(2009) 03 DEL CK 0038

In the Delhi High Court

Case No : Bail Application 159 of 2008 and Criminal Mas 171, 999 and 1329/08

Satender Pal Singh @ Twinkle APPELLANT

Vs

State RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

Citation : (2009) 7 ILR Delhi 96

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : N. Hariharan, Naveen Malhotra and S.S. Chauhan, for the Appellant; Pawan K. Behl, Sanjay Lao, APPs and Harender Sigh, Spl. Cell NDR, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—This is an application u/s 439 of the Code of Criminal Procedure 1973 (''CrPC'') seeking regular bail in FIR No. 4 of 2006 under Sections 387/506/34 of Indian Penal Code (''IPC''), 25/54/59 of Arms Act, and Sections 3 and 4 of the Maharashtra Control of Organised Crime Act, 1999 (''MCOCA'') registered at Police Station Special Cell, NDR.

2. The charge sheet in the aforementioned case was filed on 30th May 2006 against the Petitioner and charges were framed against him for the above offences on 26th July 2007. Eight witnesses including all the public witnesses have been examined. Three of eight witnesses (PWs 1,4 and 7) including the Complainant have been declared hostile. It is stated in the petition that even one of the police officials examined as a prosecution witness, ASI Ramesh Kumar, has not supported the case of the prosecution. It is pointed out that the Petitioner has been in judicial custody since 2nd February 2006. He has been granted interim bail on many occasions and has not violated the conditions on any occasion whatsoever.

3. Mr. N. Hariharan, leaned counsel appearing for the Petitioner raises two

principal contentions. He questions the manner of adding of offences under the MCOCA which according to him was done without following the procedure contemplated u/s 23 thereof. He questions the bonafides of the said move since this was done on the very date that regular bail was granted to the Petitioner in this case. As regards the sanction obtained for prosecuting the Petitioner in terms of Section 23 MCOCA, he points out this was entirely based on the opinion of the prosecutor and not the competent authority and therefore, it violated the spirit of Section 23(2). According to him such contention can be raised at any stage and would in any event be one of the considerations they should weigh with the Court while deciding whether bail should be granted to the Petitioner.

4. Secondly, it is submitted that in terms of Section 2(d) the offence under MCOCA would be attracted only when the "continuing unlawful activity" is by the Petitioner as a member of an organized crime syndicate in respect of which more than one charge sheet has been filed "within the preceding period of ten years" before a competent court and that court has taken cognizance of such offence. He refers to a list of cases involving the petitioner as produced by the prosecution and submits that only those cases in a period of ten years prior to the invocation of MCOCA were relevant. In the said period, from 1996 onwards, the Petitioner has been acquitted in all the cases except three which are pending trial and which includes the present case. It is submitted that the cases in which the Petitioner has been acquitted ought not to be considered for the purpose of determining whether the offences under MCOCA stands attracted, as that would work to the prejudice of the Petitioner. According to the petitioner a desperate attempt has been made by the prosecution to rely upon the bank statements of the Petitioner''s mother''s account to show that proceeds of crime were deposited there benami for the Petitioner''s benefit.

5. Relying on the judgment of the Supreme Court in State of Maharashtra v. Bharat Shanti Lal Shah and Ors. 2008 (9) AD (SC) 708 Mr. Hariharan submits that the requirement u/s 21(4) MCOCA that the Court has to be satisfied that the accused "is not likely to commit any offence while on bail" in refers to an offence under MCOCA. In the said decision the Supreme Court struck down as unconstitutional Section 21(5) MCOCA which forbade a court from granting bail under the said Act if the court noticed that he was on bail in an offence under MCOCA "or under any other Act."

5A. It is then contended that no useful purpose would be served in keeping the Petitioner in custody when there was no danger of his tampering the evidence nor delaying the completion of trial. About threats to witnesses, it is submitted that no complaint has been received from any witness by the police. It is pointed out that the track record of the complainant also showed his criminal past and therefore the entire prosecution at the instance of such a person stood vitiated. Reliance is placed on the decisions in Ranjitsingh Brahmajeetsing Sharma v. State of Maharashtra (2005) 2 JCC 689; Dattatray Krishnaji Ghule Vs. State of Maharashtra and Another, ; Gokul Bhagaji Patil Vs. State of Maharashtra and

Another, ; Dilip Kumar Sharma and Others Vs. State of Madhya Pradesh, ; Vasanthi v. State of A.P. 2005 (2) JCC 1005 and Chenna Boyanna Krishna Yadav Vs. State of Maharashtra and Another, .

