

State Of Maharashtra vs Vishwanath Maranna Shetty on 19 October, 2012

Equivalent citations: AIR 2013 SUPREME COURT 158

Author: P. Sathasivam

Bench: P. Sathasivam, Ranjan Gogoi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

1

2 CRIMINAL APPEAL NO. 1689 OF 2012

3 (Arising out of SLP (CrI.) No. 1522 of 2012)

The State of Maharashtra

.... Appellant(s)

Versus

Vishwanath Maranna Shetty

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

- 1) Leave granted.
- 2) This appeal is directed against the judgment and order dated

10.08.2011 passed by the High Court of Judicature at Bombay in Criminal Bail Application No. 872 of 2011 whereby learned single Judge of the High Court granted bail to the respondent herein - Accused No.9 in MCOC Special Case No. 10 of 2010 pending before the Special Court under the Maharashtra Control of Organised Crime Act, 1999 for Greater Bombay.

3) Brief facts:

(a) According to the prosecution, an “organised crime syndicate” headed by wanted accused Bharat Nepali and Vijay Shetty is operating overseas. The said syndicate has indulged in various continuous unlawful activities in the nature of extortion and contract killings in Mumbai and other places through their members. All the accused persons pending on the file before the MCOC Special Court, Greater Bombay are alleged to be the members of the said syndicate.

(b) On 03.06.2010, one Farid Tanasha, known criminal, was shot dead at his residence at Tilaknagar, Chembur, Mumbai. On the same day, an FIR being No. 122 of 2010 was registered against the accused persons under Sections 302 and 452 read with Section 34 and Section 120-B of the Indian Penal Code, 1860 (in short ‘IPC’) and under Sections 3, 25 and 27 of the Arms Act, 1959 at Tilaknagar Police Station.

(c) During investigation, DCB, CID, Unit No. 6, Mumbai learnt that the murder was committed on the instructions of Bharat Nepali and Vijay Shetty (wanted accused). Further, it was revealed in the investigation that one Dattatray Bhakare (Accused No. 7 therein) - a builder, had contracted Bharat Nepali and Vijay Shetty for eliminating Farid Tanasha (since deceased), who agreed to help the members of a Co-op. Housing Society in order to settle their dispute with the builder. It was also revealed in the investigation that the said builder allegedly financed a sum of Rs. 90 lakhs for the said killing.

(d) It was further revealed during investigation that the respondent herein was an active member of the “organised crime syndicate” and was managing funds of the syndicate and through him the money changed hands from co-accused Dattatray Bhakare to Jafar Razialam Khan @ Abbas and Mohd. Sakib Shahnawaz Alam Khan, Accused Nos. 1 & 2 respectively, who killed Farid Tanasha.

(e) On 25.09.2010, Commissioner of Police, Greater Bombay, accorded sanction for prosecution of the arrested accused persons including the respondent herein under Section 3(1)(i), (2) and (4) of the Maharashtra Control of Organised Crime Act, 1999 (in short ‘the MCOCA’) and hence the respondent is alleged to have committed the offences provided hereinabove along with the offence under Section 302 read with Section 120B of the IPC.

(f) The respondent herein preferred an application for bail in Special Case No. 10 of 2010 before the MCOC Special Court, Greater Bombay. By order dated 07.05.2011, the Special Court dismissed the said application.

(g) Being aggrieved, the respondent herein preferred Criminal Bail Application No. 872 of 2011 before the High Court. By impugned order dated 10.08.2011, the High Court accepted the case of the respondent and granted him bail by imposing certain conditions.

(h) Questioning the order granting bail to the respondent, the State of Maharashtra has filed the present appeal by way of special leave.

4) Heard Mr. Chinmoy Khaladkar, learned counsel for the appellant-State and Mr. U.U. Lalit, learned senior counsel for the respondent-accused.

5) The only point for consideration in this appeal is whether in the light of the allegations made and materials placed by the prosecution, the High Court was justified in granting bail, particularly, in the light of restriction imposed under Section 21(4) of MCOCA?

