A.F.R.

Neutral Citation No. - 2024:AHC:181548

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8970 of 2023

Applicant :- Alishan
Opposite Party :- State of U.P.
Counsel for Applicant :- Bipin Kumar,Indra Bhan Yadav,Jai Prakash,Rizwan Ullah Siddiqui,Saurabh Sachan,Sudhir Kumar Agarwal
Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.

2. Heard Sri Manish Tiwari, learned Senior Advocate assisted by Sri Indra Bhan Yadav, learned counsel for the applicant as well as Sri Manish Goyal, learned Additional Advocate General assisted by Sri Vikas Sahai, learned A.G.A. for the State and perused the material placed on record.

3. By means of the present bail application, the applicant seeks bail in Case Crime No.83 of 2022, under Section 2/3 of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, Police Station- Mirzapur, District- Saharanpur, during the pendency of trial.

PROSECUTION STORY:

4. The FIR was instituted against the applicant and other co-accused persons at police station Mirzapur, district Saharanpur on 9.4.2022 at 11:30 p.m. alleging as follows:

(i) The accused person Hazi Iqbal @ Balla is stated to be the gang leader and the applicant alongwith five other named accused persons are stated to be the members of interstate district gang involved in several financial and corporeal crimes.

(ii) They are stated to be involved in threatening the people to cause their death, extortion and extracting illegal money. They are also stated to be involved in smuggling of wood, illegal mining and illegal possession of public land, as such, have caused terror, fear and sense of insecurity in public at large.

(iii) The applicant and all the co-accused persons are stated to be highly connected politically, and as such, they were booked under the UP Gangsters Act.

ARGUMENTS ON BEHALF OF APPLICANT:

5. The applicant is absolutely innocent and has been falsely implicated in the present case. He has nothing to do with the said offence.

6. The instant FIR is just misuse of the provisions of Gangsters Act as the applicant has been implicated in the instant case only on the basis of two cases mentioned in the gang-chart, i.e., Case Crime No.52 of 2018, registered under Sections 147, 148, 149, 352, 504, 506, 447 I.P.C., Section 3(2)(V) SC/ST Act and Section 7 of Criminal Law (Amendment) Act and Case Crime No.177 of 2019, under Sections 420, 504, 506, 467, 468, 471 I.P.C., at Police Station- Mirzapur, District- Saharanpur.

7. After thorough investigation, the Investigating Officer was pleased to file closure report on 29.1.2018 in the said Case Crime No.52 of 2018, exonerating the applicant. The closure report dated 29.1.2018 has been filed as Annexure-2 to the affidavit accompanying the bail application. The criminal proceedings against the applicant arising out of the said Case Crime No.177 of 2019 have been stayed by this Court, until further orders, vide order dated 19.2.2021 passed in Application U/s 482 No.2619 of 2021. The copy of the order of this Court dated 19.2.2021 has been filed as Annexure-3 to the affidavit filed with bail application. The applicant having been exonerated in one of the said predicate offences and having been granted interim protection in another case, entitle him for bail in the instant case, as no case is made out against him.

8. The applicant had filed a Criminal Misc. Writ Petition before this Court and he was granted interim protection till submission of final report in the instant case.

9. In the instant case, similarly placed co-accused person Naseem has already been enlarged on bail by the Co-ordinate Bench of this Court vide order dated 2.1.2023 passed in Criminal Misc. Bail Application No.54879 of 2022, as such, the applicant is also entitled for bail on the ground of parity.

10. Much reliance has been placed on the judgment of the Supreme Court passed in ***Satender Kumar Antil vs. Central Bureau of Investigation and another***[1], wherein the Supreme Court has laid down as follows:

> *"**98.** Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of* India*."*

11. A criminal history of 19 cases have been shown against the applicant of which 04 cases have been quashed by the Supreme Court and the same number of cases have been quashed by this High Court. The applicant has been granted anticipatory bail in 02 cases and he has been granted regular bail in 05 cases. The proceedings have been stayed by this High Court in 02 cases. The applicant has not been nominated in other 02 cases. As such, the applicant is entitled for bail in the light of judgment of the Supreme Court passed in ***Farhana vs. State of Uttar Pradesh & Ors***[2]. The relevant paragraphs of the said judgment reads as follows:

