

Mr. Shirish Gupte, Senior Advocate a/w. Mr. Abhaykumar Apte i/b.
Mr. Prashant Pandey for Applicant.
Ms Aruna S. Pai, APP for Respondent-State.

CORAM : R. G. KETKAR, J.
Reserved on: 22ND JULY, 2015
Pronounced on: 9TH DECEMBER, 2015

Heard Mr. Gupte, learned Senior Counsel for the applicant and Ms Pai, learned APP for the State at length.

2. By this Application under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), the applicant - accused No.9 prays for enlarging him on bail in M.C.O.C. Special Case No.10 of 2010 arising from D.C.B. C.I.D. C.R. No.60/2010 registered at Tilaknagar Police Station, transferred C.R. No.122/2010. The said C.R. was registered for the offences punishable under Sections 452, 302 and 34 Indian Penal Code, 1860 (for short 'I.P.C.') read with Sections 3(1)(i), 3(2), 3(4) and 3(5) of the Maharashtra Control of Organized Crime Act, 1999 (for short M.C.O.C. Act). The applicant had earlier preferred application for bail in Special Case No.10 of 2010 before the M.C.O.C. Special Court, Greater Mumbai. By order dated 07.05.2011, the Special Court dismissed the application. The applicant thereafter preferred Criminal Bail Application No.872 of 2011 in this Court. By order dated 10.08.2011, this Court granted him bail by imposing certain conditions. The said order was challenged by the respondent. After hearing both sides, the Apex Court allowed the Appeal preferred by the respondent

and set aside the order dated 10.08.2011 passed by this Court and restored the order dated 07.05.2011 passed by the learned Special Judge. The applicant was directed to surrender before the Special Court within a period of 2 weeks from the date of the order. The applicant has filed this second application for enlarging him on bail.

3. Criminal Bail Applications No.586 of 2014, 1653 of 2014 and 713 of 2014 were listed before Hon'ble Mr. Justice Abhay M. Thipsay on 28.04.2015. In paragraph 5 of order dated 28.04.2015, it was observed that “since these applications have been clubbed together and since the previous application filed by one of the applicants – Dattatray Bhakare (applicant herein) was dealt with by Shri Justice R. G. Ketkar, Registry to examine whether all these applications have been properly listed before me. If any orders for placing the matters before one and the same Judge are necessary, the Registry may do the needful.”

4. In pursuance of that order, Registrar (Judicial-I) placed submissions before the Hon'ble the Chief Justice. By administrative order dated 05.05.2015, the Hon'ble the Chief Justice directed the Registry to list all these applications before this Court. Accordingly, I have heard the learned Counsel appearing for the parties at length. As the arguments in Criminal Bail Application No.1653 of 2014 were not concluded, the order is being pronounced today alongwith the order in Criminal Bail Application No.1653 of 2014.

5. According to the prosecution, an “organized 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 are alleged to be the members of the said syndicate.

6. On 03.06.2010, one Farid Tanasha, known criminal, was shot dead at his residence at Tilaknagar, Chemur, Mumbai. On the same day, an FIR was registered against the accused persons under Sections 302 and 452 read with Section 34 and Section 120-B I.P.C. and under Sections 3, 25 and 27 of the Arms Act, 1959 at Tilaknagar Police Station.

7. 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) – a builder had contracted Bharat Nepali and Vijay Shetty for eliminating Farid Tanasha, who agreed to help the members of Hamlog Co-operative 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 lac for the said killing.

8. It was further revealed during investigation that the applicant herein was an active member of the 'organized 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 and 2 respectively, who killed Farid Tanasha.

9. On 25.09.2010, Commissioner of police, Greater Bombay accorded sanction for prosecution of the arrested accused persons including the applicant herein under Sections 3(1)(i), (2) and (4) of the M.C.O.C.Act and hence the applicant is alleged to have committed the offences provided hereinabove along with the offence under Section 302 r/w. Section 120-B I.P.C.

