

CASE NO.:
Appeal (crl.) 1088 of 2007

PETITIONER:
C.B.I.

RESPONDENT:
PRADEEP BHALCHANDRA SAWANT & ANR

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 Special Leave Petition (Criminal) No.6044 of 2004)

P.K. BALASUBRAMANYAN, J.

1. Leave granted.

2. This Appeal by Special Leave by the Central Bureau of Investigation challenges the order of the High Court granting bail to the respondent, at the relevant time, the Deputy Commissioner of Police, Mumbai. The respondent was arrested in connection with criminal cases registered in what has come to be known as the 'stamp scam'. The respondent is arrayed as accused No. 65 in C.R. No. 135 of 2002 initially registered at Bund Garden Police Station, Pune for different offences under the Indian Penal Code as well as under Sections 3 and 24 read with Section 2(1)(a)(d) of the Maharashtra Control of Organised Crime Act ('MCOCA') read with Sections 7 and 13(1)(d) of the Prevention of Corruption Act. The charges against him, inter alia, comprised of charges 58 to 70. The charges included the charge that the respondent had conspired to commit, to abet, to knowingly facilitate the commission of an organised crime, namely, the printing and sale of fake stamp papers and thereby was guilty of offences under the MCOCA, which carried a minimum punishment of imprisonment for five years but which could extend to life. The respondent was arrested on 7.1.2004 and subsequently by the order under challenge, he was enlarged on bail. It is this order granting bail that is the subject matter of this appeal at the instance of the prosecution.

3. According to the learned counsel for the appellant 'C.B.I.', as per the supplementary charge sheet, the respondent was being charged with rendering help and support on his own in the commission of an organised crime to the members of a organised crime syndicate by abstaining from taking the necessary action by himself and through his subordinate officers and that he had directed his subordinates that Telgi, the prime accused should not be kept in any lock up. This had facilitated the continuing of illegal activity by Telgi including the disposal of his ill-gotten properties even while he was in police custody. Telgi was also accorded special treatment by the respondent. According to learned counsel, in the

circumstances, the High Court was clearly in error in granting bail to the respondent on its misconception of the scope of the relevant provisions of MCOCA and on its erroneous approach that connivance or deliberate inaction on the part of a police officer which facilitated the organised crime to flourish would not amount to an offence under Section 3 of the MCOCA. Learned counsel submitted that since a fundamental error had been made by the High Court, it was a proper case for this Court to interfere with the order.

4. Learned counsel for the respondent, on the other hand, submitted that the alleged acts of commission and omission of the respondent did not attract Section 3 of MCOCA and at best even if the case is brought under Section 24 of MCOCA, the punishment could extend only to three years and on the materials available, the High Court was justified in granting bail to the respondent. Learned counsel submitted that on the materials, there was no reason for this Court to interfere with an order granting bail, a course that is not very readily adopted by this Court.

5. We find some merit in the submission of learned counsel for the appellant that the approach of the High Court leaves a lot to be desired. There may be some substance in his argument that the High Court has not properly understood the content of Section 3(2) and 3(3) of MCOCA and it was in error in thinking that deliberate inaction or studied negligence on the part of a responsible police officer could not amount to abetting or knowingly facilitating the commission of an organised crime. But, we do not think that it is proper for this Court to go into that question in detail in this proceeding, which is only an appeal against the grant of bail. After all, whatever we may say in this order will not even control the decision to be taken after the conclusion of the trial and we think it appropriate to leave it to the court trying the case to take a final view on all the questions after the evidence has been let in. Learned counsel for the respondent, in this connection, relied upon the decision in *RanjitSing Brahmajeetsing Sharma Vs. State of Maharashtra & Anr.* [(2005) 5 S.C.C. 294] to support the argument that the High Court was not wrong in proceeding on the basis that no offence under Section 3 of MCOCA would be made out. On scrutiny of the decision, we find that it was only an order on a bail application in the case of another police officer who was the Commissioner of Police and as we have noted earlier, the observations therein obviously may not be considered an authoritative pronouncement on the relevant aspects at the trial of the cause or as concluding any question. The reasons given in an order granting bail can only be understood as supporting an order granting bail with only the consequences that flow from it. The observations cannot control the decision to be taken after trial by the concerned court.

6. It is true that counsel tried to highlight many alleged commissions and omissions on the part of the respondent and especially in his alleged treatment of Telgi, the kingpin in the crime concerned. Naturally, learned counsel for the respondent attempted to controvert the

stand adopted by the learned counsel for the appellant and contended that there were no such acts of commission or omission on the side of the respondent and that it was a case where the respondent himself was only a subordinate officer not in a position to take some of the actions which are alleged to have been not taken by him. Here again, we do not think that it is proper for us to go into an analysis of the facts and circumstances. Suffice it to say that we do not think that it is necessary to interfere with the order granting bail to the respondent in this appeal against such grant. We expect the trial court to try the case in accordance with law untrammelled by the observations in these orders.

7. We therefore decline to interfere and dismiss this appeal.