> ***"14.** There being no dispute that in the proceedings of the sole FIR registered against the appellants for the offences under Chapter XVII IPC being Crime Case No. 173 of 2019, the appellants stand exonerated with the quashing of the said FIR by the High Court of Judicature at Allahabad by exercising the powers under Section*

1 2022 INSC 690
2 2024 INSC 118

482 of Criminal Procedure Code, 1973, vide order dated 3rd March, 2023 passed in Application No. 7228 of 2023.

***15.** Hence, the very foundation for continuing the prosecution of the appellants under the provisions of the Gangsters Act stands struck off and as a consequence, the continued prosecution of the appellants for the said offence is unjustified and tantamounts to abuse of the process of Court.*

***16.** As a consequence of the discussion made herein above, the impugned orders dated 14th November, 2022 and 6th December, 2022 passed by the High Court of Judicature at Allahabad are quashed and set aside. Resultantly, the impugned FIR being Crime Case No. 424 of 2022 for offence punishable under Section 3(1) of the Gangsters Act, registered at Police Station-Bhognipur, District-Kanpur Dehat and all the proceedings sought to be taken thereunder against the appellants are hereby quashed."*

12. All these cases are politically motivated and have been foisted against the applicant due to his political affiliation to the opposition party.

13. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length.

14. The applicant is languishing in jail since 13.5.2022, as such, he is incarcerated for a period of about two years. No prosecution witnesses have been examined till date, as such, the fundamental rights of the applicant enshrined under Article 21 of the Constitution of India stand violated.

15. Further, much reliance has been placed on the judgment of the Supreme Court passed in ***Union of India vs. K.A. Najeeb***[3], wherein the Supreme Court has observed as under:-

"We are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the

3 AIR 2021 SC 712

trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail."

16. The rigors of Section 19(4) of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 do not apply to the instant case as all the cases instituted are politically motivated.

17. The applicant is ready to cooperate with trial. In case, the applicant is released on bail, he will not misuse the liberty of bail.

ARGUMENTS ON BEHALF OF STATE:

18. The bail application has been opposed on the ground that it is settled law that the bail or acquittal of the accused in the predicate offence does not entitle him for bail. The case does not get wiped out by the said grant of bail.

19. The applicant is a flight risk as his father Hazi Iqbal @ Balla has already fled the country and is the main accused person. The applicant has acted in connivance and consonance of his father.

20. Relevant paragraphs of the case law cited by State:-

(I). ***Ashok Kumar Dixit vs. State of UP[4]:***

151. *We are unable to uphold the submission. The impugned Act is designed to deal with a lass of crime which is entirely distinct from the ordinary offences, and the accused involved may be such as against whom it may be difficult to collect evidence sometimes. Consequently, if the Legislature made a provision for larger period of remand than contemplated by sub-s. (2) of S. 167, Cr. P.C., it may not be possible to hold sub-s. (2) of S. 19 to be ultra vires on that ground.*

152. *Further first remand is granted by the Judicial Magistrate or by the Executive Magistrate which cannot exceed more than sixty days. Any further remand is granted only by the special Judge after satisfying himself as to the desirability of granting further time to the investigating officer for completing the investigation. The discretion to grant remand for a period of sixty days is thus vested in a Judicial Officer, namely, the Special Judge who may disallow further remand asked for by the investigating agencies, if grounds*

4 AIR 1987 All 235

for the same are not made out. Power of further remand is not with any executive authority. We therefore, do not see any unconstitutionality in S. 19(2) of the Act.

