Supreme Court of India
Chenna Boyanna Krishna Yadav vs State Of Maharashtra & Anr on 8 December, 2006
Author: D Jain
Bench: K.G. Balakrishnan, D.K. Jain

CASE NO.:
Appeal (crl.) 1286 of 2006

PETITIONER:
CHENNA BOYANNA KRISHNA YADAV

RESPONDENT:
STATE OF MAHARASHTRA & ANR.

DATE OF JUDGMENT: 08/12/2006

BENCH:
K.G. BALAKRISHNAN & D.K. JAIN

JUDGMENT:

J U D G M E N T (Arising out of S.L.P.(Criminal) No. 1358 of 2006) D.K. JAIN, J.:

Leave granted.

2. The challenge in this appeal is to Order dated 19.9.2005 passed by a learned Single Judge of the High Court of Judicature at Bombay, rejecting the second bail application preferred by the appellant under Section 439 of the Code of Criminal Procedure, 1973 (for short 'the Code').

3. The appellant is an Advocate by profession. In the year 1994 he was elected as a Member of the Legislative Assembly of the State of Andhra Pradesh. Till the year 1998 he was a Minister in the Andhra Pradesh Government. In the year 1999 he was again elected as a Member of the Legislative Assembly. Between the period from October, 1999 to November, 2001 he was again a Minister holding various portfolios.

4. One Abdul Karim Ladsab Telgi (hereinafter referred to as 'Telgi') was arrested and proceeded against for alleged commission of offences of printing and distributing counterfeit stamps/papers on a very large scale. During investigations, stamps/papers worth Rs.2,128 crores were seized. A second search on 11.1.2003 at one of the premises occupied by Telgi, conducted by the Special Investigating Team, resulted in the recovery of a micro audio cassette. The said cassette contained recording of alleged conversation between the appellant and Telgi. The date mentioned on the said cassette is 16.1.1998. On an analysis of the voice samples of the appellant, the Forensic Laboratory opined that the voice recorded in the said cassette was that of the appellant.

5. The case of the prosecution, based on the cassette, is that in the year 1998 the appellant was involved in the kidnapping of two employees of Telgi, namely, Abdul Wahid and Sadashiva. He demanded a ransom of Rs.2 crores from Telgi for their release. A deal materialised and as a result thereof the appellant came closer to Telgi. The friendship between the appellant and Telgi

blossomed and as a result wherefor, the appellant rendered active support and help to Telgi in his alleged unlawful activities of Organised Crime Syndicate in the State of Andhra Pradesh relating to printing of counterfeit stamps and other documents and sale thereof. The allegation, in short, is that the appellant received huge amounts of money from time to time from the Organised Crime Syndicate, headed by Telgi, and in return, being an influential political person, provided a protective umbrella to the Organised Crime Syndicate in carrying out unlawful activities in the State of Andhra Pradesh, and thus, knowingly facilitated and abetted the commission of an Organised Crime by the Syndicate of Telgi.

6. Investigations were initiated by a Special Investigation Team of the Mumbai Police but later on investigation of the case, along with other 47 cases, was transferred by this Court to the Central Bureau of Investigation. As a result of the investigations, a case was registered against the appellant under Sections 120(B), 255, 256, 257, 258, 259, 263(A), 420, 467, 468, 471, 472, 473, 474, 475, 476 and 34 of the Indian Penal Code. A case was also registered under the provisions of Section 63(a) and 63(b) of the Bombay Stamps Act, 1958. Subsequently, Sections 3 and 24 of the Maharashtra Control of Organized Crimes Act, 1999 (hereinafter referred to as 'MCOCA') were also invoked. Against some of the accused, including the appellant, commission of offences under Sections 7 and 13(i)(d) of the Prevention of Corruption Act, 1988 were also alleged.

7. The appellant was arrested on 6.9.2003 and was remanded to police custody. Since 26.9.2003 he is in judicial custody. The charge-sheet came to be filed on 29.12.2003. Subsequently some more charge-sheets were filed and finally a supplementary charge-sheet was filed by the CBI on 26.7.2005. All these charge-sheets were consolidated into one.

8. Appellant's first application for bail was rejected by the High Court on 6.8.2004. As noted above his second bail application has been rejected by the impugned order. Taking into consideration statements of some of the witnesses and the said tape recorded conversation between the appellant and Telgi, the learned Judge has come to the conclusion that, prima facie, there is material on record to show that the appellant had knowledge about the continuing organised crime of printing and selling of fake stamps; and he provided protection to continuing activities of sale of the fake stamps with the knowledge or having reason to believe that he was engaged in assisting Organised Crime Syndicate of Telgi. Thus, the learned Judge has come to the conclusion that the appellant abetted the commission of organised crimes.

