

(2016) 09 KAR CK 0041

KARNATAKA HIGH COURT

Case No: Writ Petition No. 33889 of 2016 (GM-RES) Connected with Writ Petition No. 41651 of 2016 (GM-RES)

Manjunath N. Nanjundaiah

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision: Sept. 23, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 438
- Karnataka Control of Organized Crimes Act, 2000 - Section 24, Section 3

Citation: (2016) 4 AirKarR 750 : (2016) 4 KCCR 3790

Hon'ble Judges: Anand Byrareddy, J.

Bench: Single Bench

Advocate: Shri Hashmatha Pasha, Advocate, for the Petitioner in Writ Petition No. 41651 of 2016 (GM-RES); A. S. Ponnanna, AAG-II and P. M. Nawaz, State Public Prosecutor, Smt. R. Anitha, Government Pleader, for the Respondent/State in Writ Petition No. 41651 of 201

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

1. **Anand Byrareddy, J.** - These petitions coming on for preliminary hearing are considered for final disposal, with the consent of the Counsel for the parties and are disposed of by this common order having regard to the similar grievance urged in these petitions.

2. In writ petition in WP No. 41651/2016, the petitioner was arrayed as accused No.15. The background to the case is as follows:

It is stated that initially, the Malleshwaram Police, Bangalore had registered a First Information Report (FIR) in Crime No.37/2016 for offences punishable under Sections 23 and 115 of the Karnataka Education Act, 1983 (Hereinafter referred to as the "KE Act", for brevity) on a report submitted by the Joint Director (Examinations),

Pre-University Board, Bangalore, alleging that the examination in respect of the Chemistry subject of the Second Year Pre-University Course was slated for 21.3.2016 and before the examination could be conducted, the question papers of the Chemistry subject were leaked. Therefore, on learning about the same, the examination was cancelled. The Joint Director had requested the Malleshwaram Police to investigate as to who were the persons responsible for the leakage of the question papers. After registration of the FIR, investigation was said to have been taken up by the Police, but in the course of investigation, the State Government had stepped in and had directed that the Criminal Investigation Department (CID) Police, Bangalore, take up the investigation. Accordingly, the Deputy Superintendent of Police, CID had taken up the investigation and in the course of the investigation, three of the accused, arraigned as accused Nos.1 to 3, were arrested on 4.4.2016 and they were said to have been produced before the Magistrate on 5.4.2016 and were remanded to police custody till 13.8.2016. Thereafter, they were remanded to judicial custody. They had filed bail applications before the Magistrate. The second respondent, the Additional Director General of Police, CID on 20.4.2016 passed an order under section 24(1)(a) of the Karnataka (Control of Organised Crimes) Act, 2000 (Hereinafter referred to as the "KCOC Act" for brevity) invoking the provisions of the said Act against accused Nos. 1 to 3. The investigating officer had accordingly added the offence punishable under Section 3 of the KCOC Act and submitted a requisition to the Special Judge appointed under the Act. It is subsequently that accused Nos.5 to 12 and 14 were arrested and produced before the court below and were remanded to police custody. It is the petitioner's case that he was in hospital at Haliyal on 11.5.2016 where he was arrested by the respondent - Police and thereafter he was brought to Bangalore and detained till 16.5.2016. On 16.5.2016, his arrest has been shown stating that the co-accused No. 14 is said to have stated that it was through this petitioner that the Second Year Pre-University Question papers were photographed with a mobile camera, in the treasury at Hangal and it appears that is how they were able to access the question papers. The Special Court on 17.5.2016. ordered police custody till 31.5.2016. After the completion of the custody period, he has been remanded to judicial custody and he has been in custody since 17.5.2016. Against the said order, the petitioner had filed a bail petition before this court in Criminal Petition No.4962/2016 and the same is pending consideration.

It is contended that it is by virtue of the prosecution having invoked the provisions of the KCOC Act, that the petitioner is being denied bail and is continuously in custody, though he is innocent of any act alleged against him. The petitioner is a public servant working as a Second Division Assistant in the Sub-Treasury at Hangal and there was no way in which the petitioner could have opened the treasury chest when he was not the person who was in custody of the keys to the chest and he does not have the authority to open the treasury chest admittedly where the

question papers were preserved. This is insofar as his defence on facts are concerned.

3. The connected petition in WP No. 33889/ 2016 is filed by accused No. 1, against whom the very same provisions of the KCOC Act have now been invoked.