6. The prayer of the Petitioner for bail is vehemently opposed by Mr. Pawan Behl, learned APP appearing for the State. He drew the attention of the Court to the FIR as well as charge sheet and the depositions of some of the witnesses examined thus far. According to the prosecution, the Petitioner has a notorious past and is involved in several crimes. As regards the present FIR registered at the instance of Arun Kumar Gupta sufficient evidence has been gathered to substantiate the case of the prosecution. Mr. Behl refers to the DD entries in Police Station C.R. Park and the PC call records which confirm that the accused Rajesh Kwatra @ Ruby with his friends went to the residence of Sidharth Oberoi on the intervening night of 28th/29th July 2005 to threaten him. On 30th March 2006 the accused Rajesh Kwatra was granted anticipatory bail by this Court and joined the investigation on 17th April 2006. He was interrogated and arrested but immediately released on bail. Rajesh Kwatra produced the car belonging to Sidharth Oberoi, the partner of the complainant Arun Kumar Gupta. The car was seized as case property. It is submitted that in the above background the statement in court by the mother of Sidharth Oberoi which seemingly does not support the prosecution, is to no avail. Mr. Behl has placed before the Court a list of dates that show that every time the petitioner was released on interim bail, the public witness examined soon thereafter turned hostile. It is submitted that whether in fact the sanction under MCOCA was properly obtained or not can be examined at the trial and ought not to be gone into at the stage of bail.

7. The submissions of learned Counsel have been considered. The prosecution version as gleaned from the charge sheet is that on 30th January 2006, Arun Kumar Gupta, an importer, gave a written complaint that he was receiving threats to his life from Rajesh Kwatra Ruby and the petitioner Satender Pal Singh @ Twinkle who called himself as "badmash of Karol Bagh." Ruby owed Arun Kumar Gupta Rs12 lakhs and instead of repaying the amount was along with the petitioner making calls to him demanding more money and threatening him with dire consequences. The complaint referred to the threatening calls received on the night of 25th January 2006 by the complainant, his partner Sidharth and one Gurjeet. It was specifically alleged that both Ruby and the petitioner had a few months ago snatched the car of Sidharth Oberoi, the partner of Arun Kumar Gupta. Out of fear Sidharth had not made any complaint. Arun Kumar Gupta in his complaint gave the police the details of the mobile numbers from which he received the threatening calls. The investigations by the police into the making of the above calls confirmed the statements of the complainant and his friends Sidharth and Gurjeet. On 2nd February 2006 the police arrested the petitioner and his associate Ravinder Kumar Malhotra @ Puppy from the parking lot of Lodhi Gardens. Loaded pistols, for which licences were not produced, with five live cartridges, were recovered from each of them. A loaded revolver was also recovered from the from the front lower desk board of the car. Mobile phones in

their possession were seized. Ruby however could not be arrested and an NBW was issued against him.

