

CASE NO.:  
Appeal (crl.) 977 of 2006

PETITIONER:  
Mohammad Chand Mulani

RESPONDENT:  
Union of India & Ors.

DATE OF JUDGMENT: 18/09/2006

BENCH:  
K G Balakrishnan, G P Mathur & R V Raveendran

JUDGMENT:  
J U D G M E N T  
(Arising out of SLP (Crl.) No.1575/2006)

RAVEENDRAN, J.

Leave granted.

The order dated 19th/20th October, 2005 passed by the Bombay High Court rejecting his application for bail under section 439 of the Code of Criminal Procedure (for short 'the Code') is challenged by the Appellant in this appeal.

2. The appellant was working as an Assistant Commissioner of Police (Crime-I), Pune, during the year 2002. An FIR relating to an offence of possessing counterfeit stamps punishable under sections 120-B, 255, 258, 259, 260, 263-A, 420, 471, 472, 474 read with section 34 IPC, was registered against certain persons, on 7.6.2002 as C.R. No.135/2002 at Bund Garden Police Station. The initial investigation was conducted by Mr. Prakash Deshmukh, Senior Police Inspector, Bund Garden Police Station, under the guidance of Additional Commissioner of Police, Pune (Shri S.M. Mushrif), Dy. Commissioner of Police (Zone-II) and the Asstt. Commissioner of Police, Crime I (appellant). A charge-sheet was filed on 3.9.2002 followed by a supplementary charge-sheet filed on 25.11.2002.

3. The State Government created a Special Investigating Team (SIT for short) for investigation into the said bogus stamp case, headed by Mr. S K Jaiswal, DIG on 2.11.2002. A supplementary charge-sheet was filed on 25.11.2002. On 22.12.2002, Sri S.K. Jaiswal, DIG, granted approval to apply section 3(i)(ii), 3(2), 3(4), 3(5) and 4 of Maharashtra Control of Organised Crime Act, 1999 ('MCOC Act' for short) in regard to C.R. No.135/2002 of Bund Garden Police Station. SIT submitted one more original charge-sheet in C.R. No. 135/2002 before the Special Judge, Pune, under MCOC Act, numbered as Special Case No.2/2003 on 27.3.2003. Supplementary charge-sheets were by SIT filed on 15.9.2003 and 3.2.2004. This Court by order dated 15.3.2004 transferred the investigation of this case along with several other cases to the Central Bureau of Investigation (CBI for short). CBI filed a supplementary charge-sheet on 27.5.2005.

4. The appellant was associated with the investigation of that case, from the date of registration of FIR (7.6.2002) till the first charge-sheet was filed (on 3.9.2002). The appellant retired on 31.8.2003. As the investigation by the SIT disclosed involvement of the appellant in the said bogus stamp case, he

was arrested on 4.12.2003. He was arraigned as accused No.61 in the supplementary charge-sheet filed on 3.2.2004, and was charged under sections 120-B, 216, 218, 221 IPC r/w sections 3(2), 3(5) and 24 of MCOCA Act and section 7 and 13(1)(d) of the Prevention of Corruption Act.

5. According to the prosecution, the principal accused Abdul Karim Telgi was involved in printing and distributing counterfeit stamps/stamp papers on a very large scale. During investigation, stamps/stamp papers worth Rs.2189 crores were seized. The allegation against the appellant was that during the period when the appellant was supervising the investigation, he came into contact with Telgi through his counsel Abdul Rashid Kulkarni (accused No.49); that the appellant, with a view to help the perpetrators of the organized crime, tried to subvert the investigation; that he was instrumental in ensuring that some persons involved in the crime, were not shown as accused in the first charge-sheet filed on 3.9.2002; that the appellant received a sum of Rs.15 lakhs from accused No.49, as part payment towards a sum of Rs. 3 crores agreed as illegal gratification to arrange for the deletion of Telgi's relations (wife, daughter and brother) from the charge-sheet and to ensure they were not arrested; and that he was thus a direct recipient of funds from the organized crime syndicate of Telgi for facilitating their unlawful activities.

6. The appellant's application for bail was rejected by the Special Judge, Pune, on 1.7.2004. His subsequent application for bail filed before the Bombay High Court under section 439 was rejected by the High Court by the impugned order dated 19th/20th October, 2005.

7. The High Court has cited two circumstances to conclude that the appellant was involved in facilitating organized crime and receiving illegal gratification therefor. The said circumstances are :

i) During the period when the appellant was associated with the investigation from June, 2002 to 3.9.2002, Counterfeit Stamps worth Rs.1500 crores were recovered on 14.6.2002 from a godown at Bhiwandi taken on rent by one Sirajuddin Kamalsab Nasipudi, an associate of Telgi. The said Nasipudi was not shown as an accused in the first chargesheet filed on 3.9.2002, at the instance of the appellant, though the appellant was aware of the involvement of Nasipudi and was, in fact, on the look out for him.

ii) The statements of witnesses and confessions of some accused show that the appellant had received a sum of Rs.15 lakhs as illegal gratification from Telgi through Abdul Rashid Kulkarni, for not arresting Telgi's wife, daughter and brother and deleting their names from the charge-sheet.