4. Shri. Hashmath Pasha leading the arguments on the behalf of the petitioner in WP. No. 41651/2016 would draw attention to Section 24 of the KCOC Act, which is reproduced hereunder for ready reference:

"24. Cognizance of and investigation into an offence. -

(1) Notwithstanding anything contained in the Code,

(a) No information about the commission of an offence of organised crime under this Act shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;

(b) No investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.

(2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of an Additional Director General of Police."

The learned Counsel would contend that from a reading of sub-section (1), it is clear that even to record information about the commission of an offence of organised crime, the approval of a police officer not below the rank of a Deputy Inspector General of Police is required. This is the protection afforded to an accused against whom offences punishable under the KCOC Act are alleged. It is significant that in the FIR, the name of the petitioner does not figure. Therefore, investigation having been carried out and in the course of investigation while seeking remand orders, the prosecution having casually invoked the provisions of the KCOC Act, against the petitioner, has resulted in the rigour of the said legislation being made applicable even while considering the bail applications of the petitioner. This has caused serious prejudice and affects the right to liberty of the petitioner, which ought not to be. In this regard, the learned Counsel would point out, firstly, that the court would not be in a position to take cognizance of an offences punishable under the KCOC Act unless the first ingredient that in more than one case, where cognizance has been

taken by a court, of allegations of the offences punishable under the KCOC Act, is present. Insofar as the petitioner is concerned, there is no other case where the provisions of the KCOC Act have been invoked and in fact, there are no criminal cases against the petitioner at all. In that view of the matter, there is no prospect of the court taking cognizance of offences punishable under the provisions of the KCOC Act and therefore at this stage to take into account the rigour of the provisions of the KCOC Act while considering the bail application of the petitioner, causes grave prejudice and deprives him of liberty, when, on the face of it, the involvement of the petitioner and the possible commission of any crime is totally absent. The learned Counsel seeks to rely on decisions of the Supreme Court and would contend that in all cases where it is not made out that there are more than one case, of which cognizance has been taken by the court, of offences punishable under similar statutes, there can be no denial of bail. This, it is contended, has been recognised by this court, in the very proceedings, involving accused No. 16, in WP 33202/2016, dated 22.7.2016, whereby a learned Single Judge of this court has observed that the bar on restriction of grant of bail cannot operate against the petitioner, because it cannot be concluded whether the provisions of KCOC Act are attracted or not against the petitioner at the stage at which the case is pending. In that, the investigation is yet to be completed and the prosecution is yet to file a report into the court and the court is yet to take cognizance and unless there is sanction under section 24(2) of the KCOC Act, the court is barred from taking cognizance. When such stage has not been reached, it cannot be said that the provisions of the KCOC Act are attracted. It is in this vein that the learned Single Judge has observed that the restriction for grant of bail cannot operate against the petitioner. Therefore, the learned Counsel would submit that if a similar observation is made in the present case on hand, the petitioner would be satisfied.

5. It is similarly contended by the counsel for the petitioner in the connected case in WP No. 33889/2016, as it is alleged that there are no other cases pending against the petitioner or decided against the petitioner involving the provisions of the KCOC Act. A pre-condition for invoking the said provisions is that there must be more than one case in which the petitioner is involved or was involved in the past ten years prior to the complaint.

6. On the other hand, the learned Additional Advocate General Shri. A.S. Ponnanna, appearing for the State would vehemently oppose the petitions and would point out that insofar as the present petitions are concerned, the challenge is to the order passed under Section 24(1)(a), which is wholly irrelevant at this stage. The petitions are liable to be rejected as such. The prayer being considered at this stage is futile as the proceeding has progressed into an advanced stage of investigation and the report itself is to be filed soon and therefore the challenge to the order passed under section 24(1)(a) is wholly immaterial.