8. The charge sheet also records the following track record of the Petitioner:

During the course of investigation, it came to the notice that the accused Satender Pal Singh @ Twinkle is an active and absent Bad Character (BC) of Police Station Karol Bagh, New Delhi and is involved in about 30 heinous criminal cases of Murder, Attempt to Murder, Rioting, Theft, Threatening, Gang Rape, criminal conspiracy, house trespass, extortion, waging war against the State, Terrorist and Destructive Activities (TADA), Explosive Substances Act and Arms Act etc. In various police stations in Delhi and Gurgaon (Haryana). On 21.03.06 at around 2 pm, after taking the approval/sanction of the Joint Commissioner of Police, Special Cell, Delhi, Section 3 of the Maharashtra Control of Organised Crimes Act 1999 (MCOCA) was added in the case against the accused Satender pal Singh @ Twinkle and on the same day further investigation of the case was handed over to me. After taking the necessary permission from the Designated Court of MCOCA, I further interrogated the accused Satender Pal Singh @ Twinkle and accordingly arrested him u/s 3 MCOCA on 23.03.06 and took him on PC remand. During the interrogation, he again disclosed that he has been involved in the heinous crimes for the last about 20 years and amassed a huge properties and wealth by threatening other and by other illegal means, with the help of his crime syndicate which consist his real brother Harpal Singh @ Pepsi and others. He, however, refused and denied all the facts as he disclosed in his disclosure statement and stated that he lost all his properties and wealth in the gambling business in the last 3/4 years. Accused Satender Pal Singh had also refused to get his confessional statement recorded before the worthy DCP/ Special Cell u/s 18 MCOCA. The records were also collected from the concerned Police Stations/Courts about the previous cases against Satender Pal Singh. On perusal of the previous involvements/cases of accused Satender Pal Singh it revealed that he started his criminal life from the year 1986, when he was a college student in Delhi University, when he attacked with an open knife on the canteen owner of his college and a case FIR No. 57/86 has been registered against him in PS Roshnara Road (now PS Roop Nagar), Delhi. In the year 1987, he has been involved in the cases of Robbery and Arms Act in the area of PS Karol Bagh, New Delhi he involved in five cases of threatening, attempt to murder and Arms Act etc. in 1988 and three cases in the year 1989. On his continuous involvements in the crime, the local police of PS Karol Bagh entered his name in the list of Bad Character (BC) of the area besides his real brother Harpal Singh @ Pepsi. He however did not mend his criminal mind and remained involved in the crime thereafter also and has been arrested with his other associates and his brother Harpal Singh in three cases of attempt to murder, TADA and Arms Act etc. in the year 1990, two cases of attempt to murder in 1992, one case of attempt to murder and Arms Act in 1993 and one case of attempt to murder and Arms Act in the year 1995. Thereafter, he along with his brother Harpal Singh @ Pepsi and other associates were arrested in the case of sensational murder in the broad day light in the Tis Hazari Court''s complex, Delhi in the year 1997, in which two persons shot died on the spot by the accused Satender Pal Singh, his brother Harpal Singh and his other associates. During the judicial custody in the above mentioned murder case from 1997 to 2000, he was involved in five cases of hurt, threatening etc. and a sensational case of criminal conspiracy for waging war against the State, Explosive Substances Act and Arms Act, in which about 18 kgs RDX explosives, AK-47 rifle, timers, detonators and a large quantity of ammunitions were recovered from a truck. After releasing from the jail in the year 2001, he along with his other associates have been arrested in a case of abduction and gang rape in case FIR No. 650/02 u/s 363/366/427/376/368/34 IPC PS Lajpat Nagar, New Delhi. He still involved in the various crime as in the year 2004, he has been arrested along with his other associates in Case FIR No. 83/04 u/s 186/353/34 IPC & 25/27 Arms Act, PS Hari Nagar, New Delhi and 3/4/5 DPG Act, PS Special Cell, New Delhi. In most of the cases, he has been acquitted by the concerned courts. However, some cases are still pending trial against him, in the different courts. The certified copies of charge sheets and charges framed against him by the different courts during the last ten years, are also placed on the file.

9. The first point to be considered whether the offence under MCOCA stands prima facie attracted in the instant case. The Statement of Objects and Reasons (SOR) for enacting the MCOCA was taken note of by the Supreme Court in the decision of Bharat Shanti Lal Shah. The SOR adverts to the fact that organised crime has been a serious threat to the society for some years now and that "the organised criminal syndicates make a common cause with terrorist gangs and foster narco terrorism which extend beyond national boundaries." Para 2 of the SOR acknowledges that:

The existing legal framework i.e. the penal and procedural laws and the adjudicatory system are found to be rather inadequate to curb or control the menace of organized 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 organized crime.