6) Learned counsel for the State, after taking us through the averments in the FIR, confessional statement of Mohd. Rafiq Abdul Samad Shaikh @ Shankar (Accused No. 6 therein), relevant provisions of MCOCA and other materials, submitted that the Special Court was fully justified in rejecting the application for bail filed by the respondent, who is arrayed as Accused No. 9. On the other hand, according to him, the High Court, having failed to notice the involvement of the respondent and his role in passing of the amount from Dattatray Bhakare - a builder to the actual killers, A-1 and A-2, granted bail to him.

7) Per contra, Mr. U.U. Lalit, learned senior counsel for the respondent, by pointing out the confessional statement of co-accused, who retracted later, and in the light of the provisions of MCOCA, submitted that the High Court was fully justified in granting bail to the respondent.

8) In order to appreciate the rival contentions, it is useful to refer the relevant provisions of MCOCA which are extracted hereinbelow. There is no dispute that apart from Section 302 read with Section 120-B of IPC, the respondent was charged with Section 3(1)(i), 3(2) and 3(4) of MCOCA. The relevant provisions of MCOCA read as under:

Section 2 of MCOCA deals with various definitions:

“2. Definitions. (1) In this Act, unless the context otherwise requires,—

(a) ‘abet’, with its grammatical variations and cognate expressions, includes,—

(i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate;

(ii) the passing on or publication of, without any lawful authority, any information likely to assist the organised crime syndicate and the passing on or publication of or distribution of any document or matter obtained from the organised crime syndicate; and

(iii) the rendering of any assistance, whether financial or otherwise, to the organised crime syndicate;

* * *
* * *

(d) 'continuing unlawful activity' means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-

sheets have been filed before a competent court within the preceding period of ten years and that court has taken cognizance of such offence;

(e) 'organised crime' means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;

(f) 'organised crime syndicate' means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime;

(g)....." "3. Punishment for organised crime- (1) Whoever commits an offence of organised crime shall,

(i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees one lac;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life, and shall also be liable to a fine, subject to a minimum of rupees five lacs.

(3) Whoever harbours or conceals or attempts to harbour or conceal, any member of an organised crime syndicate; shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs. (4) Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less, than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(5) Whoever holds any property derived of obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with a term which, shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs." "4. Punishment for

possessing unaccountable wealth on behalf of member of organised crime syndicate.

If any person on behalf of a member of an organised crime syndicate is, or, at any time has been, in possession of movable or immovable property which he cannot satisfactorily account for, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine, subject to a minimum fine of rupees one lac and such property shall also liable for attachment and forfeiture, as provided by section 20.” “21. Modified application of certain provisions of the Code.- (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.”

9) The very same provisions have been considered by this Court in *Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra & Anr.* (2005) 5 SCC 294. In this case, the provisions of MCOCA were invoked against one Telgi who was arrested and proceeded against for alleged commission of offence of printing counterfeit stamps and forgery in various States including the State of Maharashtra. He was figured as Accused No. 23 and one Shabir Sheikh as Accused No.25. After narrating all the details, this Court posed the following question:

“36. Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the court to record such a finding? Would there be any machinery available to the court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?” In an answer to the same, this Court held as under:

“38. We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. 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 requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.” “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 futuro 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.”

10) It is relevant to note that MCOCA was enacted to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang, and for matters connected therewith or incidental thereto. The Statement of Objects and Reasons for enacting the said Act is as under:

“Organised crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fuelled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering etc. The illegal wealth and black money generated by the organised crime being very

huge, it has had serious adverse effect on our economy. It was seen that the organised criminal syndicates made a common cause with terrorist gangs and foster terrorism which extend beyond the national boundaries. There was reason to believe that organised criminal gangs have been operating in the State and, thus, there was immediate need to curb their activities.

It was also noticed that the organised criminals have been making extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission would be an indispensable aid to law enforcement and the administration of justice.

2. The existing legal framework i.e. the penal and procedural laws and the adjudicatory system were found to be rather inadequate to curb or control the menace of organised crime. Government, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime.

It is the purpose of this Act to achieve these objects.” We have already mentioned the relevant definitions including the definition of ‘abet’, ‘continuing unlawful activity’, ‘organised crime’ and ‘organised crime syndicate’.

