(2014) 09 DEL CK 0313

In the Delhi High Court

Case No : Crl. Rev. P. 714/2013, Crl. M.A. No. 18769 of 2013 and Bail Appln. 1492 of 2014

Sandeep APPELLANT

Vs

State RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Arms Act, 1959 — Section 25
Penal Code, 1860 (IPC) — Section 302, 34, 406, 498A
Wild Life (Protection) Act, 1972 — Section 51

Citation : (2015) 214 DLT 738

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Sudhir Nandrajog, Sr. Advocate and Sumit Chaudhary, Advocate for the Appellant; Kusum Dhalla, APP and Ajay Karan Sharma, SI, Advocate for the Respondent

Judgement

Indermeet Kaur, J.

Crl. Rev. P. 714/2013 & Crl. M.A. No. 18769/2013:

1. This revision petition is directed against the impugned order dated 27.7.2013 wherein petitioner Sandeep has been charged under Section 3(2) and Section 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as the "MCOCA"). Record shows that the present petitioner, along with 15 other persons, has been charge-sheeted under Section 3 of the MCOCA. The version of the prosecution is that Amit @ Babloo is a contract killer and takes "Supari" (contracts) for killing people. He has an inter-state gang for the said purpose. Amit @ Babloo was arrested in FIR No. 62/2006 dated 22.2.2006 registered under Sections 302/ 34 of the IPC at PS Bawana along with his associates including the present petitioner. During the course of investigation of that FIR, it was revealed that the present petitioner, nephew of deceased Jai Prakash, had inimical terms with his uncle due to a dispute over a parcel of land

in Bawana. Further investigation revealed that a conspiracy for the murder of Jai Prakash (uncle of the petitioner) had been hatched for which purpose a sum of Rs. 2 lacs in advance had been paid to Amit @ Babloo and the value of the contract to kill was set at Rs. 10 lacs.

2. The evidence collected against the petitioner was that he had engaged the services of Amit @ Babloo and his associates for killing his uncle Jai Prakash with whom he had a dispute and for this purpose, he had paid an advance sum of Rs. 2 lacs. On 19.3.2005, the present petitioner was arrested in connection with FIR No. 261/2010 dated 20.3.2006 under Sections 25/54/59 of the Arms Act for illegal possession of an arm registered at PS Narigloi.

3. In the charge-sheet filed, the details of three FIRs pending against the petitioner had been detailed. They are as follow:

(i) FIR No. 142/2000 dated 20.5.2000 registered under Sections 498-A/ 406 of the IPC, registered at PS Gannaur.

(ii) FIR No. 62/2006 dated 22.2.2006 registered under Sections 302/ 34 of the IPC at PS Bawana for contract killing of Jai Prakash and;

(iii) FIR No. 261/2006 dated 20.3.2006 registered under Section 25 of the Arms Act for having been found in the illegal possession of a country made pistol.

4. The foremost submission of the learned Senior Counsel for the petitioner is that the petitioner had engaged the services of Amit @ Babloo and his gang; he was not a member of the so called organized crime syndicate being run by Amit @ Babloo. He was in fact a client who had engaged the services of a professional gang; he thus being neither a member of the organized crime syndicate and nor acting on behalf of the said syndicate, does not qualify to be charge-sheeted for having committed an offence under Section 3 of the MCOCA. To substantiate his argument, attention has been drawn to the definition of "continuing unlawful activity" as contained in Section 2(1)(d) of the MCOCA. It is pointed out that "organized crime" has been defined under Section 2(1)(e) and an "organized crime syndicate" is defined under Section 2(1)(f); submission being reiterated that unless and until the petitioner qualifies either as a member of an organized crime syndicate or is acting on behalf of such a syndicate, he cannot be encompassed within the provisions of the MCOCA. Learned Senior Counsel for the petitioner points out that the trial Judge also noting the three cases which were pending against the petitioner had thought it fit to note that FIR No. 142/2000 registered under Sections 498-A/ 406 of the IPC was a personal matter; Section 25 of the Arms Act was also punishable with imprisonment up to three years and both these FIRs thus would not be relevant for the purposes of deciding whether the petitioner is guilty of a continuing unlawful activity.

5. Arguments have been refuted. Learned Counsel for the State has pointed out that the present petitioner has a close nexus with the gang of Amit @ Babloo, who was admittedly the leader of the crime syndicate. Submission being that

even if he was not an active member, the very fact that he was associated with this gang would prima facie be sufficient material for the Court to have framed charges against him; further submission being that it is an admitted case of the petitioner himself that he had hired the services of Amit @ Babloo (who was the leader operating this inter-state gang). Learned Counsel for the State has placed reliance upon a judgment delivered on 1.11.2011 in Bail Application No. 1440/2011 (Narender Kumar v. State of Delhi) by a Bench of this Court to support this argument.

6. Arguments have been heard.

7. A "continuing unlawful activity" as defined in Section 2(1)(d) is any activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more in respect of which one charge-sheet has been filed within the preceding 10 years and of which the Court has taken cognizance. An "organized crime" is such a continuing unlawful activity undertaken by an individual, singly or jointly either as a member of an organized crime syndicate or on behalf of such syndicate.

