

CASE NO.:
Appeal (crl.) 1087 of 2007

PETITIONER:
State of Maharashtra & Ors

RESPONDENT:
Vashishtha Rambhau Andhale

DATE OF JUDGMENT: 17/08/2007

BENCH:
CJI K.G. BALAKRISHNAN & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T
(Arising out of SLP(Crl.) No.4394 of 2004)

P.K. BALASUBRAMANYAN, J.

1. Leave granted.

2. This appeal by the prosecution challenges the order granting bail to the respondent, Inspector of Police attached to the Dharavi Crime Branch, Unit-5, Mumbai. The respondent was arrested during the investigation of the crime registered in the Bund Garden Police Station, Pune relating to the organised crime that has come to be known as the 'stamp scam'. The respondent was accused No.55. He was arrested on 18.10.2003 and though the Special court declined his prayer for bail, in appeal, the High Court granted bail. It is that order of the High Court that is challenged in this appeal.

3. Learned counsel for the appellants submitted that the Central Bureau of Investigation (for short the CBI) had taken over the investigation as directed by this Court in March 2004, had conducted proper investigation and had charge-sheeted various accused and a revised charge-sheet had been filed in July 2004. It is submitted that this Court had entrusted the investigation to the CBI on finding that the Special Investigating Team constituted for that purpose by the State of Maharashtra was not investigating the crime having great social dimensions, in a proper manner or with due sincerity. He submitted that the investigation conducted by the CBI clearly indicated the involvement of the respondent in lending a helping hand to Telgi to facilitate the commission of an organised crime and the evidence, thus, far obtained by the CBI has not been appreciated properly by the High Court keeping in mind the circumstances under which the CBI came into the picture and started an investigation on its own. Counsel submitted that the High Court made an erroneous approach to the materials gathered by the CBI and has erred in discarding them on the basis that there was some delay in recording the statements of the witnesses, at least nine of whom had spoken of the involvement of the respondent and the confessional statement of accused No.8 Sajid, who confessed that he had handed over Rs.15 lakhs to the respondent by way of

illegal gratification and as a quid pro quo for the respondent releasing those connected with a stamp offence.

4. Learned counsel for the appellants particularly pointed out that the respondent had failed to arrest Telgi when Telgi had appeared in the office of the Crime Branch Dharavi, Unit-5, Mumbai. Similarly, the respondent had set free the various persons taken into custody when huge quantity of fake stamps were recovered in a raid and this was done by the respondent in the light of the illegal gratification received by him from Sajid. The High Court erred completely in not giving due weight to those witnesses who spoke of the failure of the respondent to arrest Telgi even when he was wanted and when he appeared at the Police Station and presented himself before the respondent and also the confession of Sajid supported by other relevant materials that a sum of Rs.15 lakhs had been paid to the respondent for inducing him to set free a number of persons involved in the stamp scam, taken into custody while raiding a premises in Andheri and recovering a huge cache of fake stamps.

5. Counsel submitted that the High Court has also not kept in mind the nature of the offence, its impact on society, the position held by the respondent, his duty as a protector of the law and the rights of the citizens and the nature of his conduct. It was a clear case where the offences under Section 3, 4 and 24 of the Maharashtra Control of Organised Crime Act, 1999 (for short the MCOCA) had been made out. The High Court ought not to have interfered with the order refusing to grant bail.

6. Learned counsel for the respondent, on the other hand submitted that the respondent was not holding such a responsible post as to be able to assist Telgi and his associates in the manner suggested by the prosecution and that the High Court has not erred in granting bail to him. Counsel submitted that the confession of Sajid had to be tested at the trial and the High Court was not incorrect in not relying on it at this stage to refuse bail to the respondent. Counsel also submitted that after all it was an order granting bail to an accused, no doubt in a serious crime and that normally this Court in appeal would not interfere with such an order. Counsel therefore, submitted that no interference was warranted in this appeal.

7. We find that there is some merit in the contention of the learned counsel for the appellants that the High Court was not correct in thinking that all the evidence gathered by the CBI must be treated as evidence gathered belatedly. The High Court obviously forgot that the CBI was directed to take up the investigation by this Court only in March 2004 and what this Court was intending, was a thorough investigation by the CBI, especially in the nature of unsatisfactory performance of the State Police and the number of police personnel and higher ups allegedly involved in the organised crime. To that extent we cannot approve the approach or attitude of the High Court in dealing with the appeal against the refusal to grant bail to the respondent. Same would be the position regarding the confessional statement of Sajid and the High Court was not correct in trying to discard it on the basis that it was belated.

8. Any studied inaction or aid extended to the members of an organised crime, the members of an organised gang involved in such crime might also amount to an offence under MCOCA and this fact cannot be forgotten when dealing with the case of a police officer allegedly involved in the crime. But then that is a matter to be decided by the trial court at the time of trial of the offence. For the present we need only indicate that we cannot fully endorse the approach made by the High Court in granting bail to the respondent.

9. At the same time, we do not think it proper in this appeal to go into the various aspects urged at great length by counsel appearing in the case. We think that the matters must be left to the trial court for decision after taking proper evidence and it would be premature to pronounce on the various aspects urged before us. Though we are not in a position either to fully endorse or to fully approve the views expressed by the High Court in the order under challenge, we do not think that it is necessary, at this stage, to interfere with that order and set aside the bail granted to the respondent. We, therefore, decline to interfere with the decision of the High Court though we do find merit in some of the aspects urged by the counsel for the appellant.

10. In view of what is stated above, the appeal is dismissed leaving all the questions open to be decided by the trial court.