

CASE NO.:
Appeal (crl.) 183 of 2007

PETITIONER:
DATTATRAY KRISHNAJI GHULE

RESPONDENT:
STATE OF MAHARASHTRA & ANR.

DATE OF JUDGMENT: 09/02/2007

BENCH:
CJI K.G. BALAKRISHNAN & D.K. JAIN

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P.(Criminal) No. 4600 of 2006)
With

CRIMINAL APPEAL NO. 184 OF 2007
(Arising out of S.L.P.(Criminal) No. 4603 of 2006)

HITENDRA MANOHAR VICHARE
-
APPELLANT

VERSUS

STATE OF MAHARASHTRA & ANR.
-
RESPONDENTS

D.K. JAIN, J.:

Leave granted.

2. The challenge in these two appeals is to a common Order dated 3rd March, 2006 passed by a learned Single Judge of the High Court of Judicature at Bombay, rejecting the bail applications preferred by the appellants.

3. The appellants having been arrested in connection with the same case (C.R. No. 131 of 2001), registered at Thane Nagar Police Station for the offences punishable under Sections 192, 217, 218, 263(a) of the Indian Penal Code read with Sections 3(1)(ii), 3(2), 3(3), 3(4) and Section 34 of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as "MCOCA"), common questions arise for consideration and therefore, both the appeals are being disposed by this judgment. At the relevant time both the appellants were police officers, in-charge of investigations in the aforementioned case. Both of them were arrested on 8th October, 2004.

4. The case of the prosecution against the appellants, in brief, is as under:

5. On 16th May, 2005 appellant P.S.I Hitendra Manohar Vichare (hereinafter referred to as Vichare) arrested one Sandeep Kandar and fake stamps worth Rs.51,000/- were seized. On the same day C.R. No. 131 of 2001 was registered. Vichare investigated the case from 16th May, 2001 to 22nd May, 2001. Appellant P.I. Dattatray Krishnaji Ghule (hereinafter referred to as Ghule) took over investigations in the said case on 22nd May, 2001. On 23rd May, 2001 one Maruti Car was intercepted and a huge quantity of fake stamps was

seized from the occupants of the car. Ghule was in-charge of the investigations from 22nd May, 2001 to 26th December, 2001. As a result of investigations, three charge-sheets were filed against several persons, including one Shabbir Sheikh and Abdul Karim Ladsab Telgi, head of an organised crime syndicate, engaged in unlawful activities relating to printing of counterfeit stamps and other documents and sale thereof. However, subsequently, under the orders of this Court, investigations in the case were transferred to the C.B.I. and the provisions of MCOCA were invoked. As a result of fresh investigations by the C.B.I. cases were registered against the appellants under the aforementioned provisions and they were arrested on 8th October, 2004.

6. The main allegations against the appellants in the charge-sheet filed by the C.B.I., inter-alia, are: despite having come to know about the illegal activities of said Shabbir Sheikh, Vichare did not arrest him and conspired with Ghule to aid and abet the organised crime syndicate headed by Telgi to carry on their illegal activities; he neither carried out search at the offices of Telgi nor did he seal his property; Ghule took over investigation with the intention to extract pecuniary benefits for himself; both of them did not seal the premises belonging to Telgi with an ulterior motive to aid and abet the organised crime syndicate; they deliberately framed two persons of the rival gang on the instructions of said Shabbir; they showed false recovery from one Sandeep Kandar; recorded statement in order to implicate him; registered a false complaint (C.R. No. 131/2001) against him and also destroyed/fabricated evidence by entering into criminal conspiracy with the members of Telgi gang by misusing their official position.

7. Taking these circumstances into consideration, as noted above, the learned Single Judge has rejected application for bail preferred by the appellants.

8. We have heard Mr. T.L.V. Iyer and Mr. Arvind Sawant, learned senior counsel respectively on behalf of Ghule and Vichare and Mr. Sushil Kumar, learned senior counsel on behalf of the C.B.I.

9. Learned senior counsel for the appellants have submitted that no inference can be drawn on the basis of the material on record, referred to in the impugned order that the appellants had conspired or abetted commission or facilitation of the crime with which Telgi or other co-accused were associated. It is asserted that in the charge-sheet filed against the appellants there are no allegations that they had indulged in "continuing unlawful activities" within the meaning of Section 2(1)(d) of MCOCA or have committed "organised crime" within the meaning of Section 2(1)(e) of MCOCA. It is urged that there is not an iota of evidence against the appellants to hold that they belong to an "organised crime syndicate" within the meaning of Section 2(1)(f) of MCOCA. It is thus, pleaded that Section 3 of MCOCA cannot be invoked against them. In the alternative, it is submitted that on account of the alleged acts of omission and/or commission, at the highest only Section 24 of MCOCA may be attracted, for which offence the maximum punishment provided is three years' rigorous imprisonment and the appellants having already spent more than two years in judicial custody they are entitled to be enlarged on bail. It is also pointed out that some of the similarly situated accused have already been granted bail by this Court.

10. Learned senior counsel appearing for the C.B.I., while opposing the grant of bail to the appellants, has submitted that there is enough evidence on record to show that the appellants had knowingly facilitated and abetted the said organised crime syndicate to continue their unlawful activities and therefore, in the teeth of rigours of Section 21(4) of MCOCA, the appellants cannot be released on bail.

11. At this juncture, it is neither necessary nor desirable to weigh the evidence meticulously to return a positive finding as to whether or not the appellants have committed offences they have been charged with. However, as the provisions of MCOCA have been invoked in the instant cases, in addition to the considerations, which normally weigh with the court in granting bail in non-bailable offences, the limitations imposed in the provisions contained in sub-section (4) of Section 21 of MCOCA have to be borne in mind. The said provision came up for consideration before this Court recently in Chenna Boyanna Krishna Yadav vs. State of Maharashtra & Anr. and its scope and purport was explained thus:

"It is plain from a bare reading of the non-obstante clause in the sub-section that the power to grant bail by the High Court or Court of Sessions is not only subject to the limitations imposed by Section 439 of the Code but is also subject to the limitations placed by Section 21(4) of MCOCA. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provisions requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. Thus, recording of findings under the said provision is a sine qua non for granting bail under MCOCA."

12. Thus, in the light of what has been said above, what needs to be considered is whether there is a reasonable ground to believe that the appellants are not guilty of the two offences, they have been charged with and further that they are not likely to commit an offence under MCOCA while on bail.

13. Having considered the matter in the light of the roles attributed to the appellants in the charge-sheet, we are of the view that the allegations, briefly enumerated above, may not per se be sufficient to bring home an

offence falling within the ambit of Section 3(2) of MCOCA. Therefore, bearing in mind the fact that maximum punishment provided under Section 24 of MCOCA is three years rigorous imprisonment and the appellants have already been in judicial custody for over two years, in our view it is a fit case for grant of bail to both the appellants.

14. Consequently, the appeals are allowed and the order passed by the High Court is set aside. It is directed that the appellants shall be enlarged on bail on their furnishing personal bonds in the sum of Rs.50,000/- each with two sureties, each in the like amount to the satisfaction of the Special Court, Pune. They shall also remain bound by all the conditions as stipulated in Section 438(2) of the Code of Criminal Procedure. They shall also surrender their passports, if any, before the Special Court, Pune. Needless to add that the afore-noted observations on the merits of the allegations against the appellants are tentative, purely for the purpose of these appeals and shall not be construed as expression of a final opinion on any of the issues of fact or law, which may arise for consideration during the course of trial.