10. In support of this Application, Mr. Gupte submitted that the applicant was arrested on 02.07.2010. He was released on bail in pursuance of the order passed by this Court on 10.08.2011. The State Government challenged that order in the Apex Court. The Apex Court allowed the Appeal on 19.10.2012. The applicant was taken in custody on 03.11.2012 and is presently in custody. Thus, the applicant is in jail for more than 3 years and 10 months. He further submitted that the incriminating material, at the highest, against the applicant is the confessional statement. The said statement is subsequently retracted. Even if that confessional statement is considered, there is no material to implicate applicant / accused No.9. The confessional statement of accused No.2 Mohd. Sakib does not refer to role of the applicant. The statement of the employee of the applicant shows that on 03.06.2010, some cash transaction took place between the applicant and the co-accused to whom he could not identify. He submitted that under Section 10 of the Indian Evidence Act, 1872 (for short 'Evidence Act'), if statement of accomplice is to be used, it cannot be used as the alleged conspiracy came to an end. In any case, the statement does not indicate involvement of applicant in conspiracy of murder. He submitted that it is the case of the prosecution that accused No.7 -Dattatray Yeshwant Bhakare undertook project of slum rehabilitation at Chembur. There was dispute between some members of Hamlog Co-operative Housing Society and accused No.7. The members approached Farid Tanasha. He was the member of Chota Rajan, a leader of organized crime syndicate. Accused No.7 approached Bharat Nepali and Vijay Shetty absconding accused, allegedly members of Chota Rajan. They defected from Chota Rajan and started their own syndicate. It is the case of the prosecution that accused No.7 paid Rs.90 lacs to Bharat Nepali and Vijay Shetty to commit murder of Farid Natasha. Accused No.2-main shooter was paid Rs.9 lacs through accused No.6 Mohd. Rafiq. The prosecution alleged

that accused No.6, on instructions of the wanted accused Vijay Shetty, used to collect money from the applicant and on several occasions, he handed over the same to the accused No.2. It was also alleged that on the instructions of the wanted accused Vijay Shetty - accused No.6 paid the sum of Rs.15 lacs to the applicant 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 lacs from an employee of the applicant. The substance of the allegation against the applicant 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.

11. Mr. Gupte submitted that the confessional statement of accused No.2 was retracted before the Metropolitan Magistrate, Elsplanade, Mumbai. The said statement cannot be considered while deciding the bail application. The said aspect was not agitated before the Apex Court while dealing with the previous bail application. The said aspect is, therefore, required to be considered in the present application.

12. He submitted that there is no prima facie evidence indicating that the present applicant is benefited monetarily i.e. he got any pecuniary benefit in the alleged crime. He submitted that there is no record of whatsoever nature to indicate that the applicant had any contact with the so called gangsters Bharat Nepali and Vijay Shetty so as to connect him with the 'organized crime syndicate' headed by the wanted accused. Merely because the confessional statement indicates that the wanted accused called on the mobile of the applicant that by itself does not mean that he was associated with the crime syndicate. There is no intercepted conversation between the absconding accused Vijay Shetty and the applicant so as to connect him to the alleged organized crime syndicate headed by Bharat Nepali and Vijay Shetty. He further submitted that even after considering the alleged confessional statement

of accused No.2, there is no evidence on record to show that amount allegedly received from the accused No.7 by the present applicant is in respect of the funds of the 'organized crime syndicate'. It, therefore, cannot be said that the applicant was in any way connected with the 'organized crime syndicate'. He submitted that though accused No.1 is charged for providing the fire-arms to the accused, who had actually eliminated Farid Tanasha, has been released by the trial Court on bail, the prosecution did not file any application for cancellation of bail of the said accused.

13. Mr. Gupte submitted that the confessional statement must be free from any inducement, threat or promise. The statement should be voluntary. He further submitted that considering the material on record, at the highest, without admitting, it can be said that the applicant has committed offence under Section 4 of the M.C.O.C. Act for which he is punishable with an imprisonment for a term which shall not be less than 3 years and which may extend to 10 years in addition to minimum fine of Rs.1 lac among others. He submitted that as the applicant is languishing in jail for more than 3 years, this is a fit case for enlarging him on bail.

14. Mr. Gupte relied upon the decision of the Apex Court in the case of *State of Maharashtra Vs. Bharat Chaganlal Raghani*, (2001) 9 SCC 1. He submitted that in that case, the trial Court excluded confessional statements on the grounds that - (i) the Magistrate, before whom the accused were directed to be produced along with original statements of confession in terms of Rule 15(5) of the Terrorist and Disruptive Activities (Prevention) Rules, 1986 (for short "TADA Rules") framed under the TADA Act, had failed to inquire from the accused as to whether they had made voluntary statements before the police officer and to record the replies of the accused; (ii) that as PW48 had received a

call on 27th August, 1995 to carry the confessional statements to the Magistrate, its recording on 28th August, 1995 was highly improbable; and (iii) that there were interpolations in the original confessional statements recorded by PW38.