11) Keeping the above Objects and Reasons and various principles in mind, statutory provisions of MCOCA, restrictions for the grant of bail and the materials placed by the prosecution, let us consider whether the respondent has made out a case for bail?

12) Considering the arguments advanced by both the sides, we have meticulously analysed the reasoning of the special Court rejecting the application for bail filed by the respondent herein and impugned order of the High Court granting him bail. The materials placed indicate that the respondent is having an association with the overseas base wanted accused Nos. 1 and 2. It also indicates that the respondent knowingly handled the funds of the syndicate. The statement of one of the witnesses indicates that the respondent had asked the said witness to collect a sum of Rs.25 lakhs from the co-accused – Ravi Warerkar, however, the same was not materialized. In addition to the same, there is a statement of co-accused – Mohd. Rafiq that he collected Rs.15 lakhs from co-accused – Dattatray Bhakare and delivered it to the respondent. The confessional statement further indicates that the wanted accused - Vijay Shetty used to make calls using cell phone no. 0061290372184 to the respondent. The confessional statement also reveals that Accused No. 6 received Rs. 6 lakhs from the man of the respondent-accused. On perusal of the materials relied on by the prosecution, the special Judge concluded that the respondent had been working for the wanted accused, Vijay Shetty, and he used to receive ill- gotten money for him and prima facie the ingredients of the offence punishable under Section 4 of MCOCA attracts against the respondent-accused.

13) In the earlier part of our judgment, we extracted Section 21(4) of MCOCA which bars the Court from releasing the accused of an offence punishable under the said Act subject to the conditions prescribed in clauses (a) and (b) therein. We are of the view that sub-section (4) of Section 21 mandates that it is incumbent on the part of the Court before granting of bail to any person accused of an offence punishable under MCOCA that there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence while on bail.

14) In the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), similar provision, namely, Section 37, corresponding to Section 21(4) of the MCOCA has been substituted by Act 2 of 1989 with effect from 29.05.1989 with further amendment by Act 9 of 2001 which reads as under:

“37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) 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.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.” Sub-clause (2) also makes it clear that the limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force, on granting of bail.

15) The above provision was considered by this Court in Union of India vs. Rattan Mallik Alias Habul, (2009) 2 SCC 624. In this case, Union of India filed an appeal before this Court challenging the order of the Allahabad High Court suspending the sentence awarded by the trial Court to the respondent/accused therein for having committed offences under Sections 8/27-A and 8/29 of the NDPS Act and granting him bail. Considering the limitation imposed in sub-section (1) (b) of Section 37 of the NDPS Act, this Court held thus:

“12. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public 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. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on “reasonable grounds”.

13. The expression “reasonable grounds” has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide *Union of India v. Shiv Shanker Kesari*). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of “not guilty”. 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 accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail.

The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.” After saying so, on going into the materials placed and the reasoning of the High Court for grant of bail, this Court has concluded that the order passed by the High Court clearly violates the mandatory requirement of Section 37 of the NDPS Act and set aside the same with a liberty to decide afresh in the light of the limitations imposed. In the case on hand, we have already extracted the limitation/restrictions imposed in Section 21(4) of MCOCA for granting bail.

16) It is relevant to point out that the materials placed by the prosecution show that one Vijay Shetty and the respondent are members of Bharat Nepali’s “organized crime syndicate”. It is also the definite stand of the prosecution that the said Bharat Nepali as well as Vijay Shetty, who murdered Farid Tanasha are said to be out of India and are indulging into the organized crime through the members of the syndicate. The materials placed further show that Dattatray Bhakare-a builder, was