8. This issue as to whether a person who is not involved in more than one offence could be covered within the ambit of Section 3 of the MGOCA had come up for consideration before the Bombay High Court in Govind Sakharam Ubhe Vs. The State of Maharashtra (At the instance of DCB, CID, Unit IV) wherein it was held that where within the preceding 10 years, one charge-sheet has been filed in respect of an organized crime committed by a member of that crime syndicate, that charge-sheet can be taken into consideration for the application of the MCOCA even if his involvement is only in that case alone.

9. This Court is in agreement with this proposition. This is especially so keeping in mind the object for which the MCOCA was enacted i.e. to make special provisions for prevention and control of organized crime syndicates and for coping with such activities; construing Section 2(1)(d) in a narrower ambit would defeat the object of the MCOCA. What is contemplated under Section 2(1)(d) of the said Act is that the activities prohibited by law for the time being in force which are punishable as described therein have been undertaken jointly or singly as a member of an organized crime syndicate and in respect of which more than one charge-sheet has been filed. Stress and emphasis is on the unlawful activity committed by the organized crime syndicate. The requirement of one or more charge-sheet is qua the unlawful activities by such an organized crime syndicate.

10. In the present case, the petitioner is closely linked with the crime syndicate which was being run by Amit @ Babloo. The petitioner had given a contract (supari) to Amit @ Babloo for killing his uncle and who in fact had been killed. FIR No. 62/2006 had been registered on 22.2.2006 under Sections 302/ 34 of the IPC against Amit @ Babloo and the present petitioner along with other persons. Cognizance has already been taken in that charge-sheet.

11. This charge-sheet has been filed later in time wherein the petitioner has been

charged under Sections 3(2) and 3(4) of the MCOCA.

12. Section 3(2) read herein as follows:

"3. Punishment for organized crime.--(1) xxx xxx xxx

(2) Whoever conspires of attempts to commit or advocates, abets or knowingly facilitates the commission of an organized crime or any act preparatory to organized crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extent to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of Rupees five lacs."

13. The word "abet" has been defined in Section 2(a). It reads as follows:

"(a) "abet", with its grammatical variations and cognate expressions, includes--

(i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner, an organized crime syndicate;

(ii) the passing on or publication of, without any lawful authority, any information likely to assist the organized crime syndicate and the passing on or publication of or distribution of any document or matter obtained from the organized crime syndicate; and

(iii) the rendering of any assistance, whether financial or otherwise, to the organized crime syndicate."

14. As per the admission of the petitioner himself, he was the person who had hired the services of Amit @ Babloo to kill his uncle. FIR No. 62/2006 registered under Sections 302/ 34 of the IFC is pending qua that offence. The active participation on the part of the petitioner to have facilitated the act of murder is writ large in the argument made by the petitioner himself. As per his own admission, he had rendered financial assistance to the organized crime syndicate of Amit @ Babloo to commit the act of murder. This qualifies as an "abetment".

15. Section 3(4) is the penal provision for being a member of an organized crime syndicate. The definition of "organized crime syndicate" as contained in Section 2(f) of the MCOCA does not speak of a member. It defines an organized crime syndicate to be a group of two or more persons, who acting singly or collectively as a gang, indulge in activities of organized crime. The word "member" is conspicuously absent in the definition of Section 2(f). What is relevant is the association and connection of the person with the organized crime syndicate. The nexus and link of the petitioner with the organized crime syndicate is prima facie established; this in fact is the crux of the use of the words "continuing unlawful activity".

16. On no ground can it be said that the impugned order framing charge against the petitioner suffers from any infirmity.

17. In Sansar Chand Vs. State of Rajasthan, , the Apex Court while dealing with

an appeal against conviction under the MCOCA read with Section 51 of the Wildlife (Protection) Act, 1972 had inter-alia noted as under:

"It must be mentioned that persons like the appellant are the head of a gang of criminals who do illegal trade in wildlife. They themselves do not do poaching, but they hire persons to do the actual work of poaching. Thus a person like the appellant herein remains behind the scene, and for this reasons it is not always possible to get direct evidence against him."

18. In this case, the hirer i.e. person who had hired the services of another to carry out the "continuing unlawful activity" was held guilty.

19. This revision petition is without any merit. It is dismissed.

Bail Appln. 1492/2014:

20. Learned Senior Counsel for the petitioner has reiterated the same arguments i.e. those addressed on charge, for the purpose of bail as well. Petitioner is stated to be in judicial custody since 13.12.2010. This Court has dismissed the revision petition challenging; the order of framing charge under Sections 3(2) and 3(4) of the MCOCA against the present petitioner thus stands.

21. These charges against the petitioner are grave and serious. Such an offence for which the petitioner has been charged is punishable with imprisonment which may extend to life, with a minimum of five years. Evidence is yet to be led. No ground is made out for bail at this stage. Dismissed.