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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Order pronounced on 05.08.2022

+ CRL.A. 358/2021

STATE Appellant

Through: Mr.Amit Chadha, APP for State.

versus

IBRAHIM TYAGI Respondent

Through: Mr. Omkar Sharma and Mr.
Ghanshyam Sharma, Advocates.

+ CRL.A. 359/2021

STATE Appellant

Through: Mr.Amit Chadha, APP for State.

versus

HAZI MANSOOR Respondent

Through: Mr. Omkar Sharma and Mr.
Ghanshyam Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. The State has filed these appeals under Section 12 of The Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to 'MCOCA') read with Section 482 Cr.P.C. against the impugned order dated 25.11.2020 passed by learned Special Judge (MCOCA)-cum-ASJ. Since broad facts in both the cases are same and the appeals are also on the same lines, so both the matters have been taken up together for disposal.

1.1 The case of the petitioners is that regular bail was granted to both the

respondents/accused persons without they being in judicial custody and they were directed to join investigation as and when required by the Investigating Officer. The application filed before the learned Special Judge was neither an application under Section 439 Cr.P.C. nor an application under Section 438 Cr.P.C. and the heading of the application stated that this was an application for joining the investigation and grant of bail. There is no provision under MCOCA for grant of anticipatory bail but the applications were considered by learned ASJ treating them as anticipatory bail applications. These applications were moved on 23.11.2020, the response was filed on 25.11.2020 and on the same date, these applications were disposed of by two separate detailed orders on identical grounds.

1.2 In brief the facts of the case are that an FIR No. 397/2019 was registered under Section 3/4 of MCOCA at PS: Hari Nagar against Salman Tyagi and his crime syndicate members. He had formed an interstate gang for running an organised crime syndicate with an objective of gaining pecuniary benefits for himself, his family members and his associates. Accused Salman Tyagi was arrested on 03.10.2020 and subsequently other members of the crime syndicate were also arrested. Confessional statements of all the arrested accused persons were recorded under Section 18 of MCOCA, where they admitted their different roles in running/participating in the crimes syndicate of extortion of money by creating fear among public persons with the use of illegal fire arms and they are also dealing in drugs/contrabands.

1.3 Charge-sheet was filed against the arrested accused persons on 26.03.2020. Proceedings under Section 82 Cr.P.C. against accused Manish Malhotra @ Sunny and Mohd. Faizal @ Bablu are stated to be under

process. Accused persons/respondents are stated to be involved in case FIR No. 342/2012 dated 25.09.2012 under Sections 307/429/147/148/149/34 IPC and Sections 25/27/54/59 of the Arms Act, in which accused Salman Tyagi along with gang members and the present two respondents/accused were arrested in the case for assaulting the complainant with an iron rod, sword and for firing gun shots upon the complainant.

1.4 Accused respondent/Hazi Mansoor is also stated to be involved in case FIR No. 338/2012 under Sections 308/323/34 IPC at PS Hari Nagar in which accused Salman Tyagi, the present accused/respondent and other accused persons had beaten the complainant so severely that he would have died of the consequences of beating.

1.5 It is the further case of the petitioner that during investigation, some of the immovable properties belonging to the accused persons were identified. The said properties were identified by main accused Salman Tyagi during his PC remand as belonging to him or his family members, including the present accused/respondents. As per law, there is an FIR against the accused persons apart from confessional statements from the co-accused and statements of independent witnesses, who had testified that they were threatened by the present accused/respondents, so these are enough grounds to invoke the stringent provisions of MCOCA against the respondents.

1.6 These two accused/respondents were not arrested by the investigating agency but they were granted bail without considering the fact that they were required by the investigating agency for their custodial interrogation for proper investigation of the case. Provisions under Section 438 Cr.P.C. do not apply to the cases under MCOCA.

1.7 The grounds on which the present petition is filed are that the bail orders passed by the learned ASJ are without application of judicial mind, based on conjectures and surmises; the application before learned Special Judge was not filed under any provision of Cr.P.C.; the learned Special Judge has conducted a mini trial at the stage of considering the bail applications; there were no formal applications of surrender but the learned ASJ in the impugned order has taken the respondents under court custody/jurisdiction and thereafter granted regular bail and the procedure prescribed under Section 439 Cr.P.C. was not followed; the confessional statement under Section 18 MCOCA of other co-accused persons and the involvement of the present respondents was not taken into consideration. On these grounds, it has been prayed that the orders dated 25.11.2020 be set aside and the bails granted to the respondents/accused be revoked.