8. The records disclose that Mr. Mushrif (Addl. Commissioner) was in charge of the investigation at the relevant time and he had divided the investigation and connected work among four teams namely i) appraisal of seized papers/documents; ii) examination of computer records and decoding; iii) investigation; and iv) field work. Appellant was placed in the field work team and was not directly involved in investigation. The appellant was not a part of the team that raided the Bhiwandi godown rented by S. K. Nasipudi. It also appears that the decision as to who should be made accused primarily rested with Dy. Commissioner of Police (Zone II) subject to the final decision of the Addl. Commissioner. The Senior Police Prosecutor was also being consulted in the matter.

Therefore, apparently, it was not for the appellant to take any decision as to whether S. K. Nasipudi should have been shown as an absconding accused in the first charge-sheet, though it was possible that he gave his suggestion in the matter. The learned counsel for the appellant submitted that one possible reason for not including the name of S. K. Nasipudi in the first charge-sheet, was that his full name and address was not available at the time when the first chargesheet was filed and they were still looking for him. Be that as it may.

9. In regard to the allegation that the appellant had received a sum of Rs.15 lakhs from Telgi through his counsel Mr. A.R. Kulkarni, for deleting/not arresting the family members of Telgi, the material held against the appellant are :

i) The statement of Mr. Mushrif dated 22.11.2002 wherein he had stated that Telgi had told him that Mulani and the Police Inspector Deshmukh had threatened that unless Rs.3 crores was paid to them, they would arrest his wife, daughter and sick brother; that as he (Telgi) was in custody, negotiations were going on through his counsel A. R. Kulkarni, through whom the demand was made; that Rs.15 lakhs had already been paid; and that they (Mulani and Deshmukh) had assured that after receipt of the balance, the names of the said family members of Telgi will be deleted from the charge-sheet.

ii) The statement of Vijay Gunjal recorded on 11.9.2003, wherein he had stated that he had accompanied advocate A.R. Kulkarni in August, 2002 when he went to meet the appellant; and that A.R. Kulkarni subsequently told him that he had given Rs.15 lakhs to the appellant.

iii) The statement of R.I. Kamble, Police Naik, recorded on 8.8.2003 wherein he had stated that Vijay Gunjal had told him that in spite of giving Rs.15 lakhs to Mulani (appellant), the job of deleting the names of four accused had not been done.

But the High Court has recorded a finding that "It cannot be said that it was the applicant (Mulani) who was insisting that the wife, daughter and brother of Telgi shall be kept out of the charge sheet as the Apex Court (in 2005 (5) SCC 294) has already noted that it was Shri Mushriff who was the superior officer of the applicant who was desirous of keeping the said three persons out of the charge sheet." Learned counsel for the appellant also pointed out the significant delay in recording the statement of Vijay Gunjal, though he had been attending the office of the SIT regularly. He also pointed out to the discrepancies in the statements of Gunjal and Kamble. Be that as it may.

10. One other circumstance relied on by the prosecution is the statement of Sri Adhip Chaudhary, Addl. Chief Secretary, Karnataka. He stated that there was a meeting on 24.7.2002 of the senior officers of States of Karnataka and Maharashtra; and just before the meeting, Sri Sreekumar, Addl. DG, had warned him to be a little cautious about one of the members of the Maharashtra team, namely Mulani (Appellant) as the Karnataka police had received some information about his involvement while intercepting messages.

11. The learned counsel for Respondents submitted that the activities of Appellant would fall under section 3(2) of MCOC Act, which is punishable with imprisonment which may extend to life. He also drew our attention to the observation of the High Court that prima facie section 3(2) of MCOC Act was attracted.

The learned counsel for appellant contested this position. Relying on the decision of this Court in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* [2005 (5) SCC 294], he submitted that even if all allegations against the appellant were accepted, his case would fall only under Section 24 and not Section 3(2) of the MCOC Act and the maximum sentence under Section 24 is three years and the appellant has already been in prison for 2 years and 9 months and therefore deserved to be released on bail. As we are concerned with only grant of bail, it is not necessary at this stage to examine or decide upon the relative scope of sections 3(2) and 24 of the MCOC Act as to in what circumstances, the action of a public servant will be considered as "rendering any help or support in the commission of an organized crime, whether before or after the commission of such offence by a member of an organized crime syndicate or abstains from taking lawful measures under the Act", falling under section 24, or considered as "conspiring or attempting to commit or advocating, abetting or knowingly facilitating the commission of an organized crime or any act preparatory to organized crime" falling under section 3(2) of MCOC Act.

12. The appellant has retired from service in the year 2003. He has been in jail for more than two years and nine months. The trial is likely to take several years as there are more than 800 witnesses to be examined. In the circumstances, and having regard to the nature of involvement alleged and the role attributed to the appellant in the charge-sheet, we are of the view that this is a fit case for grant of bail to the appellant.

13. We accordingly allow this appeal, set aside the order of the High Court and direct the Special Court, Pune, to enlarge the appellant on bail on his furnishing security to its satisfaction in a sum of Rs. two lakhs with two solvent sureties for like sum, subject to the following conditions :

- i) The appellant shall fulfil the conditions enumerated in clauses (i) to (iii) of Section 438(2) Cr.P.C.
- ii) He shall report before the Investigating Officer every alternate Saturday between 10 a.m. and 12 noon.
- iii) He shall surrender his passport, if any, before the Special Court.

14. Nothing stated above shall be construed as an expression of an opinion with regard to merits. The entire consideration is with limited reference to grant of bail. It is needless to say that the trial court while deciding the matter on merits, will not be influenced by anything stated by this Court while disposing of applications for bail.