



Judgment

apl7.16 2

1

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO.7 OF 2016

**Vijendra Molchand Kuril,
Aged about 35 years, Occupation Labour,
R/o Mochipura, Akola. Applicant.**

:: VERSUS ::

**1. The State of Maharashtra,
Police Station, Akot Fail, Akola.**

**2. Special Inspector General of Police,
Amravati Range, Amravati. Non-applicants.**

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Shri S.V. Sirpurkar, Counsel with Ms Ankita Sarkar, Adv. for
the applicant.

Shri T.A. Mirza with Shri I.J. Damle, Additional Public
Prosecutors for the State.

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CORAM : V.M. DESHPANDE, J.

DATE : SEPTEMBER 12, 2017.

ORAL JUDGMENT

**1. Rule. Rule is made returnable forthwith. Heard
finally by consent of learned counsel Shri S.V. Sirpurkar with
Ms Ankita Sarkar for the applicant and learned Additional**

.....2/-

Judgment

apl7.16 2

2

Public Prosecutors Shri T.A. Mirza with Shri I.J. Damle for the State.

2. The inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 is invoked by the applicant to set up a challenge to order passed by learned Special Judge (MCOCA), Amravati dated 30.11.2015 in Crime No.83 of 2015 by which learned Special Judge allowed application of the prosecution dated 26.11.2015 and thereby cancelled the bail granted in favour of the present applicant in Crime No.83 of 2015 registered with Akot File Police Station, Akola for the offences punishable under Sections 302, 384, 387, and 120B of the Indian Penal Code. At the same time, application dated 18.11.2015 was rejected by learned Special Judge which was filed on behalf of the prosecution seeking permission to arrest the applicant. However, the prosecution was given liberty to arrest the

.....3/-

Judgment

apl7.16 2

3

applicant for the offences punishable under Sections 3 and 4 of the Maharashtra Control of Organized Crime Act, 1999 (for short, "*the MCOC Act*").

3. According to learned counsel Shri S.V. Sirpurkar for the applicant, the order passed by learned Special Judge (MCOCA), Amravati is unjust inasmuch as, according to him, though ample opportunity was available to the prosecuting agency, the provisions of the MCOC Act were not applied and thereby allowed crucial time to pass away. In that view of the matter, according to him, the law laid down by this Court in the case of Sarang Arvind Goswamy .vs.. State of Maharashtra, reported at 2005(3) Mh.L.J. 774 cannot be made applicable. He, therefore, submits that the order impugned is required to be set aside.

4. Per contra, it is the submission on behalf of the prosecution that the law laid down by this Court in the case

.....4/-

Judgment

apl7.16 2

4

cited *supra* applies to the present case with its full force. According to learned Additional Public Prosecutor, as soon as sanction to prosecute the applicant, under the stringent provisions of the MCOC Act was received, the same were applied. He submits that the order passed by learned Special Judge is passed after considering the provisions of the MCOC Act in its correct perspective and, therefore, he prays for dismissal of the application.

5. To appreciate the rival contentions, it would be useful to advert to basic facts giving rise to Crime No.83 of 2015.

6. One Rameshwar Pawar set the criminal law into motion by lodging his report with Akot File Police Station, Akola on 5.7.2015.

7. As per the first information report, the first informant works as an agricultural labour in agricultural

.....5/-

Judgment

apl7.16 2

5

fields of Dilip Bisen, Prakash Bisen, and Ramsingh Bisen since last 10 years. Therefore, he is fully acquainted with his 3 employers. As per the first information report, Prakash Bisen is having an agricultural field situated on Akot-Akola Road. Elias Khan and Salam Khan Karim Khan were making attempt to grab the said agricultural land of Prakash Bisen by adopting arm-twisting tactics and by using force. Even, Elias Khan raised an unauthorized construction in the nature of 'hut' also and in the said unauthorized construction, Elias Khan and Salam Khan Karim Khan used to sit their along with others having criminal records. In view of these activities, field owner Prakash Bisen was frightened.

8. According to the first information report, prior to two days only, Salam Khan Karim Khan, Elias Khan, Rizwan, and Viju (present applicant) extended threat to landowner Prakash Bisen that if Rs.10.00 lacs are not given to them, they

.....6/-

Judgment

apl7.16 2

6

will occupy and take possession of 28 Acres of land of Prakash Bisen. As per the first information report, Prakash Bisen refused to oblige such threat.

