(2011) 11 DEL CK 0283

In the Delhi High Court

Case No : Bail Application 1440 of 2011

Narender Kumar APPELLANT

Vs

State of Delhi RESPONDENT

Date of Decision : 01-11-2011

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 82, 83
Penal Code, 1860 (IPC) — Section 120B, 201, 302, 307, 34

Citation : (2011) 10 AD 231 : (2011) 185 DLT 620

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Manish Aggarwal, for the Appellant; Manoj Ohri, APP for State, ACP Ved Prakash, Operation Cell, Outer District and SI Surender Singh, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—By this application the Petitioner seeks anticipatory bail in case FIR No. 299/2009 u/s 3 of The Maharashtra Control of Organized Crime Act, 1999 (in short MCOCA).

2. Learned counsel for the Petitioner contends that the Petitioner was only involved in one case in the year 2003 wherein he was acquitted in the year 2004. Further, after the alleged association in the sole FIR registered against the Petitioner in the year 2003, the Petitioner has had no association with the main accused Amit @ Babloo. Even as per the FIR No. 68/2003 u/s 302/201/120B IPC and 25 Arms Act the Petitioner had no direct association with Amit @ Babloo. Since there is no illegal activity committed by the Petitioner after 2003 it cannot be said that he was involved in continuing illegal activity. Further, no cognizance of any offence qua the Petitioner has been taken after 2003. In view of the fact that the Petitioner was only involved in one case wherein also he has been acquitted, the essential ingredients of Section 3 MCOCA that there should be

more than one charge-sheet filed against the person in the preceding 10 years is not made out. Since the necessary ingredients of Section 3 MCOCA are not fulfilled, the anticipatory bail application is maintainable and the Petitioner is entitled to anticipatory bail.

3. Learned APP on the other hand contends that Section 21(3) is a complete bar to the grant of anticipatory bail in a case registered for offence punishable under MCOCA. The proceedings u/s 82 Cr.P.C. have already been completed against the Petitioner and proceeding u/s 83 Cr.P.C. are going on. The fact that the Petitioner has been acquitted in FIR No. 68/2003 has no bearing on the involvement for an offence punishable under MCOCA. Further the requirement of Section 3 MCOCA is that there should be more than one charge-sheet in the preceding 10 years against the syndicate and not against each individual of the syndicate. Since the necessary ingredients of Section 3 are made out in the present FIR, the present petition seeking anticipatory bail is not maintainable and hence the same be dismissed.

4. Briefly the case of the prosecution is that the abovementioned FIR No. 299/2009 was registered at PS Narela on the fact that one Amit @ Babloo a bad character of P.S. Narela was involved in inter-state crime and operating in Delhi and neighbouring States as contract killer. For the said purpose he has formed an inter-state gang and thus leads the gang whether he is outside or inside the jail. Amit was arrested in case FIR No. 62/2006 u/s 302/34 IPC registered at P.S. Bawana along with his associates Sandeep, Naresh, Rajesh @ Imran, Surender @ Neetu, Gurbachan and Sunder @ Surender. Further in FIR No. 261/2006 one Sandeep was arrested who disclosed about the involvement of the syndicate. Amit @ Babloo was also arrested in case FIR No. 57/2006 u/s 307/506/34 IPC and 27 Arms Act registered at P.S. Narela. During investigation it was found out that Amit @ Babloo was operating along with his 31 associates who were found to be involved in 13 cases of contract killing, attempt to murder etc. The Petitioner was an associate of Amit @ Babloo in FIR No. 68/2003 u/s 302/201/120B IPC and 25 Arms Act registered at P.S. Sampla, Rohtak, Haryana. Since Amit @ Babloo and his associates while committing series of serious offence expressed a fear psychosis and terror in the minds of the residents of the area, the abovementioned FIR was registered after taking necessary approval from the Joint Commissioner of Police, since in more than three cases cognizance had been taken by different Courts relating to the syndicate.

5. Section 3 of the MCOCA provides that whoever commits an offence of organized crime shall be punishable with death or imprisonment of life if the offence results in the death of any person and in other cases to be punishable with imprisonment to a term which shall not be less than 5 years but which may extend to imprisonment for life and fine. Further, as per Section 3 any person who is a member of an organized crime syndicate or who conspires or attempts to conspires or abets shall be punishable with imprisonment for a term which shall not be less than 5 years but which may extend to life and fine. "Organized

crime" is defined in Section 2(e) as under:

Section 2 - Definitions

(e) "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 insurgency;

6. Further "continuing unlawful activity" is defined in Section 2(d) of the MCOCA as under:

" Section 2 - Definitions

(d) ""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;

7. Thus, a perusal of Section 2(e) and 2(d) clearly shows that if any offence is committed by any individual either singly or jointly as a member of the syndicate or on behalf of the syndicate by use of violence or threat of violence, intimidation or coercion with the objective of gaining pecuniary benefit, the same is an organized crime. Section 2(f) defines "organized crime syndicate" as a group of two or more persons who are acting either singly or collectively as a syndicate or gang indulging in activities of organized crime. Since the Petitioner had acted as a member of the syndicate of Amit @ Babloo, he falls within the ambit of committing organized crime as a member of an organized crime syndicate.