153. *Arguments were also advanced before us challenging the validity of Cl. (e) of S. 2, U.P. Act. 7 of 1986, in so far as it provided that even a person in whose welfare the public servant is interested would be a member of his family. Clause (e) provides:—*

> *"Member of the family of a public servant means his parents or spouse and brother, sister, son, daughter, grandson, granddaughter or the spouses of any of them, and includes a person dependent on or residing with the public servant and a person in whose welfare the public servant is interested."*

154. *We find that the aforesaid definition of member of the family of a public servant is extremely vague and incapable of being worked out. How could a person in whom a public servant is interested be a member of his family. This definition including any person in whose welfare the public servant if interested is extremely vague, and, as such is liable to be held as unreasonable. As a result whereof, we hereby find that the phrase" and a person in whose welfare the public servant is interested" is unconstitutional on the ground of being unreasonable and violative of Art. 14 of the Constitution. However, since this clause is capable of being severed from the remaining, it is not correct to argue that the whole of cl. (e) of S. 2 would have to be struck down.*

155. *These petitions had been filed mainly on the ground that U.P. Act 7 of 1986 was ultra vires the Constitution. We have not been able to find substance in any one of the grounds of attack of the Act. So far as our power to quash the investigation and the proceedings pending before the Special. Judges challenged in some of the writ petitions before us, are concerned, we are of opinion that this is not possible to be done in these cases. Judicial opinion seems to be settled and we have several authorities of the Supreme Court where interference by the Court into police investigation has been disapproved. This question arose in connection with an application under S. 561A Criminal P.C. in an appeal in State of West Bengal v. S.N. Basak, AIR 1963 SC 447. Kapoor, J. quoted with approval the observations of the Judicial Committee in the case of Emperor v. Khwaja Nazir Ahmad, AIR 1945 PC 18, where the Privy Council observed:*

> *"The functions of the judiciary and the police are complementary not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to interfere in*

an appropriate case when moved under S. 491, Criminal P.C. to give directions in the nature of habeas corpus."

156. *This view was followed by the Supreme Court in State of West Bengal v. Sampat Lal, (1985) 1 SCC 317 : AIR 1985 SC 195 and Eastern Spinning Mills Shri Virendra Kumar Sharda v. Rajiv Poddar, 1989 Supp (2) SCC 385 : AIR 1985 SC 1668. In this case, the Supreme Court observed:*

"We consider it absolutely unnecessary to make a reference to the decision of this Court and they are legion which have laid down that save in exceptional cases where non-interference would result in miscarriage of justice, the Court and judicial process should I not interfere at the stage of investigation of offences."

157. *Of course, the decisions cited above were in connection with S. 482, Cr. P.C., but the scope of interference under Art. 226 of the Constitution is narrower. The power of superintendence of the High Court under Art. 226 being extraordinary is to be exercised sparingly and only in appropriate cases. The power to issue certiorari cannot be invoked to correct an error of fact which a superior Court can do in exercise of its statutory power as a Court of appeal. The High Court cannot in exercising its jurisdiction under Art. 226 convert itself into a Court of appeal when the legislature has not chosen to confer such a right.*

158. *The High Court's function is limited to see that the subordinate court or Tribunal or authority functions within the limits of its power. It cannot correct errors of fact by examining the evidence.*

159. *In a writ petition filed under Art. 32 of the Constitution, the argument made on behalf of the petitioner of that case that there I was no material whatsoever to warrant the framing of charges, hence, the entire proceedings were liable to be quashed. The Supreme Court in Raghubir Singh v. State of Bihar, (1986) 4 SCC 481 : AIR 1987 SC 149, repelled that argument by saying:*

"It was strenuously contended by Sri Jethmalani that there was no material whatsoever to warrant the framing of charges for any of the offences mentioned in the charge sheet other than S. 165A. We desire to express no opinion on this question. It is not a matter to be investigated by us in a petition under Art. 32 of the Constitution. We wish to emphasise that this Court cannot convert itself into the Court of a Magistrate or a Special Judge to consider whether there is evidence or not justifying the framing of charges".

