 9871047373 during 1/1/05 to 20/4/05 and 13 calls were between the mobile No. 9810645454 and 9871047373. As many as 475 incoming outgoing calls were traced out from Mobile No. 9891939197 in the name of Arvinder Pal Singh to 9810224004 during the aforesaid period. 858 calls were exchanged between the mobile of Arvinder Pal Singh and Kamaljit Singh. One another mobile telephone No. 9871375297 activated on 25/3/05 was found to be in the name of Arvinder Pal Singh but at the address of accused Kamaljit Singh i.e. M 65 GK Part II, New Delhi. During investigation in view of the facts and circumstances of the case and the conduct of the accused persons provisions of Section 3/4 MACOCA were used against the accused persons.

4. During investigation the accused Neeraj Chopra @ Dev Chopra was found to be an active associate of Kamaljit Singh, who was arrested u/s 21 NDPS Act by NCB on 2/9/05 and was found to be involved in as many as four cases since 16/1/96 till the date of his arrest, the details of which are given in the charge sheet. Out of four cases, three cases are pending under ITP Act and one case u/s 376/34 IPC. Later on, accused Neeraj Chopra was arrested in the present case on the disclosure statement of his co-accused Arvinder Pal Singh. In terms of the provisions u/s 18 MACOCA his confessional statement was recorded by DCP/N and CP, the designated officer, he disclosed that in the year 1993 he was introduced to accused Kamaljit Singh at Mumbai by one Vijay Solanki who was

stated to be working for Kamaljit Singh. Vijay Solanki had employed Neeraj Chopra as his driver and he used to collect payments from Five Star Hotel from various clients but was never told about the business. After about 7-8 months he left Mumbai and came back Delhi. He was advised by Vijay Solaki to contact Kamaljit Singh at M-65, GK Part Ii, New Delhi, for his balance salary. When he met Kamaljit Singh at his residence, he was employed by him as his driver. Thereafter on the instructions of Kamaljit Singh, he used to collect air tickets from airport and also used to transport young and glamorous girls and dropped them in lobby of various Five Star Hotels, where Arvinder Pal Singh, Varsha Keshwani and SJ Menon used to receive them. Gradually he came to know that Kamaljit Singh and his associates were running a prostitution racket spread over several cities.

5. Perusal of the order of the trial court dismissing bail application of the petitioner would show that the petitioner had claimed statutory bail u/s 167(2) of the Cr.P.C. read with Section 21(2) of MACOCA on the ground that the prosecution have failed to complete the investigation under the statutory period of 90 days and the period of investigation had been extended u/s 21(b) of MACOCA without notice to the petitioner or his counsel and they were not present at the time of the aforesaid order as well. This plea has been rejected by the learned trial court. In so far as the petitioner is concerned, his application was only u/s 167 of the Cr.P.C. The order would further reveal that another co-accused Arvinder Pal Singh had also moved the application for statutory bail, which was rejected along with the bail application of the petitioner. However, the said Arvinder Pal Singh had also moved another bail application on the ground that he was falsely implicated in this case. He had also taken up the plea that Section 3 of MACOCA was wrongly invoked against him as he was never a member of any orgainsed crime syndicate nor indulged in any continuing unlawful activity and the provisions of MACOCA could not be attracted on the basis of the allegations leveled against him. The trial court rejected the said bail application of Arvinder Pal Singh observing that record indicated links between Arvinder Pal Singh and Kamaljit Singh (petitioner herein), which was established through the use of their mobile phones. In the process, the learned trial court observed:

Perusal of the record shows that during the investigation of the present case, the links between the accused Arvinder Pal Singh and Kamaljit Singh through the use of mobile phones have been established. During investigation, two mobile phones were recovered from the possession of accused Kamaljit. There is another mobile phone No. 9871375297 activated on 25/3/05 which is in the name of Arvinder Pal Singh but issued at the address of accused Kamaljit i.e. M 65, PK Part-2, New Delhi and 100 of calls have been traced out between the two during the period 1/1/05 to 20/4/05. During investigation it is also revealed that billing address of all the mobile phones in the name of Arvinder Pal Singh was M 65, GK Part-2, which is residence of accused Kamaljit. It is also on record that during investigation a duplicate key of Indica Car of accused Arvinder Pal Singh was recovered from the house of accused Kamaljit. Perusal of the record further shows that during the disclosure statement u/s 18(1) MACOCA accused Neeraj Chopra disclosed that accused Arvinder Pal Singh is an associate of accused Kamaljit, who is running a prostitution racket spread over several cities and accused Arvinder Pal Singh along with other associate of Kamaljit supplies girls of (sic.) prostitution and the said disclosure statement is admissible against his co-accused Arvinder Pal Singh.

6. As far as applicability of Section 3 of MACOCA is concerned, rejecting the application of Arvinder Pal Singh as well as another accused Neeraj Chora, who had taken similar plea, the learned trial court observed as under:

In these circumstances, prima facie there is sufficient material on record to attract the provisions of Section 3(2) MACOCA. Thus, for the mere reason that accused Arvinder Pal Singh has not been facing any other trial during the preceding period of 10 years as defined in Section 2(d) of MACOCA it cannot be said that the provisions of MACOCA cannot be invoked against him on the allegations on record. In view of the provisions of Section 21(3)(b) I do not find any reasonable ground on record to believe that the accused is not guilty of an offence punishable under this Act and that he is not likely to commit any offence while on bail. As such, I find no merits in the bail application of accused Arvinder Pal Singh. Hence, rejected.