9. Mr. Umesh U. Lalit, learned senior counsel appearing for the appellant, has submitted that on the basis of the material on record, including the statements of the four witnesses, referred to in the impugned order, no inference can be drawn that the appellant was a party to conspiracy or had abetted commission or facilitation of the crime with which Telgi or other co-accused were associated. It is urged that the allegation of demand of ransom of Rs.2 crores by the appellant from Telgi has no nexus with the principal offence alleged under MCOCA. Drawing support from the decision of this Court in Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra & Anr. , wherein various provisions of MCOCA, particularly the definition of the word "abet" contained in Section 2(1)(a) have been considered, learned counsel has contended that even if prosecution version is taken on its face value, the appellant's alleged association with Telgi would not bring his

case within the ambit of Section 3(2) and at best only Section 24 of MCOCA may be attracted. It is urged that the maximum punishment provided under Section 24 of MCOCA being three years' rigorous imprisonment and the appellant having already been in judicial custody for more than three years, he is entitled to be enlarged on bail. Learned counsel has also pointed out that at least three co- accused, namely, R.S. Sharma, Mohammad Chand Mulani and Babanrao Tukaram Ranjane, against whom much more evidence is available, have already been enlarged on bail by this Court.

10. Mr. Sushil Kumar, learned senior counsel appearing for the respondents, while opposing the bail to the appellant, has submitted that there is enough evidence on record to show that the appellant had abetted the said organised activity. Learned counsel has contended that the allegation regarding kidnapping of two men belonging to Telgi and demanding ransom cannot be termed as anti-thesis to the prosecution case and in fact the said act on the part of the appellant was the beginning of his association with Telgi which ultimately blossomed into close relationship with Telgi, which led the appellant to actively support the Organised Crime Syndicate of Telgi and in return he received large amounts from him.

11. The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State vs. Capt. Jagjit Singh and Gurcharan Singh vs. State (Delhi Admn.) and recently in Jayendra Saraswathi Swamigal vs. State of Tamil Nadu , which are:

" the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case."

12. However, as the provisions of MCOCA have been invoked in the instant case in addition to the afore- mentioned broad principles, the limitations imposed in the provisions contained in sub-section (4) of Section 21 of MCOCA cannot be lost sight of while dealing with the application for grant of bail. The relevant provision reads as under:

"(1) (2) (3) (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) (6) (7) "

13. It is plain from a bare reading of the non-obstante clause in the sub-section that the power to grant bail by the High Court or Court of Sessions is not only subject to the limitations imposed by Section 439 of the Code but is also subject to the limitations placed by Section 21(4) of MCOCA. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions 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 provisions 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. Thus, recording of findings under the said provision is a sine qua non for granting bail under MCOCA.

14. In R.B. Sharma's case (supra), construing the said provision somewhat liberally, S.B. Sinha, J. speaking for a three-Judge Bench observed thus:-

"43. Section 21(4) of MCOCA does not make any distinction between an offence which entails punishment of life imprisonment and an imprisonment for a year or two. It does not provide that even in case a person remains behind the bars for a period exceeding three years, although his involvement may be in terms of Section 24 of the Act, the court is prohibited to enlarge him on bail. Each case, therefore, must be considered on its own facts. The question as to whether he is involved in the commission of organised crime or abetment thereof must be judged objectively " "44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in future must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence." "46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the 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. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."

15. Bearing in mind the above broad principles, we may now consider the merits of the appeal.

16. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the appellant has committed offences under Section 3(2) or Section 24 of MCOCA. What is to be seen is whether there is a reasonable ground for believing that the appellant is not guilty of the two offences, he has been charged with, and further that he is not likely to commit an offence under MCOCA while on bail. As noted above, the circumstance which has weighed with the High Court to conclude that the appellant had the knowledge of Organised Crime Syndicate of Telgi, printing fake stamps etc. and these were being sold under the protection of the appellant and hence he had abetted an organised crime, is the alleged conversation between him and Telgi in January, 1998, after the kidnapping incident. In our view, the alleged conversation may show appellant's acquaintance with Telgi but may not per se be sufficient to prove appellant's direct role with the commission of an organized crime by Telgi, to bring home an offence of abetment in the commission of organized crime falling within the ambit of Section 3(2) of MCOCA and/or that he had rendered 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 had abstained from taking lawful measures under MCOCA, thus, falling within the purview of Section 24 of MCOCA. It is true that when the gravity of the offence alleged is severe, mere period of incarceration or the fact that the trial is not likely to be concluded in the near future either by itself or conjointly may not entitle the accused to be enlarged on bail. Nevertheless, both these factors may also be taken into consideration while deciding the question of grant of bail.

17. Having regard to the afore-mentioned circumstances, particularly the role attributed to the appellant in the charge-sheet, we are of the view that it is a fit case for grant of bail to the appellant.

18. Consequently, the appeal is allowed and the order passed by the High Court is set aside. It is directed that the appellant shall be enlarged on bail on his furnishing a personal bond in the sum of Rs.5 lakhs with two sureties, each in the like amount to the satisfaction of the Special Court, Pune. He shall also remain bound by all the conditions as stipulated in Section 438(2) of the Code. The appellant shall also surrender his passport, if any, before the Special Court, Pune.

19. It goes without saying that aforenoted observations on the merits of the material collected by the prosecution are tentative, only for the purpose of this appeal, and shall not be taken as an expression of final opinion on the merits of the case.