The first information report further recites that on the day of the occurrence, i.e. on 5.7.2015 at about 5:00 p.m., when first informant Rameshwar Pawar and Prakash Bisen were sitting under a 'Neem-Tree' adjacent to road in the agricultural field of Dilip Bisen, a white colour four wheeler came and driver of the said, all of a sudden, turned the said vehicle left side and gave a forceful dash to Prakash Bisen, resulting into falling of Prakash Bisen from chair on which he was sitting and he came under the said vehicle. Thereafter, Salam Khan Karim Khan, Elias Khan, and Viju (present applicant), who were sitting on rear seat of the motor-vehicle, alighted from the vehicle, dragged Prakash Bisen from beneath of the motor-vehicle, and put away . Due to this, first

.....7/-

Judgment

apl7.16 2

7

informant Rameshwar Pawar ran away towards the agricultural field. Thereafter Salam Khan Karim Khan, Elias Khan, and Viju (present applicant) left the place in the vehicle.

9. **Since the report lodged by Rameshwar Pawar was disclosing cognizable offence, a crime was registered with Akot File Police Station, Akola for the offences punishable under Sections 302, 384, 387, and 120B of the Indian Penal Code. The name of the present applicant was specifically appearing in the first information report in connection with demand for extortion and also at the time when Prakash Bisen was run over by the vehicle, that time he was one of occupants in the said vehicle. The applicant was arrested on 6.7.2015. After some days, he was taken in the police custody remand and, thereafter, he was taken in the magisterial custody remand.**

.....8/-

Judgment

apl7.16 2

8

10. The applicant was arrested for the offences punishable under the Indian Penal Code. Looking to the nature of accusations made against the present applicant and the offences which were registered against the applicant, the prosecution was under the duty to file final report within a period of 90 days from the date of arrest of the applicant. However, till lapse of 103 days from the date of arrest, no final report was filed before the Court of law. The applicant moved an application under Sections 167(2) and 439 of the Code of Criminal Procedure, 1973 for grant of bail before learned Special Judge under the MCOC Act, Amravati.

11. It was pointed out before learned Special Judge by moving the application, which was filed on 17.10.2015, that against the applicant the stringent provisions of the MCOC Act are not applied and the applicant is accused of committing offences punishable under the Indian Penal Code

.....9/-

Judgment

apl7.16 2

9

and in spite of lapse of 103 days, the charge-sheet against him is not filed.

12. The said application was contested by the prosecution on the ground that the prosecution has already applied the provisions of the MCOC Act against the co-accused. Therefore, outer limit to file the charge-sheet in the crime is 180 days and, therefore, the said application was opposed.

13. On 17.10.2015, learned Special Judge allowed the application filed on behalf of the present applicant by holding that merely because the provisions of the MCOC Act are applied against the co-accused, that is not sufficient to deny default bail in favour of the applicant since the applicant was charged only for the offences committed under the Indian Penal Code.

.....10/-

Judgment

apl7.16 2

10

14. **The applicant, thereafter, availed of the bail and was released from jail.**

15. **On 18.11.2015 an application was moved by the prosecution to cause arrest of the present applicant. According to the said application, after releasing the applicant on default bail, the Inspector General of Police, Amravati Range, Amravati granted sanction on 9.11.2015 for applying Sections 3 and 4 of the MCOC Act.**

16. **Pending the said application, on 26.11.2015 another application was filed by the prosecution for cancellation of the bail granted in favour of the present applicant on 17.10.2015. As per the said application, co-accused Shaikh Kayyum Shaikh Karim gave his confessional statement which was recorded by the authority mentioned in Section 18 of the MCOC Act. In the said confessional statement, he has attributed specific role against the present**

.....11/-

Judgment

apl7.16 2

11

applicant for taking forceful possession of the agricultural field of deceased Prakash Bisen. His confessional statement also states that on 5.7.2015 a meeting was held in the house of a gang leader Abdul Salam Khan Abdul Karim Khan in respect of the agricultural field and in that meeting also the applicant was present.