So far as the bail application of accused Neeraj Chopra is concerned, the defense counsel has argued that provisions of MACOCA are not applicable to ITP Act, as, as per the definition of the organized crime in Section 2(e) MACOCA the continuing unlawful activity must be in respect of use of violence or intimidation or coercion or other unlawful means with the object of gaining pecuniary benefit or gaining undue economic or other advantage for himself or any other person. It is submitted that in the offence unde the ITP Act there is no use of violence or threat of violence of intimidation or coercion or any other act adjust dem genris. However, I do not agree with the contention of the defense counsel to the effect that as the phrase ''other unlawful means'' mean any other unlawful activity even if it is not related to the use of violence or to threat of violence. In the present case the allegations against accused Neeraj Chopra are also serious in nature as he is also an associate of accused Kamaljit and facilitated him in running the prostitution racket which is admitted by him in his disclosure statement recorded u/s 18 MACOCA. Besides during investigation it has come on record that he has been facing trial in four criminal cases since 16/1/96 till 11/8/96, 3 cases are under IPT Act and one case is u/s 376/34 IPC. In his case also there is no reasonable ground to believe that he is not guilty of the alleged offence and is not likely to commit any offence while on bail.

7. Though the petitioner had moved application only for statutory bail, which was dismissed by the learned trial court, in the present application the petitioner has not raised any plea on this premise. The entire thrust of this petition as well as arguments, which were advanced by the learned Counsel for the petitioner was

that the provisions of MACOCA could not have been invoked in a case like this wherein the alleged offence related to running a prostitution racket. Plea was that MACOCA was enacted to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang and this was explained by the Supreme Court in the case of Ranjitsing Brahmajeet Singh Sharma v. State of Maharashtra and Anr. 2005 (2) JCC 689 as well. He further submitted that reading of definition u/s 2(1)(d) and (e) of MACOCA would clearly envisage that there must be use of violence or threat of violence or intimidation or coercion or other unlawful means with the objective of granting pecuniary benefits and or gaining gaining undue economic and other advantage for himself or any other person or permitting insurgency for charging a person under MACOCA. With such an objective, the purpose for which MACOCA was enacted, was to be kept in mind while interpreting the provisions and also plain language of the provisions of MACOCA. It was sought to be highlighted that the Supreme Court in the said case while interpreting the word ''abet'' has held that the offence u/s 3(2) of the MACOCA must have direct nexus with the offence committed by an organized crime syndicate. What ''organized crime syndicate'' would be, is interpreted in para 31. The Court in that case also made it clear that the restrictions of the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the material brought on record, is satisfied that in all probability he may not ultimately be convicted, an order granting bail may be passed. His submission was, Therefore, that since the provisions of MACOCA could not have been invoked at all on the basis of allegations raised, in all probability the petitioner could not be convicted under MACOCA and, Therefore, he was entitled to bail. Mr. Harjinder Singh, learned senior counsel for the petitioner, also submitted that the statements of the petitioner as well as Arvinder Pal Singh were not recorded u/s 18 of the MACOCA and, Therefore, they were inadmissible in law, as there is non-compliance of Section 27 of the Evidence Act. For similar reason statement of Dev Chopra is also inadmissible and, Therefore, the Court should not be influenced by these statements, which may be confessional in nature as they have no evidential value. Learned Counsel also submitted that the petitioner was in custody for quite some time now and, Therefore, should be released on bail.

8. Learned Counsel for the respondent on the other hand, submitted that running of sex racket of such a magnitude in an organized way would fit into the definition of ''organized crime'' and the main objective of MACOCA was to prevent orgainsed crimes. He further pointed out that there were 12 previous cases against the petitioner under ITP Act out of 15 cases filed against him, which would show that the petitioner was continuing to indulge in such an illegal activity in an orgainsed way and for involvement of the petitioner under MACOCA, he was not entitled to bail. He also submitted that even otherwise charges under ITP Act as well as IPC were also of very serious nature, which warranted dismissal of the application.

9. I have considered the submissions of both the counsel and have also gone

through the record. After investigation, charge-sheet dated 19.4.2005 was filed by the investigating agency, which is u/s 4/5/8 of the ITP Act, 420/120B IPC and Sections 3 and 4 of MACOCA. Copy of the said charge-sheet is placed on record. Charges were framed against the petitioner on 3.11.2006 and the petitioner has filed criminal revision petition challenging the order of framing of charge, which is pending in this Court and it is in that petition, the Court would ultimately take the view as to whether charge under MACOCA is rightly framed or not. For the purpose of this bail application one will have to proceed, as per the position prevalent as on date, that the trial court has found prima facie case against the petitioner under MACOCA as well on the basis of which, charges are framed. Therefore, it would not be proper for me to go into this aspect in the present petition. In view of the fact that charges are framed under MACOCA, I am of the view that circumstances do not warrant grant of bail to the petitioner.

10. Even de hors the charge under MACOCA, there are serious allegations against the petitioner for which charges under ITP Act are also framed. Learned Counsel for the respondent had taken me through the record and also the allegations, note whereof has already been taken above. He also pointed out that as many as 15 cases were registered against the petitioner out of which 12 were under ITP Act. He also referred to the various calls made from one mobile phone to other between the co-accused inter se as well as between the accused persons and the girls involved in sex trade, who were recovered. He pointed out that these girls were also provided with mobile phones, who were residing in other cities and there were calls made by co-accused persons to those girls on those phones. He also referred to the statements of the accused persons recorded during investigation throwing light on the manner in which air ticket bookings for this girls used to be made and the modus of making payments to these girls adopted by the petitioner and other co-accused. It is, however, not necessary to go into these allegations in detail. Suffice it to state that the charges against the petitioner are of serious nature and I am, Therefore, not inclined to grant bail to the petitioner. This petition is accordingly dismissed at this stage.

