

(2023) 08 BOM CK 0072
In the Bombay High Court
Case No : Criminal Appeal No. 935 Of 2023

State Of Maharashtra

APPELLANT

Vs

Kasim @ Talaf Muktar Irani

RESPONDENT

Date of Decision : 28-08-2023

Acts Referred:

Maharashtra Control Of Organised Crime Act, 1999 — Section 3(i)(ii), 3(2), 3(4), 12, 18, 23(1)(a)
Indian Penal Code, 1860 — Section 34, 141, 143, 147, 148, 149, 307, 392, 394
Arms Act, 1959 — Section 3, 25

Citation : (2023) 08 BOM CK 0072

Hon'ble Judges : Revati Mohite Dere, J;Gauri Godse, J

Bench : Division Bench

Advocate : P.P. Shinde, Niranjan S. Mundargi

Final Decision : Allowed

Judgement

Revati Mohite Dere, J

1. Heard learned counsel for the parties.

2. Admit.

3. By this appeal, preferred under section 12 of the MCOC Act, the appellant-State of Maharashtra seeks quashing and setting of the impugned order dated 26th July 2023, passed by the learned Special Judge (under the MCOC Act), Thane, below remand report dated 26th July 2023 in C.R No. 461 of 2022, registered with the Ambarnath Police Station, Thane. The learned APP submitted that the findings recorded by the learned Special Judge in its Order passed below remand report dated 26th July 2023, i.e. the order at Exhibit-F at page 44, is unsustainable in law. She submits that merely because, the respondent-accused was arrested in an earlier MCOC case, the police custody could not have been refused in the second MCOC case, more particularly, when the present C.R is different and distinct from the first MCOC case.

4. Mr Niranjana Mundargi, learned counsel appointed to appear on behalf of respondent vide order dated 25th August 2023, opposes the appeal.

5. Perused the papers. On 24th August 2023, notice was issued to the respondent-accused returnable on next date i.e. 25th August 2023, considering the urgency in the present case. Learned APP had assured to serve the respondent-accused lodged in the Aadharwadi Jail, Kalyan during the course of the day. Vide the said order dated 24th August 2023, we had directed the Superintendent, Aadharwadi Jail, Kalyan to permit the concerned officer to serve the respondent-accused with the notice and had also directed the Superintendent, to record the statement of the Respondent No.2, as to whether the respondent-accused intends to engage an advocate of his choice, or would want an advocate from the High Court Legal Services Committee to be appointed.

6. Pursuant to our order dated 24th August 2023, the officer of the State of Maharashtra attempted to serve notice on the respondent-accused, however, he refused to accept the notice. Accordingly, the Superintendent of Aadharwadi Jail, Kalyan, submitted his report. In the said report, it was stated that the respondent-accused orally informed that he would be engaging a private advocate. Since, none appeared for the respondent-accused on 25th August 2023, we appointed Mr Niranjana Mundargi, to appear on behalf of respondent-accused, to espouse his cause.

7. A few facts as are necessary to decide the Appeal are as under:

I) On 30th August 2022, C.R No. 461 of 2022 was registered with the Ambarnath Police Station, Thane, as against unknown persons, for the alleged offence punishable under section 392 read with section 34 of the IPC(subsequently section 394 was substituted by section 392). In the very same case i.e. the aforesaid C.R, MCOC was invoked on 20th October 2022, pursuant to which sanction was accorded by the competent authority under section 23(1)(a) of the MCOC Act. The confessional statement of co-accused in the said case i.e. of Karan Rajbhor was recorded in the said case under section 18 of MCOC Act.

II. On 8th July 2023, the respondent-accused came to be arrested in connection with C.R. No. 17 of 2021 registered with the Khadakpada Police Station, Kalyan, Thane for the alleged offences punishable under section 392 read with section 34 of IPC and under sections 3 and 25 of the Arms Act.

III. On 11th July 2023, pursuant to transfer warrant, respondent-accused came to be arrested in C.R. No. 67 of 2021, registered with the Khadakpada Police Station, Kalyan, Thane for the alleged offences punishable under section 392 read with section 34 of the IPC.

IV. Thereafter, again on 15th July 2023, on a transfer warrant, the respondent-accused came to be arrested in connection with C.R No. 121 of 2021, also registered with the Khadakpada Police Station, Kalyan, Thane, for the alleged offence punishable under section 392 read with section 34 of the IPC.

V. Thereafter, on 18th July 2023, on production warrant he was arrested in connection with C.R No. 359 of 2022 registered with the Khadakpada Police Station, Kalyan, Thane, for the alleged offences punishable under sections 307, 141, 143, 147, 148, 149 of the IPC. In the said C.R, MCOC Act was invoked on 29th November 2022 and sections 3(i)(ii), 3(2), 3(4) of the MCOC Act, were added. In the said C.R i.e. C.R No. 359 of 2022 after invocation of MCOC Act, police custody of 5 days was granted.

VI. On 24th July 2023, the police of the Ambernath Police Station filed an application seeking production warrant of the respondent-accused, for arresting him in connection with C.R No. 461 of 2022, in which MCOC Act was invoked as noted above, on 20th October 2022. The said application seeking issuance of production warrant is at Exhibit-D, at page 32 of the appeal.

VII. Pursuant thereto, the learned Special Judge issued production warrant on 24th July 2023. Accordingly, on 26th July 2023, pursuant to the production warrant issued by learned Special Judge, respondent-accused was produced before the learned Special Judge, MCOC Court, Thane on 26th July 2023.

The remand record filed by the police of the Ambernath Police Station is at Exhibit-E at page 35 of the appeal. Learned Special Judge on the same day, refused to grant police custody after observing as under:

"The prosecution is seeking police custody of the accused for 20 days. Perused the papers. The accused came to be arrested and produced for the first time after receipt of prior approval under MCOC Act. The approval under the MCOC Act was already been invoked against present accused. Based on the same material, in present crime also the MCOC invoked. The accused said to have indulged in chain snatching offences. Thus, irrespective of grounds mentioned in the remand report, the accused is remanded to JCR till 09.08.2023."

8. As noted above, the observation of the learned Special Judge, that MCOC Act was already invoked against the present appellant and that based on the said material again MCOC Act was invoked, cannot be sustained, in as much as, the earlier C.R in which MCOCA was invoked i.e. in C.R No. 359 of 2022, was registered with the Khadakpada Police Station, Kalyan and was in connection with a case registered for the alleged offences punishable under sections 307, 141, 143, 147, 148, 149 of the IPC. The present C.R i.e. C.R No. 461 of 2022, registered with the Ambernath Police Station, Thane, in which police custody remand has been refused, pertains to AN offence punishable under section 392 read with section 34 (subsequently section 394 came to be added in place of section 392). It appears that the investigation of C.R No. 461 of 2022 has now been transferred from Ambernath Police Station, Thane to the ACP, Ulhasnagar Division, Thane. The sections applied in both the C.Rs as noted aforesaid are different.

9. Considering what is stated aforesaid i.e. the ground on which police custody remand was rejected cannot be sustained and as such, the impugned order

dated 26th July 2023 stands quashed and set aside. Liberty is granted to police to re-apply and seek police custody remand of the respondent-accused. If an application seeking police custody remand is filed, the learned Special Judge, Thane to decide the said application afresh in accordance with law, uninfluenced by its earlier order i.e. order dated 26th July 2023.

10. Appeal is allowed on the aforesaid terms and is accordingly disposed of.

11. All parties to act on the authenticated copy of this order.