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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 677/2012**

HONEY SHARMA

..... Petitioner

Through: Mr. Majeed Memon, Senior Advocate
with Mr. Zafar Sadique, Mr. Rajneesh
Chuni, Advocates.

versus

**STATE GOVT. OF NCT
OF DELHI**

..... Respondent

Through: Mr. Manoj Ohri, APP for State with
Addl. DCP L.M. Rao and Insp. A.K.
Singh, Special Cell, Delhi.

Reserved on : 8th October, 2012

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Date of Decision: 02nd November, 2012

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J :

1. Present petition has been filed under Section 439 Cr.P.C. seeking bail in FIR No. 71/2009 registered with Police Station Special Cell under Section 3 of The Maharashtra Control of Organized Crime Act, 1999 (for short 'MCOCA') as well as Sections 420/468/471/120B IPC and Section 12 of The Passports Act, 1967.

2. Mr. Majeed Memon, learned senior counsel for petitioner stated that though the petitioner was initially named in eleven cases, as of today she is involved in only four FIRs, namely :-

- (i) FIR No. 132/2002 registered with Police Station Defence Colony under Sections 420/468/471/120B IPC.
- (ii) FIR No. 160/2007 registered at Karnal under Sections 420/406/407/468/120B IPC.
- (iii) FIR No. 79/2006 registered at Pehowa, Kurukshetra, Haryana under Sections 420/406 IPC.
- (iv) FIR No. 263/2008 under Sections 420/406/506 IPC read with Section 12 of the Passports Act.

3. Mr. Memon further stated that the seven cases in which petitioner was an accused had either been settled or compounded or resulted in acquittal and even in the remaining four cases, she had been granted bail.

4. Mr. Memon pointed out that accused/petitioner had not been charged with any offence of money laundering or any serious crime. He pointed out that petitioner's husband, who is a travel agent, had only been accused of issuing fake visas and of giving false assurances of employment abroad.

5. Mr. Memon contended that none of the cases in which the petitioner had been charged would fall within the definition of 'organised crime' under MCOCA. According to him, accusations against the petitioner were neither grave nor serious. Since Mr. Memon laid considerable emphasis on paras 21 to 24 of ***Ranjitsing Brahmajeetsingh Sharma Vs. State of Maharashtra and Another, (2005) 5 SCC 294***, the same are reproduced hereinbelow:-

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

It was also noticed that the organized 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 organized 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 organized crime.

It is the purpose of this act to achieve these objects."

Section 2 is the interpretation clause. Section 2(1)(a), (d), (e) and (f) whereof read thus:

"2.(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;"

Sub-section (2) of Section 3 provides for punishment for organized crime in the following terms:

"3.(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organized crime or any act preparatory to organized 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 fine of rupees five lakhs."

Section 4 provides for punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate. Section 20 provides for forfeiture and attachment of property, sub-section (2) whereof reads as follows:

"20.(2) Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him, to pass an order that all or any properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the properties so attached shall stand forfeited to the State Government, free from all encumbrances."

Section 21 provides for modified application of certain provisions of the Code of Criminal Procedure, sub-section (4) whereof is as under:

"21.(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."

Section 24 reads, thus:

"24. Whoever being a public servant renders any help or support in any manner in the commission of organised crime, as defined in Clause (e) of Section 2, whether before or after the commission of any offence by a member of an organised crime syndicate or

abstains from taking lawful measures under this act or intentionally avoids to carry out the directions of any Court or of the superior police officers in this respect, shall be punished with imprisonment of either description for a term which may extend to three years and also with fine."

22. The interpretation clause as regard the expression "abet" does not refer to the definition of abetment as contained in Section 107 IPC. It refers to such meaning which can be attributed to it in the general sense with grammatical variations and cognate expressions. However, having regard to the cognate meaning, the term may be read in the light of the definition of these words under Sections 107 and 108 of the Indian Penal Code. The inclusive definition although expansive in nature, "communication" or "association" must be read to mean such communication or association which is in aid of or renders assistance in the commission of organized crime. In our considered opinion, any communication or association which has no nexus with the commission of organized crime would not come within the purview thereof. It must mean assistance to organised crime or organised crime syndicate or to a person involved in either of them. It, however, includes (a) communication or (b) association with any person with the actual knowledge or (c) having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate. Communication to, or association with, any person by itself, as was contended by Mr. Sharan, would not, in our considered opinion, come within meaning of the aforementioned provision. The communication or association must relate to a person. Such communication or association to the person must be with the actual knowledge or having reason to believe that he is engaged in assisting in any manner an organised crime syndicate. Thus, the offence under Section 3(2) of MCOCA must have a direct nexus with the offence committed by an organised crime syndicate. Such abetment of commission of offence must be by way of accessories before the commission of an offence. An offence may be committed by a public servant by reason of acts of omission and commission which would amount to tampering with the investigation or to help an accused. Such an act would make him an accessory after the commission of the offence. It is interesting to note that whereas Section 3(2) having regard to the definition of the term 'abet' refers directly to commission of an offence or assisting in any manner an organised crime syndicate, Section 24 postulates a situation

where a public servant renders any help or support both before or after the commission of an offence by a member of an organised crime syndicate or abstains from taking lawful measures under this Act.