2. Notice was issued. Response has been filed on behalf of the respondents. On behalf of the respondents, it has been submitted that the order dated 20.07.2020, wherein anticipatory bail was granted to Mustafa Tyagi was not being challenged by the investigating agency. The present respondents applied for anticipatory bails which were granted by the impugned orders on the ground that the roles assigned to the present petitioners are identical to Mustafa Tyagi. The investigating agency never applied for issuance of NBWs against the present respondents and they were never called upon to join investigation and that was the reason why respondents approached the Court with a prayer to join investigation as they were always willing, ready and available for joining the investigation.

2.1 The order has been challenged by prosecution after lapse of one year. The bails were granted to the respondents on the ground that no case under

MCOCA was made out against them and State was given liberty to approach the concerned court in the event of any credible evidence against the respondents is found for being involved in activity of organized crime syndicate or holding assets on its behalf.

2.2 The petitioner never approached the learned Trial Court for cancellation of the bail order dated 25.11.2020 because no new facts came on record to implicate the present respondents as members of organized crime syndicate or holding assets from proceeds of organised crime syndicate. They have vehemently denied that they are members of any organized crime syndicate. The details of the properties and the way they have acquired the properties, have also been detailed. It has been stated that the learned Trial Court has passed a reasoned order, so, there is no occasion to recall or cancel the said order.

3. Written synopsis have been filed on behalf of the State as well as on behalf of respondents.

3.1 I have heard the counsel for both the parties.

3.2 It is pointed out in the written synopsis on behalf of the State that both the accused/respondents were arrested in case FIR No. 424/2021 dated 30.07.2021 under Sections 387/336/506/212/120B IPC and 25/27 Arms Act, PS Hari Nagar and in the said case, Salman Tyagi (Kingpin) and Muntzeer @ Munti (real brother of Salman Tyagi) were arrested on 27.08.2022 and 01.10.2021 respectively as they were found to be involved in demand of extortion of money. Accused Salman Tyagi called complainant Bhoomi and had demanded protection money of Rs. 15 lakhs from her and had asked her to hand over the money to his family members, including the present respondents/accused and when protection money was not given, accused

Salman Tyagi with the help of organized crime syndicate members, fired upon house of Bhoomi, so that in state of fear, she should deliver the protection money demanded by accused Salman Tyagi. It categorically reflects that both the accused persons are continuing unlawful activities unabated on behalf of alleged organized crime syndicate.

3.3 It is to be further noted that Para no.16 of the impugned order in case of Ibrahim Tyagi and para no.17 of the impugned order in case of accused respondent Hazi Mansoor, clearly state that *‘in the event of discovery of credible evidence against accused/respondents regarding involvement in the activity of organized crime syndicate or holding assets on its behalf, the bail granted through this order shall be reconsidered’*.

3.4 The impugned order is dated 25.11.2020 and FIR bearing No. 424/2021, PS Hari Nagar, was registered only on 30.07.2021. This gives cause of action to the State to approach the Court of learned Special Judge, MCOCA for re-considering the orders dated 25.11.2020 for cancellation of bail.

4. In view of the above, an opportunity is granted to the State to approach the court of learned Special Judge, MCOCA in terms of the liberty granted in the last paragraphs of orders dated 25.11.2020 and move applications for cancellation of bails in both the cases. In case, any such applications are moved by State, the present respondents shall have a right to file their response and the learned Special Judge shall dispose of the said application on merits after hearing both the parties.

4.1 At this juncture, attention of the learned Special Judge is drawn to Section 21 of MCOCA, which is reproduced hereunder:-

“21. Modified application of certain provisions of the Code-

(1) Notwithstanding anything contained in the Code or in any other law, every offence punishable under this Act, shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and “cognizable case” as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that, in sub-section (2),—

(a) the references to “fifteen days”, and “sixty days”, wherever they occur, shall be construed as references to “thirty days” and “ninety days”, respectively ;

(b) after the proviso, the following proviso shall be inserted, namely :—

Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period upto one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days.”.

(3) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act.

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless—

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release ; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question.

(6) The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code or any other law for the time being in force on the granting of bail.

(7) The police officer seeking the custody of any person for preindictment or pre-trial interrogation from the judicial custody shall file a written statement explaining the reason for seeking such custody and also for the delay, if any, in seeking the police custody”.

5. The applications to be filed by the State may be disposed of by the Ld. Special Judge, keeping in view the above-noted provisions.

6. With these directions, the present appeals are disposed of. State shall approach the learned Trial Judge within four weeks from the date of this order.

7. It is needless to state that nothing stated hereinabove will come in the way of the Ld. Special Judge while deciding the applications of the State on merit.

TALWANT SINGH, J

AUGUST 05, 2022

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