160. *For the reasons given above, all the writ petitions fail and are dismissed with costs. Interim order shall stand vacated.*

(II). ***Dharmendra Kirthal vs. State of UP[5]:***

> ***2.*** *At the very outset, it is imperative to state that this Court, on 20-9-2010, while issuing notice, had passed the following order:*
>
> > *"Issue notice in regard to the validity of Section 12 of the U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986."*
> >
> > *Regard being had to the aforesaid, we shall only dwell upon and delve into the constitutional validity of Section 12 of the Act.*
>
> .....
>
> ***10.*** *To appreciate the rival submissions raised at the Bar in their proper perspective, we think it seemly to refer to the Statement of Objects and Reasons of the Act which is as follows:*
>
> > *"Gangsterism and anti-social activities were on the increase in the State posing threat to lives and properties of the citizens. The existing measures were not found effective enough to cope with this new menace. With a view to break the gangs by punishing the gangsters and to nip in the bud their conspiratorial designs it was considered necessary to make special provisions for the prevention of, and for coping with gangsters and anti-social activities in the State.*
> >
> > *Since the State Legislature was not in session and immediate legislative action in the matter was necessary, the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Ordinance, 1986 (U.P. Ordinance No. 4 of 1986) was promulgated by the Governor on 15-1-1986, after obtaining prior instructions of the President.*
> >
> > *The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Bill, 1986 is accordingly introduced with certain necessary modifications to replace the aforesaid Ordinance."*
>
> .....
>
> ***15.*** *The Statement of Objects and Reasons and the Preamble make it quite clear that the legislature felt the compulsion to make special provisions against gangsterism and anti-social activities. While speaking about terrorism, the majority in Kartar Singh [Kartar Singh v. State of Punjab, (1994) 3 SCC 569 : 1994 SCC (Cri) 899] opined that: (SCC pp. 633-34, para 68)*
>
> > *"**68.** ... it is much more, rather a grave emergent situation created either by external forces particularly at the frontiers of this country or by anti-nationals throwing a challenge to the very existence and sovereignty of the country in its democratic polity."*
> >
> > *The learned Judges put it on a higher plane than public order disturbing the "even tempo of the life of community of any specified locality" as has been stated by Hidayatullah, C.J., in Arun Ghosh v. State of W.B. [(1970) 1 SCC 98 : 1970 SCC (Cri) 67]*

5 (2013) 8 SCC 368

16. *The present Act deals with gangs and gangsters to prevent organised crime. Section 2 of the Act is the dictionary clause. Section 2(b) defines the term "gang" and we think it apt to quote the relevant part which is as follows:*

> *"**2. (b)** '**Gang**' means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in anti-social activities…."*
>
> *After so defining, the legislature has stipulated the offences which are punishable under the Act, but they need not be referred to.*

17. *The term "gangster" has been defined under Section 2(c) which is as follows:*

> *"**2. (c)** '**gangster**' means a member or leader or organiser of a gang and includes any person who abets or assists in the activities of a gang enumerated in clause (b), whether before or after the commission of such activities or harbours any person who has indulged in such activities;"*

18. *Section 3 of the Act deals with penalty. It is apt to reproduce the same:*

> *"**3. Penalty**.—(1) A gangster, shall be punished with imprisonment of either description for a term which shall not be less than two years and which may extend to ten years and also with fine which shall not be less than five thousand rupees:*
>
> *Provided that a gangster who commits an offence against the person of a public servant or the person of a member of the family of a public servant shall be punished with imprisonment of either description for a term which shall not be less than three years and also with fine which shall not be less than five thousand rupees.*
>
> *(2) Whoever being a public servant renders any illegal help or support in any manner to a gangster, whether before or after the commission of any offence by the gangster (whether by himself or through others) or abstains from taking lawful measures or intentionally avoids to carry out the directions of any court or of his superior officers, in this respect, shall be punished with imprisonment of either description for a term which may extend to ten years but shall not be less than three years and also with fine."*

19. *Section 5 of the Act deals with Special Courts and Section 5(1) provides that for the interest of speedy trial of offences under this Act, the State Government may, if it considers necessary, constitute one or more Special Courts. Section 7 deals with the jurisdiction of the Special Courts. Section 7(1) provides that:*

