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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 2/2013**

SUMIT KAPOOR @ AMIT

..... Petitioner

Through: Mr. Manoj Sharma and Mr. Shaid Ali
Rao, Advocates

versus

STATE

..... Respondent

Through: Mr. Mukesh Gupta, Additional Public
Prosecutor for the state with
Mr. J.K. Sharma, ACP/DG Cell
Central Distt. & Inspector Braj
Mohan PS Kirti Nagar.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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11.07.2013

By invoking sub-sections 4 & 5 of Section 3 of The Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as MCOCA) petitioner has been called upon to face the trial in FIR No. 137/11 under Sections 392/397/468/471/34 I.P.C. read with Sections 25, 27, 54 & 59 of Arms Act read with Sections 3(1), (ii) of MCOCA registered at PS Kirti Nagar, Delhi by trial court vide impugned order of 1st November, 2012.

Activities of petitioner and his co-accused were put under surveillance and thereupon it had come to light that activities of petitioner and his co-accused were of an organized crime

syndicate. To highlight petitioner's involvement in running an organized crime syndicate, details of fifteen cases against petitioner and his co-accused are given in the impugned order. Out of fifteen cases, petitioner is an accused in atleast three of them, which attract the provisions of MCOCA. Infact, if more than one charge-sheet is filed in a criminal case pertaining to unlawful activity relating to organized crime within preceding 10 years then the provisions of MCOCA would be attracted.

Challenge to the impugned order by petitioner's counsel is on the ground that petitioner's statement under Section 18 of MCOCA has not been recorded and so his prosecution in FIR in question with the aid of Section 3 of MCOCA is bad in law. It was urged by petitioner's counsel that out of fifteen cases as highlighted in the impugned order only one case is pending and so petitioner cannot be tried by invoking MCOCA and he ought to be discharged.

Learned Additional Public Prosecutor supports the impugned order and submits that there is a statement of main accused recorded under Section 18 of MCOCA which incriminates petitioner and for invoking MCOCA, involvement of an accused in more than one case of organized crime is sufficient and it is immaterial whether a similar other case against accused is pending or has been concluded. It is pointed out that mother of petitioner

had not disclosed any source of income and the amount of ₹8,63,000/- deposited in her account was out of proceeds of the organized crime syndicate of which petitioner is a member and petitioner had re-paid the loan amount of her mother out of proceeds relating to unlawful activities and thus petitioner's prosecution by invoking MCOCA is fully justified. Learned Additional Public Prosecutor also relied upon decision of a Division Bench of this Court in *Om Prakash Shrivastav v. State of NCT of Delhi* 2009 (164) DLT 218 to assert that provisions of MCOCA can be invoked if cognizance is taken in more than one charge-sheet and in the instant case, petitioner has been charge-sheeted in three cases whose details have been given in the impugned order.

After having heard both the sides and on perusal of impugned order and material on record, I find that challenge to the impugned order is on the grounds which can be tested at trial. It would be pre-mature to jump to any conclusion as to whether Section 30 of the Evidence Act can be legally invoked on the basis of statement made by main accused under Section 18 of MCOCA. Pertinently, statement made under Section 18 of MCOCA is per se admissible. Involvement of an accused in more than one case of organized crime is sufficient to attract the provisions of MCOCA.

Impugned judgment while applying the ratio of the Apex Court decision in *Ranjitsinh Brahmajeetsing Sharma v. State of Maharashtra & Anr.* AIR 2005 SC 2277 has rightly called upon petitioner to face the trial with the aid of Section 3 of MCOCA and the parameters governing consideration on the point of charge as enumerated by the Apex Court in *Ramesh Singh v. State of Bihar* AIR 1977 SC 2018 and reiterated by this Court in *Mathura Dass & Ors. v. State* 2003 II AD (Crl.) DHC 437 have been rightly applied by trial court as even on strong suspicion, an accused can be asked to face the trial if the Court is prima facie satisfied about involvement of petitioner in the crime in question.

Apex Court in *Amit Kapoor v. Ramesh Chander and Another* (2012) 9 SCC 460 has reiterated the parameters which govern the framing of a charge. The pertinent observations made by the Apex Court in *Amit Kapoor* (supra) are as under: -

"At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at the stage."

In view of the foregoing narration, I find that impugned order

does not suffer from any illegality or infirmity. As a consequence thereof, this petition is dismissed while not commenting on merits of this case lest it may prejudice petitioner at trial.

(SUNIL GAUR)
Judge

JULY 11, 2013
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