It is further contended that under section 24(1)(a), the authority concerned, only grants prior approval to record the information about the commission of an offence of organised crime. The name of the petitioner not being mentioned in the FIR in the first instance is of no consequence. The learned Additional Advocate General would in this regard point out the observations of the Supreme Court in the case of *Vinod G Asrani v. State of Maharashtra*, (2007) 3 SCC 633, wherein the Supreme Court has observed that the ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who had committed it. The scheme of the Code of Criminal Procedure, 1973 (Hereinafter referred to as the "CrPC", for brevity), makes it clear that once the information of the commission of an offence is received under Section 154 CrPC, the investigating authorities take up the investigation and file a charge-sheet against whoever is found during the investigation to have been involved in the commission of such offence. There is no hard and fast rule that the first information report must always contain the names of all persons who were involved in the commission of an offence. Very often the names of the culprits are not even mentioned in the FIR and they surface only at the stage of the investigation. The scheme under Section 23 of Maharashtra Control of Organised Crime Act, 1999, is similar to Section 24 of the KCOC Act and Section 23 (1)(a) therein provides a safeguard that no investigation into an offence under the MCOC Act should be commenced without the approval of the authorities concerned. Once such approval is obtained, an investigation is commenced. Those who are subsequently found to be involved in the commission of the organised crime can very well be proceeded against once sanction is obtained against them under Section 23 (2) of MCOC Act.

7. The learned Additional Advocate General would therefore point out that the petitioner having been implicated as an accused on investigation, throwing up incriminating material against him, does not deter the prosecution from proceeding against him in filing a charge sheet, after completion of the investigation against the present petitioner.

The grievance of the petitioner that since the provisions of the KCOC Act have been invoked, it is a deterrent for the bail court to consider his bail application is not a consideration. It is the prerogative of the prosecution to invoke the relevant provisions of law in respect of the acts committed by him and to thereafter substantiate the same. The apprehension that the mere invocation of the provisions even before the court has taken cognizance of the case would prejudice the petitioner's case for bail is not wholly correct. Attention is drawn to section 22(4)(b) of the KCOC Act, where it is made clear that if the court is satisfied 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 such offence while on bail, he can still be granted bail. Therefore, he would submit that the apprehension of the petitioner is misplaced and exaggerated and the present petitions are untenable and are to be dismissed.

8. In the light of the above contentions, from a reading of Section 24 of the KCOC Act, it is evident that prior approval granted to record the information about the commission of an offence of organised crime is the first step in the prosecution even seeking to invoke the provisions of the KCOC Act. It is plain from the language of section 24(1)(a) that there is no requirement that any particular accused should be named. It is the commission of an offence of organised crime which is relevant and if the authority is satisfied that such information can be recorded, there is no bar for the information to be recorded. In the instant case, if the petitioner in WP 41651 /2016 was not named in the FIR and he has been subsequently alleged of having committed offences in the course of the remand orders sought against him after he was arrested, that does not preclude the petitioner from seeking bail, as Section 22(4)(b) lays down that if the court is satisfied about the innocence of the accused, it can grant him bail. For it is the settled legal position that a case is considered to be instituted only upon the court taking cognizance of the case. In the present situation, unless there is prior sanction obtained, the Special Judge would not be in a position to take cognizance. That is yet to come about. Therefore, at this stage, the very invocation of the provisions of the KCOC Act by itself does not implicate the petitioner of having committed any such offence. It is a mere allegation. It is probably in that light that the learned single Judge of this court has gone one step further and has held that the restriction for grant of bail cannot operate against the petitioner in the case of one of the other accused, referred to above. Such a conclusion cannot be drawn in the present case on hand, at least in the opinion of this Bench. It is always open for the petitioner to demonstrate that no case could be made out against the petitioner under the provisions of the KCOC Act to be entitled to bail. When his bail petition is pending before this court, that opportunity is always available to him. Therefore, on that ground alone, interference in this petition is not warranted.

Similar would be the case insofar as the other petitioner in WP 33889/2016 is concerned.

Consequently, there is no substance in the petitions and the same are dismissed.

9. The further contention of the petitioners that unless there are at least two cases, in which cognizance had been taken, against the petitioners, for offences under the KCOC Act, the provisions would not be attracted, is sought to be met by the learned Additional Advocate General, to contend that if there is an organised syndicate and if there are members of the syndicate against whom allegations are made, the provisions of the KCOC Act are attracted. The others against whom there may not be any such cases would pale into insignificance and would come under the mischief of the KCOC Act is a contention and that controversy is left open, to be addressed at the appropriate stage, if at all. It does not arise at this stage when the court below is yet to take cognizance of the case.

The interim order stands vacated.

10. At this stage, Shri. Hashmath Pasha pleads this court observe that any observations made herein will not come in the way of considering the bail petition which is pending before another coordinate bench, is concerned. It goes without saying that the coordinate bench would not be deterred by the observations made herein in considering the bail petition.