> *"**7. Jurisdiction of Special Court**.—(1) Notwithstanding anything contained in the Code, where a Special Court has been constituted for any local area, every offence punishable under any provision of this Act or any rule made thereunder shall be triable only by the Special Court within whose local jurisdiction it was committed whether before or after the constitution of such Special Court."*
>
> *Sub-section (2) of Section 7 lays the postulate that:*
>
> *"**7. (2)** All cases triable by a Special Court, which immediately before the constitution of such Special Court were pending before any court, shall on creation of such Special Court having jurisdiction over such cases, stand transferred to it."*

20. *Section 8 deals with the power of Special Courts with respect to other offences which reads as follows:*

> *"**8. Power of Special Courts with respect to other offences**.—(1) When trying any offence punishable under this Act a Special Court may also try any other offence with which the accused may, under any other law for the time being in force, be charged at the same trial.*
>
> *(2) If in the course of any trial under this Act of any offence, it is found that the accused has committed any other offence under this Act or any rule thereunder or under any other law, the Special Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof."*

21. *Section 10 provides the procedure and powers of Special Courts and Section 11 provides for protection of witnesses.*

22. *Section 12, the validity of which is under attack, is as follows:*

> *"**12. Trial by Special Court to have precedence**.—The trial under this Act of any offence by Special Court shall have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance."*

…..

32. *The present provision is to be tested on the touchstone of the aforesaid constitutional principle. The provision clearly mandates that the trial under this Act of any offence by the Special Court shall have precedence and shall be concluded in preference to the trial in such other courts to achieve the said purpose. The legislature thought it appropriate to provide that the trial of such other case shall remain in abeyance. It is apt to note here that "any other case" against the accused in "any other court" does not include the Special Court. The emphasis is on speedy trial and not denial of it. The legislature has incorporated such a provision so that an accused does not face trial in two cases simultaneously and a case*

before the Special Court does not linger owing to clash of dates in trial. It is also worthy to note that the Special Court has been conferred jurisdiction under sub-section (1) of Section 8 of the Act to try any other offences with which the accused may, under any other law for the time being in force, have been charged and proceeded at the same trial.

……

36. *On a careful scrutiny of the provision, it is quite vivid that the trial is not hampered as the trial in other courts is to remain in abeyance by the legislative command. Thus, the question of procrastination of trial does not arise. As the trial under the Act would be in progress, the accused would have the fullest opportunity to defend himself and there cannot be denial of fair trial. Thus, in our considered opinion, the aforesaid provision does not frustrate the concept of fair and speedy trial which are the imperative facets of Article 21 of the Constitution.*

.....

39. *From the aforesaid, it is quite clear that no individual has any right to hazard others' liberty. The body polity governed by the rule of law does not permit anti-social acts that lead to a disorderly society. Keeping the aforesaid perspective in view, the submission of the learned counsel for the petitioner and the argument advanced in oppugnation by the learned counsel for the respondent are to be appreciated. It is urged that an accused tried under this Act suffers detention as the trial in other cases are not allowed to proceed. As far as other cases are concerned, there is no prohibition to move an application taking recourse to the appropriate provision under the Code of Criminal Procedure for grant of bail. What is stipulated under Section 12 of the Act is that the trial in other case is to be kept in abeyance. The Special Courts have been conferred with the power to try any other offence with which the accused under the Act is charged at the same trial.*

40. *Quite apart from the above, the Act empowers the Special Courts to grant bail to an accused under the Act though the provision is rigorous. Sections 19(4) and 19(5) deal with the same. They are as follows:*

> *"**19. Modified application of certain provisions of the Code**.—(1)-(3)****
>
> *(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder 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 for 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) The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code."*

41. *The said provisions are akin to the provisions contained in Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The provision under Section 37 of the NDPS Act, though lays down conditions precedent and they are in addition to what has been stipulated in the Code of Criminal Procedure, yet there is no deprivation of liberty. Be it noted, a more stringent provision is contained in MCOCA under Section 21(5). It reads as under:*

> *"**21. (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."*

42. *A three-Judge Bench in State of Maharashtra v. Bharat Shanti Lal Shah [(2008) 13 SCC 5] dealing with the said facet has opined thus: (SCC p. 29, para 63)*