doing a project at Chembur, Mumbai and some members of the Co-operative Housing Society had some dispute with him, therefore, they had approached Farid Tanasha, who had a criminal background and he also agreed to help those persons in their dispute with the builder. On knowing this, Dattatray Bhakare contacted Bharat Nepali and Vijay Shetty for eliminating Farid Tanasha and for that he allegedly financed a sum of Rs.90 lakhs which was paid to the said wanted accused persons through the arrested accused persons. The investigation also reveals that about Rs. 9 lakhs were given to the main shooter – Mohd. Sakib Shahnawaz Alam Khan (Accused No.2) through Mohd. Rafiq (Accused No. 6). The said Accused No.6 made a confessional statement as far as the respondent herein is concerned. It was alleged that Accused No.6, on the instructions of the wanted accused - Vijay Shetty, used to collect money from the respondent and on several occasions, he handed over the same to Accused No. 2. It was also alleged that on the instructions of the wanted accused – Vijay Shetty, Accused No. 6 paid a sum of Rs. 15 lakhs to the respondent herein on 28.05.2011. It is the further case of the prosecution that in the third week of June, 2010, Accused No. 6 received an amount of Rs. 6 lakhs from an employee of the respondent. The substance of the allegation against the respondent is that part of the amount, which was given to the shooter for killing Farid Tanasha, had been passed on through him to the actual shooter. It is not in dispute that sanction under Section 23(2) of MCOCA had been accorded by the Commissioner of Police on 25.09.2010.

17) Considering the materials, particularly, in the light of the bar under Section 21(4) of MCOCA, the Special Court rightly rejected the application for bail filed by the respondent herein. From the materials placed, prima facie, it is clear that the respondent-accused had association with the wanted accused, Vijay Shetty and Bharat Nepali, who are notorious criminals and the act of the respondent comes within the definition of ‘abet’ as defined in Section 2(1)(a) of MCOCA.

18) As rightly pointed out by the learned counsel for the State that the High Court ought to have appreciated the statement of the co-accused- Mohammad Rafiq that on 28.05.2010, he collected Rs. 15 lakhs from co- accused- Dattatray Bhakare and delivered it to the respondent. The confessional statement further indicates that the wanted accused, Vijay Shetty used to make calls from cell phone no. 0061290372184 and call records also indicate that the cell phone that was being used by the respondent did receive overseas calls. The confessional statement further indicates that he received Rs. 6 lacs from the man of the respondent. The material placed by the prosecution also indicate that the respondent has been working for the wanted accused-Vijay Shetty and he used to receive ill-gotten money for him. We have already extracted Section 21(4) which interdict grant of bail to the accused against whom there are reasonable grounds for believing him to be guilty of offence under MCOCA.

19) We are satisfied that the High Court failed to appreciate the fact that the materials placed against the respondent consist of the confession made by the co-accused – Mohd. Rafiq which has been recorded under Section 18 of MCOCA, the statement of the employee of the respondent which indicates that the respondent handed over cash to him in the third week of June, 2010 and that the money received by the respondent and handed over to the main accused were part of the illegal transactions. The act of the respondent, prima facie, is well within the definition and also the statement of object and reasons of the MCOCA which we have already extracted. The act of the

respondent is of the abetment of the offence enumerated in MCOCA. At any rate, the materials placed by the prosecution show that the respondent had received ill-gotten money for the wanted accused – Vijay Shetty and, therefore, ingredients of Section 4 of MCOCA were attracted against him. We are satisfied that all these aspects have been correctly appreciated by the Special Court.

20) Though the High Court has adverted to all the above-mentioned aspects and finding that all those aspects have to be considered during the trial and even after finding that “it cannot be said that there are no reasonable grounds for believing that the applicant (respondent herein) has not committed an offence punishable under the MCOCA”, on an erroneous view, granted him bail which runs contrary to Section 21(4) of MCOCA.

21) 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 organized 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 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 there under, these provisions cannot be ignored while dealing with such an application. Since the respondent has been charged with 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 the 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.

22) The analysis of the relevant provisions of the MCOCA, similar provision in the NDPS Act and the principles laid down in both the decisions show 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.

23) In our opinion, the impugned order having been passed ignoring the mandatory requirements of Section 21(4) of MCOCA, cannot be sustained. Accordingly, the impugned order of the High Court dated 10.08.2011 in Criminal Bail Application No. 872 of 2011 granting bail to the respondent is set aside and the order of the special Judge dated 07.05.2011 in M.C.O. Special Case No.10 of 2010 is restored. In view of the same, the respondent is directed to surrender before the Special Court within a period of two weeks from the date of passing of this order, failing which, the special Court is directed to take appropriate steps for his arrest.

24) The appeal of State of Maharashtra is allowed.

.....J. (P. SATHASIVAM)J. (RANJAN
GOGOI) NEW DELHI;

OCTOBER 19, 2012.