17. The applicant was also present in the car which gave a murderous dash to deceased Prakash Bisen. It is also stated in the said application that Call Data Records (CDRs) of the mobile cellphone of the applicant are now obtained which show that the applicant was in touch with the gang leader from 15.6.2015 till the date of the occurrence. It is also stated in the application that witness one Dhnyaneshwar Omkar Pahurkar has stated in his statement that prior to 15 days of the occurrence, there was a meeting in one Jayaswal Wine Bar with deceased Prakash Bisen by the gang leader and

.....12/-

Judgment

apl7.16 2

12

other members of the syndicate in which the applicant was also present. Further, from the CDRs it is clear that the present applicant was in touch even with deceased on his cellphone.

18. According to the application, during the course of the investigation, thus it is clear that the applicant is an active member of this syndicate of which Abdul Salam Khan Abdul Karim Khan is its leader. A proposal was submitted to the competent authority for applying the provisions of the MCOC Act and the competent authority granted sanction on 9.11.2015 and accordingly the provisions of Sections 3 and 4 of the MCOC Act were added as against the present applicant in Crime No.83 of 2015 and, therefore, a prayer was made for cancellation of the bail granted in favour of the applicant.

19. After hearing learned counsel for the applicant and learned Additional Public Prosecutor for the State, the

.....13/-

Judgment

apl7.16 2

13

issue that once the bail is granted for the offences punishable under the “ordinary law” i.e. under the Indian Penal Code and subsequently, the provisions of Sections 3 and 4 of the MCOC Act are added and applied, whether the bail earlier granted can be cancelled or not, is not in *res integra* in view of the law laid down by this Court in the case of Sarang Arvind Goswamy cited *supra*.

20. In Sarang Arvind Goswamy's case, accused Sarang was arrested in connection with Crime No.212 of 2004 for the offences punishable under the Indian Penal Code. Subsequently, he was released on bail. Subsequent to his release on bail, the provisions of special enactment, namely MCOC Act, were invoked against said Sarang. After such invocation, an application was moved by the prosecution for cancellation of bail on the assertion that as the provisions of special enactment have been applied, earlier bail cannot be

.....14/-

Judgment

apl7.16 2

14

continued and the same is required to be cancelled in view of the stringent provisions of Section 21 of the MCOC Act.

21. The Sessions Court at Pune cancelled the bail granted earlier in favour of accused Sarang that gave rise filing of Criminal Application No.2129 of 2005 by Sarang before this Court and this Court, after considering the entire law on the said issue, found that the bail, which was granted earlier in favour of applicant Sarang, was only in respect of the offences punishable under the relevant Sections of the Indian Penal Code. However, subsequently, the stringent provisions of the MCOC Act were applied. Therefore, the order was upheld cancelling the bail of Sarang.

22. In the present case also, at the time when the applicant was released on bail under Section 167(2) of the Code of Criminal Procedure, 1973, the stringent provisions of special enactment i.e. MCOC Act were not applied against the

.....15/-

Judgment

apl7.16 2

15

present applicant only. Therefore, learned Judge of the Court below has rightly granted default bail since the final report was not filed within 90 days.

23. However, the investigation was continued in view of invocation of the provisions of the MCOC Act against the co-accused persons and during the investigation, the role of the applicant was also revealed by which the provisions of the MCOC Act could be invoked and accordingly the sanction was sought and the same was granted by the competent authority.

24. In my view, the prosecution has rightly applied for cancellation of bail by approaching to the Court by moving an application dated 26.11.2015 on assertion that the provisions of the MCOC Act have been applied against the present applicant. As a consequence of which, the bail granted in favour of the applicant, relating to the offences under the Indian Penal Code, will be of no avail. In view of invocation of

.....16/-

Judgment

apl7.16 2

16

the provisions of the special enactment, the prosecution was having a right to take the applicant into custody in relation to the newly registered offences under the MCOC Act and as observed by this Court in Sarang Arvind Goswamy's case cited *supra*, the applicant can be released on bail only if the applicant was to satisfy rigours of the provisions of the special enactment.

25. In view of the provisions of the MCOC Act, being made against the present applicant, in my view learned Judge of the Court below has not committed any wrong in cancelling the bail. Consequently, the present application is required to be dismissed and accordingly it is dismissed and the *interim* orders granted by this Court on 8.1.2016 shall cease to operate immediately. The applicant is directed to surrender before the law immediately. Else, the investigating officer is free to cause arrest of the applicant in the said crime.

.....17/-

Judgment

apl7.16 2

17

26. The criminal application is dismissed and the Rule is discharged.

JUDGE

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