10. The very definition of ''organised crime'' u/s 2(1)(e) read with 2(1)(d) MCOCA shows that the offence thereunder is attracted if the charge sheet has been filed and cognizance taken of the offence committed by the Petitioner in the past ten years. In other words, the MCOACA does not require the chargesheet so filed to end in a conviction. It appears from the very object of enacting the MCOCA that the mere fact that the accused may ultimately be acquitted in such a case will not take away the applicability of the said provision. If that interpretation were to be permitted, the very object of enacting a separate special law to deal with ''organised crime'' even while acknowledging the inadequacy of the existing legal framework would be defeated. It is the filing of the charge sheet that attracts the offence of ''organised crime'' and not the result

of the consequent trial. Also, it is intended to deal with a situation where a person facing trial for the commission of a serious offence, continues indulging in criminal activity even while he is facing trial in the earlier case or cases. The legislative intent is apparent from the fact that provision does not state that in the event of an acquittal of the accused in the chargesheet, the offence will cease to be attracted. In Bharat Shantilal Shah, the Supreme Court upheld the decision of the Bombay High Court which negatived the challenge to the constitutional validity of Sections 2 (d), (e) and (f) and Sections 3 and 4 MCOCA. It was further explained in Ranjitsingh Brahmajeetsing Sharma in para 32 that "an offence falling within the definition of organised crime and committed by an organised crime syndicate is the offence contemplated by the SOR." In light of this legal position, even if one were to restrict the scrutiny of cases involving the petitioner to the period after 1996, the acquittal of the petitioner in all but three of the cases against him in this period, will not make a difference to the applicability of the MCOCA. The detailed background of the petitioner''s past involvement and the types of cases as detailed in the chargesheet, prima facie indicates that the provisions of the MCOCA stood attracted. In Gokul Bhagaji Patil the Supreme Court reminded that in MCOCA cases, in addition to the basic considerations i.e., the seriousness of the crime, reasonable apprehension of the witnesses being tampered, "the limitations in subsection (4) of Section 21 of MCOCA need to be kept in view." An additional factor in this case would be the presumption that is attracted against the petitioner in terms of Section 22 MCOCA since arms were recovered from him and his associate at the time of their arrest.

11. As regards the grant of sanction for adding the offence under MCOCA in the instant case, this Court is inclined to accept the plea of learned APP that this should await the trial where evidence on this aspect will have to be led. It is also not possible for this Court to opine at this stage that the adding of the aforementioned offences on the basis of the opinion of the public prosecutor is violative of Section 23(2) MCOCA and therefore vitiates the trial itself. It is accordingly made clear that this Court is not expressing opinion on the said issues and it would be for the trial court to form an independent view after evidence is led.

12. The trial court record does show that four of the prosecution witnesses have turned hostile. However given the background of the cases, the nature of the crime and the conduct of the Petitioner, this Court is not inclined to accept the plea of counsel for the petitioner that this is a factor that should persuade the Court to release the petitioner on bail at this stage. This Court also takes note of the fact that the said four witnesses who have turned hostile were examined during the period when the Petitioner was on interim bail. For instance the petitioner''s interim bail was extended on 21st August 2007 till 12th September 2007. PW1, who was declared hostile, was examined on 1st September 2007. The petitioner''s interim bail was extended on 9th January 2008 till 27th January 2008. PW4, who turned hostile, was examined on 11th January 2008. This

cannot be a matter of mere coincidence. This is correlation between the dates on which the Petitioner was granted interim bail and the examination of the prosecution witnesses who turned hostile is a factor that weighs with this Court in declining the petitioner''s prayer for bail. Only seven to eight prosecution witnesses remain to be examined. Since the fair progress of the trial has already been hampered in the manner indicated above, the better course would be to expedite the completion of the trial, while declining the petitioner''s prayer for release on bail at this stage.

13. The decisions of the Supreme Court in Ranjitsingh Brahmajeetsingh Sharma, Dattatray Krishnaji Ghule, Gokul Bhagaji Patil, Vasanthi v. State of A.P.and Channa Boyanna Krishna Yadav appear to have turned on their peculiar facts which bear little comparison with the facts of the present case. The said decisions therefore do not come to the aid of the Petitioner. This Court is for the aforementioned reasons not inclined to grant the petitioner bail at this stage.

14. However, the trial court is requested to expedite the trial and endeavour to deliver the final judgment within six months from today and in any event not later than 9th October 2009. If for some reason, the above time schedule is unable to be adhered to, the Petitioner can renew his request for bail at the first instance before the trial court.

15. It is clarified that the observations and opinion expressed by this Court in the present order is only in the context of considering the prayer of the petitioner for release on bail. The trial court will form an independent opinion, uninfluenced by this order, while delivering judgment at the conclusion of the trial.

16. With the said direction, the application is dismissed. All the pending applications also stand dismissed.