8. The contention of the learned counsel for the Petitioner that since the Petitioner is not involved since the year 2003 it cannot be said to be a continuing in lawful activity also deserved to be rejected. As per Section 2(d) as reproduced above an activity which is prohibited by law i.e. a cognizable offence punishable with imprisonment of three years or more which is 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-sheet has been filed before a competent Court within the preceding period of 10 years on which the Court has taken cognizance of such offence is a continuing unlawful activity.

9. The issue whether a person who is not involved in more than one offence as a member of syndicate would fall within the ambit of Section 3 MCOCA came up for consideration in Govind Sakharam Ubhe v. State of Maharashtra and Ors. 2009 (3) Bom CR (Crl.) 144 wherein it was held:

36. The words `in respect of which more than one charge-sheet have been filed'' cannot go with the words `a member of a crime syndicate'' because in that case, these words would have read as `in respect of whom more than one charge-sheet have been filed.

37. But even otherwise, if all provisions are read together we reach the same conclusion. Section 2(1)(d) which defines `continuing unlawful activity'' sets down a period of 10 years within which more than one charge- sheet have to be filed. The members of the crime syndicate operate either singly or jointly in commission of organized crime. They operate in different modules. A person may be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situations, the MCOCA can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOCA. This is evident from Section 3(4) of the MCOCA which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum of fine of Rs. 5 lakhs. The charge under the MCOCA ropes in a person who as a member of the organized crime syndicate commits organized crime i.e. acts of extortion by giving threats, etc. to gain economic advantage or supremacy, as a member of the crime syndicate singly or jointly. Charge is in respect of unlawful activities of the organized crime syndicate. Therefore, if within a period of preceding ten years, one charge-sheet has been filed in respect of organized crime committed by the members of a particular crime syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOCA against him even if he is involved in one case. The organized crime committed by him will be a part of the continuing unlawful activity of the organized crime syndicate. What is important is the nexus or the link of the person with organized crime syndicate. The link with the organized crime syndicate'' is the crux of the term `continuing unlawful activity''. If this link is not established, that person cannot be roped in.

38. In order to substantiate our construction of Section 2(1)(d) of the MCOCA, we will take hypothetical example of accused 1(A), accused 2(B), accused 3(C) and accused 4(D), who are members of the organized crime syndicate and who have committed crimes within preceding ten years. Insofar as accused A is concerned, it is alleged that he has committed an offence resulting in the death of any person which is punishable with death or imprisonment for life as described in Section 3(1) of the MCOCA. Accordingly, one charge-sheet is filed against him. Insofar as accused B is concerned, it is alleged that he has committed an offence resulting in the death of any person which is punishable with death or imprisonment for life as described in Section 3(2) of the MCOCA. Accordingly, one charge-sheet is filed against him. Likewise, insofar as accused C is concerned, it is alleged that he has committed an offence resulting in the

death of any person which is punishable with death or imprisonment for life as described in Section 3(3) of the MCOCA. Accordingly, one charge-sheet is filed against him. Finally, it is alleged that accused D is a member of organized crime syndicate as described in Section 3(4) of the MCOCA and as such has indulged in organized crime and against whom also one charge-sheet is filed.

39. The submission on behalf of the appellant is that even though all the four accused namely, A, B, C and D may be members of the organized crime syndicate since against each of the accused not more than one charge- sheet is filed, it cannot be held that they are engaged in continuing unlawful activity as contemplated u/s 2(1)(d) of the MCOCA. Apart from the reasons which we have given hereinabove as to why such a construction is not possible, having regard to the object with which the MCOCA was enacted, namely to make special provisions for prevention and control of organized crime syndicate and for coping with criminal activity by organized crime syndicate, in our opinion, Section 2(1)(d) cannot be so construed. Such a construction will defeat the object of the MCOCA. What is contemplated u/s 2(1)(d) of the MCOCA is that activities prohibited by law for the time being in force which are punishable as described therein have been undertaken either singly or jointly as a member of organized crime syndicate and in respect of which more than one chargesheets have been filed. Stress is on the unlawful activities committed by the organized crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate.

10. Since the necessary ingredients of an offence u/s 3 of MCOCA are made out against the Petitioner in view of the bar u/s 21(3) of MCOCA, the present application for anticipatory bail is not maintainable.

Application is dismissed.