23. Interpretation clauses contained in Sections 2(d), 2(e) and 2(f) are inter-related. An "organised crime syndicate" refers to an "organised crime" which in turn refers to 'continuing unlawful activity'. As at present advised, it may not be necessary for us to consider as to whether the words "or other lawful means" contained in Section 2(e) should be read "ejusdem generis"/"noscitur-a-sociis" with the words (i) violence, (ii) threat of violence, (iii) intimidation or (iv) coercion. We may, however, notice that the word "violence" has been used only in Section 146 and 153-A of the Indian Penal Code. The word "intimidation" alone has not been used therein but only Section 506 occurring in Chapter XXII thereof refers to "criminal intimidation". The word "coercion" finds place only in the Contract Act. If the words "unlawful means" are to be widely construed as including any or other unlawful means, having regard to the provisions contained in Sections 400, 401 and 413 IPC relating to commission of offences of cheating or criminal breach of trust, the provisions of the said Act can be applied, which prima facie, does not appear to have been intended by the Parliament.

24. The Statement of Objects and Reasons clearly state as to why the said Act had to be enacted. Thus, it will be safe to presume that the expression 'any unlawful means' must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control. In other words, an offence falling within the definition of organised crime and committed by an organised crime syndicate is the offence contemplated by the Statement of Objects and Reasons. There are offences and offences under the Indian Penal Code and other penal statutes providing for punishment of three years or more and in relation to such offences more than one charge-sheet may be filed. As we have indicated hereinbefore, only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA. Furthermore, mens rea is a necessary ingredient for commission of a crime under MCOCA."

6. Mr. Memon submitted that the petitioner/accused's case was on a much higher pedestal than the accused in *Ranjitsing Brahmajeetsingh Sharma* (supra) as the present petitioner was a woman and mother of three children including a breastfed child.

7. On the other hand, Mr. Manoj Ohri, learned APP for State stated that the petitioner was a member of an 'organized crime syndicate' along with her husband, brothers and brother-in-law. He stated that the said syndicate was involved in thirty one cases including attempt to culpable homicide not amounting to murder, wrongful confinement, criminal intimidation, cheating, forgery and criminal breach of trust and offences under The Passports Act etc. registered in various police stations in Delhi, Punjab and Haryana. He stated that out of these thirty one cases, petitioner was involved in eleven FIRs.

8. Mr. Ohri stated that at the time of petitioner's arrest, she was either wanted or had been declared proclaimed offender in nine out of eleven cases in which she had been named. He further stated that as petitioner was absconding, process under Section 82 Cr.P.C. had been initiated by the Special Court. It was only after two years of registration of cases that she was arrested on 6th January, 2012.

9. Mr. Ohri also stated that witnesses in their statement under Section 161 Cr.P.C. had not only specifically named the petitioner but had also described in detail the role played by her in the commission of crimes. He referred to contents of FIR No. 263/2008 registered on a complaint of Mr. Harish Idnani, husband of real sister of the petitioner to show that petitioner was actually involved in activities of organized crime syndicate and she had not even

spared her own blood relations. He stated that offences had been committed by the petitioner/accused either jointly or individually for pecuniary benefits in which they had used violence and criminal intimidation besides committing other offences like cheating, forgery etc. According to prosecution, accused persons as a syndicate, had allegedly cheated an amount of Rs. 4.5 crores from various victims.

10. Mr. Ohri pointed out that petitioner had five bank accounts in her name as well as aliases. He stated that these accounts showed transactions worth Rs. 1,83,35,093/- from her activities of organized crime and organized crime syndicate. He further pointed out that the accounts were in the name of Honey Sharma and that of one Honey Bhardwaj, daughter of Ramesh Bhardwaj, even though there was no person by the name of Ramesh Bhardwaj. According to the prosecution, in order to conceal her identity, petitioner/accused got a PAN card issued in the name of Honey Bhardwaj, daughter of Ramesh Bhardwaj, whereas her actual identity is Honey Sharma, wife of Vipin Sharma.