> *"63. As discussed above the object of MCOCA is to prevent the organised crime and, therefore, there could be reason to deny consideration of grant of bail if one has committed a similar offence once again after being released on bail but the same consideration cannot be extended to a person who commits an offence under some other Act, for commission of an offence under some other Act would not be in any case in consonance with the object of the Act which is enacted in order to prevent only organised crime."*
>
> *Thereafter, the learned Judges observed that the expression "or under any other Act" in the provision being discriminatory was violative of Articles 14 and 21 of the Constitution. Such a provision is absent in Section 19 of the Act. Thus, there being a provision for grant of bail, though restricted, we are disposed to think that the contention that the accused is compelled to languish in custody because of detention under the Act does not deserve acceptation and is, accordingly, negatived.*

43. *The next submission of the learned counsel is that it is in the nature of preventive detention as is understood under Article 22(4) of the Constitution of India. The said contention is to be taken note of only to be rejected, for the concept of preventive detention is not even remotely attracted to the arrest and detention for an offence under the Act.*

44. *The next proponement, as noted, pertains to the violation of the equality clause as enshrined under Article 14 of the Constitution. Mr Garg has endeavoured to impress upon us that the accused who is only tried by other courts gets the benefit of speedy trial whereas the accused tried under this Act has to suffer because the trial in other courts are kept in abeyance. We have already expressed our view that the concept of speedy and fair trial is neither smothered nor scuttled when the trial in other courts are kept in abeyance. As far as Article 14 is concerned, we do not perceive that the procedure provided in the Act tantamounts to denial of fundamental fairness in the trial. It does not really shock the judicial conscience and by no stretch of imagination, it can be said to be an anathema to the sense of justice. It is neither unfair nor arbitrary.*

45. *It is apposite to note here that there is a distinction between an accused who faces trial in other courts and the accused in the Special Courts because the accused herein is tried by the Special Court as he is a gangster as defined under Section 2(c) of the Act and is involved in anti-social activities with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person. It is a crime of a different nature. Apart from normal criminality, the accused is also involved in organised crime for a different purpose and motive. The accused persons under the Act belong to an altogether different category. The legislature has felt that they are to be dealt with in a different manner and, accordingly, the trial is mandated to be held by the Special Courts in an expeditious manner. The intention of the legislature is to curb such kind of organised crimes which have become epidemic in the society.*

(III). ***State of Maharashtra vs. Vishwanath Maranna Shetty[6]:***

29. *While dealing with a special statute like MCOCA, having regard to the provisions contained in sub-section (4) of Section 21 of this Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the*

6 (2012) 10 SCC 561

requisite mens rea. In view of the above, we also reiterate that when a prosecution is for offence(s) under a special statute and that statute contains specific provisions for dealing with matters arising thereunder, these provisions cannot be ignored while dealing with such an application. Since the respondent has been charged with the offence under MCOCA, while dealing with his application for grant of bail, in addition to the broad principles to be applied in prosecution for the offences under IPC, the relevant provision in the said statute, namely, sub-section (4) of Section 21 has to be kept in mind. It is also further made clear that a bare reading of the non obstante clause in sub-section (4) of Section 21 of MCOCA that the power to grant bail to a person accused of having committed offence under the said Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 but also subject to the restrictions placed by clauses (a) and (b) of sub-section (4) of Section 21. Apart from giving an opportunity to the prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. The satisfaction contemplated in clauses (a) and (b) of sub-section (4) of Section 21 regarding the accused being not guilty, has to be based on "reasonable grounds". Though the expression "reasonable grounds" has not been defined in the Act, it is presumed that it is something more than prima facie grounds. We reiterate that recording of satisfaction on both the aspects mentioned in clauses (a) and (b) of sub-section (4) of Section 21 is sine qua non for granting bail under MCOCA.