11. Mr. Ohri stated that scrutiny of the income tax returns filed by the petitioner revealed that between the years 2007 and 2010, she had declared gross receipt of Rs. 26,84,770/- in which the declared gross profit was Rs. 8,43,030/- as against her actual total transaction of Rs. 1,83,35,093/-.

12. According to prosecution, petitioner was the owner of two cars. While AUDI A4 car bearing No. DL-3CAY-0130 was registered in the name of Honey Sharma, wife of Vipin Sharma, the second car, i.e., Maruti Swift bearing No. HR-51-AD-3187 was registered in the name of Honey Bhardwaj, wife of Ramesh Bhardwaj.

13. Mr. Ohri pointed out that there had been recovery of passports containing fake visa stamps of New Zealand not only from the house which was under petitioner's tenancy but also from petitioner's car which was being driven by her husband at the time of her arrest. He submitted that in accordance with Section 22 of MCOCA, the presumption would be against the petitioner, till she proves to the contrary.

14. According to Mr. Ohri, petitioner had been named in FIRs which were registered under Section 506 IPC besides other sections. He pointed out that offence criminal intimidation was covered under the definition of 'organized crime' under Section 2(d) of MCOCA and there were also allegations under Section 308 IPC against other syndicate members.

15. Mr. Ohri also referred to a Full Bench judgment of the Maharashtra High Court in ***State of Maharashtra Vs. Jagan Gagansingh Nepali @ Jagya & Anr.*** in ***Criminal Appeal No. 20 and 407 of 2011*** decided on 5th August, 2011 wherein it has been held as under:-

"34. It can, thus, clearly be seen that the purpose behind enacting the MCOCA was to curb the activities of the organised crime syndicates or gangs. The perusal of the Preamble and the Statement of Objects and Reasons and Preface, in our considered view, does not lead to any narrower meaning that MCOCA has been enacted only for the purpose of curbing activities which involve pecuniary gains or undue economic advantages. The mischief which is sought to be cured by enactment of MCOCA is to curb and control menace of organised crime. The law has been enacted with the hope that the elements spread by the organised crime in the Society can be controlled to a great extent and for minimizing the fear spread in the society. If a narrower meaning as sought to be placed is accepted, it will frustrate the object rather than curing the mischief for which the Act has been enacted."

16. Having heard learned senior counsel for petitioner and learned APP for State, the question that arises for determination is what are the considerations to be kept in mind while granting bail to an accused charged under MCOCA.

17. It is pertinent to mention that my learned Predecessor had in a criminal appeal being CrI. A. 484/2012 filed by the State, vide order dated 30th April, 2012 stayed the operation of the order dated 31st March, 2012 passed by Additional Sessions Judge whereby the petitioner had been discharged under Section 3 of MCOCA. Consequently, present bail application has to be decided treating the petitioner as an accused under MCOCA.

18. Section 21(4) of MCOCA which deals with consideration for grant of bail is reproduced hereinbelow:-

“21. Modified application of certain provisions of the code.

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(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.”

19. The Supreme Court in ***Chenna Boyanna Krishna Yadav Vs. State of Maharashtra and Anr., (2007) 1 SCC 242*** after considering its earlier judgment in ***Ranjitsing Brahmajeetsingh Sharma*** (supra) has held as under:-

“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 the

Court of Session 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."

20. A passport is a property of the Government and is given by a State to its citizen so as to provide him with an identity proof. In the opinion of this Court, any endeavour on the part of any individual to forge, falsify or tamper with any passport has serious consequences inasmuch as it not only constitutes a threat to national and international security but it also diminishes a national symbol as well as the value of identity papers issued by a particular country and results in every citizen of that country being subjected to much greater scrutiny and harassment.

21. This Court is *prima facie* of the view that petitioner was involved in illegal activities of crime syndicate and not merely a puppet in the hands of her husband. The petitioner having used fake names/aliases for opening bank accounts, obtaining PAN card, purchasing cars and the statement of witnesses in FIR No. 263/2008 naming her specifically for commission of offences,

prima facie show her conscious involvement in illegal activities of the crime syndicate running into several crores of rupees.

22. Further, the past conduct of the petitioner in avoiding arrest for two years after registration of FIR under MCOCA and also the conduct of her husband and brother in producing fake production warrant would show that it cannot be said that the petitioner would not commit similar offence while on bail.

23. Consequently, present petition for bail at this stage is rejected. It is made clear that the observations made by this Court are only in the context of present bail petition and the same would not prejudice either of the parties at the stage of trial.

MANMOHAN, J

NOVEMBER 02, 2012

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