***30.** The analysis of the relevant provisions of MCOCA, similar provision in the NDPS Act and the principles laid down in both the decisions shows that substantial probable cause for believing that the accused is not guilty of the offence for which he is charged must be satisfied. Further, a reasonable belief provided points to existence of such facts and circumstances as are sufficient to justify the satisfaction that the accused is not guilty of the alleged offence. We have already highlighted the materials placed in the case on hand and we hold that the High Court has not satisfied the twin tests as mentioned above while granting bail.*

(IV). ***Collector of Customs v. Ahmadalieva Nodira*[7]*:***

***6.** As observed by this Court in Union of India v. Thamisharasi [(1995) 4 SCC 190 : 1995 SCC (Cri) 665 : JT (1995) 4 SC 253]*

7 (2004) 3 SCC 549

clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are : (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

7. *The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, 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 provision 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. In the case at hand the High Court seems to have completely overlooked the underlying object of Section 37. It did not take note of the confessional statement recorded under Section 67 of the Act. Description of drug at Serial No. 43 of the Schedule which reads as follows has not been kept in view:*

"Sl. No.	*International non-proprietary names*	*Other non-proprietary names*	*Chemical name*
	*	*	*
43	*DIAZEPAM*		*7-Chloro-1, 3-dihydro-1-methyl-5-phenyl-2H-1, 4-benzondiazepin-2-one*
	*	*	*"

In addition, the report of the Central Revenue Control Laboratory was brought to the notice of the High Court. The same was lightly brushed aside without any justifiable reason.

8. *In the aforesaid background, this does not appear to be a case where it could be reasonably believed that the accused was not guilty of the alleged offence. Therefore, the grant of bail to the*

accused was not called for. The impugned order granting bail is set aside and the bail granted is cancelled. The respondent-accused is directed to surrender to custody forthwith. Additionally, it shall be open to the trial court to issue notice to the surety and in case the accused does not surrender to custody, as directed, to pass appropriate orders so far as the surety and the amount of security are concerned. It is made clear that no final opinion on the merit of the case has been expressed in this judgment, and whatever has been stated is in the background of Section 37 of the Act for the purpose of bail.

(V). ***Kamlesh Pathak v. State of UP[8]:***

17. *Section 12 of U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 provides that trial under the Act of any offence by special court shall have precedence over the trial of any other case against the accused in any other court and shall be concluded in preference to the trial of such other case and accordingly trial of such other case shall remain in abeyance. The validity of the aforesaid Act was in question before the Hon'ble Supreme Court in the case of Dharmendra Kirthal v. State of U.P., (2013) 8 SCC 368. The Apex Court after detail analysis, upheld the constitutional validity of Section 12 of the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 by holding that it does not infringe any of the facets of Articles 14 and 21 of the Constitution of India.*

18. *Accordingly, it goes without saying that the case against the applicant under the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 shall have precedence over the trial of any other case against the accused.*

CONCLUSION:

21. Subsequent to the instant FIR, other FIRs have been instituted against the applicant and other co-accused persons, as such, inference can be drawn against the applicant. The circumstances and the gravity of offence mentioned in the said FIRs go against the applicant.

22. It is informed by learned A.G.A. that four witnesses have been examined and the trial is at its conclusive end. It is an admitted fact that co-accused person Hazi Iqbal @ Balla, who happens to be father of the applicant, had already fled the country and is residing in Dubai, as such, the applicant is a *'flight risk'*.

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23. The instant case does not seem to be a misuse of the act as the applicant has large criminal antecedents and he has committed offence subsequent to the institution of instant FIR also.

24. Thus, there are no reasonable grounds for this Court to believe that applicant is not a guilty of such offence and that he is not likely to commit any offence in future while on bail as is the requirement of Section 19(4) of the UP Gangsters Act.

25. Considering the submissions of learned counsel for the parties, nature of allegations, gravity of offence and all attending facts and circumstances of case, the Court is of the opinion that it is not a fit case for bail. Hence, the bail application of applicant is hereby ***rejected***.

26. However, it is directed that the aforesaid case pending before the trial court be decided expeditiously in view of the principle as has been laid down in the recent judgments of the Supreme Court in the cases of ***Vinod Kumar vs. State of Punjab***[9] and ***Hussain and Another vs. Union of India***[10], if there is no legal impediment.

27. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 11.11.2024
Vikas

(Justice Krishan Pahal)

9 (2015) 3 SCC 220
10 (2017) 5 SCC 702