15. In paragraph 35, the Apex Court reproduced Rule 15 of the TADA Rules. In paragraph 36, the Apex Court held that Rule 15 does not oblige such Magistrate either to open the envelop containing the confessional statement recorded by the police officer or to satisfy himself regarding the voluntary nature of the confession. The Magistrate, at the most, can record the statement of the accused if made regarding alleged harassment, torture or the like. If the Magistrate, referred to in Sub-rule (5) of Rule 15 has to ascertain the voluntary nature of the confessional statement, the purpose of Section 15 authorising a police officer to record the confessional statement shall stand frustrated. It was, therefore, not correct on the part of the Designated Judge to hold, "it was obligatory on the part of the Magistrate to question the accused as to whether they had made the said statements voluntarily or otherwise and that ought to have been formed as a part of the record of the confessional statements which were sent to her".

16. He submitted that the said decision was rendered under the Terrorist and Disruptive Activities (Prevention) Act, 1987. In the present case, the accused is charged under MCOC Act. Section 18(2) of MCOC Act lays down that the confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him. Sub-section (3) thereof lays down that the Police Officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against

him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is being made voluntarily. The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and time of the same. Sub-section (4) lays down that every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence. Sub-section (5) lays down that the person from whom a confession has been recorded under sub-section (1) shall also be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under sub-section (4) alongwith the original statement of confession, written or recorded on mechanical device without unreasonable delay. Sub-section (6) lays down that the Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon. He submitted that there is no provision in the TADA Act and TADA Rules similar to Section 18(6) of MCOC Act.

17. He also relied upon the decision of the Apex Court in the case of *Jameel Ahmed Vs. State of Rajasthan*, (2003) 9 SCC 673 and submitted that Rule 15(5) is only directory and not mandatory. The Apex Court held that scheme of Rule 15 shows that the object of the Rule is to safeguard the interest of the maker of the confession by directing the confessional statement to be taken out of the hands of the Police so that

there could be no subsequent interpolation. In that case, the confessional statement was directly transmitted to the designated Court and the Apex Court was considering the genuineness of the said confessional statement.

18. Finally Mr. Gupte submitted that when the Apex Court allowed the Appeal preferred by the State Government and set aside the order passed by this Court enlarging the applicant on bail, the Apex Court did not consider - (i) the retraction of the confessional statement and (ii) telephonic conversations with accused No.9. For all these reasons, he submitted that the applicant is entitled to enlarge on bail on such terms and conditions as this Court deems fit and proper.

19. On the other hand, Ms Pai submitted that no case is made out for enlarging the applicant on bail. She has taken me through the order dated 14.03.2012 passed by this Court in Criminal Appeal No.1502 of 2011 and in particular paragraphs 19, 20 and 23 thereof. She submitted that in the present case, confessional statements of accused Nos.2 and 6 have been recorded after following the procedure laid down in Section 18 of MCOC Act. The said statements are the substantive piece of evidence, which can be used even against the co-accused if held to be admissible, voluntary and believable. In the case of *State of Maharashtra Vs. Nalini*, (1999) 5 SCC 253, the Apex Court held that a confession recorded under Section 15 of the TADA Act has to be considered as a substantive piece of evidence not only against the maker of its but also against its co-accused. She submitted that applicant has not brought on record any change in circumstances after the order of the Apex Court dated 19.10.2012 canceling the bail. She, therefore, prayed for dismissal of the application.

20. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is necessary to consider whether the applicant has made out a case for bail.

21. I have carefully gone through the confessional statements of accused No.2 Mohd. Sakib Shahnawaz Alam Khan and accused No.6 Mohd. Rafiq Abdul Samad Shaikh @ Shankar. Perusal of the materials placed on record prima facie indicate that applicant is having an association with overseas based wanted accused Bharat Nepali and Vijay Shetty. Confessional statement of accused No.6 shows that he had collected Rs.15,00,000/- from accused No.7 Dattatray Bhakare and delivered it to the applicant on 28.05.2011. The confessional statement further indicates that wanted accused Vijay Shetty used to make calls using cell phone No.0061290372184 to the applicant. The said statement reveals that accused No.6 received Rs.3,00,000/- to Rs.3,50,000/- from the applicant. The statement also reveals that the accused No.6 received Rs.6,00,000/- from an employee of the applicant.

22. Mr. Gupte submitted that the confessional statement of accused No.2 Mohd. Sakib does not refer to the role of the applicant. The said statement is subsequently retracted. Even if that confessional statement is considered, there is no material to implicate the applicant. I do not find any merit in this submission. Perusal of the confessional statement of accused No.6 clearly spells out the active role of the applicant. It is also evident from the confessional statement of the accused No.6 that applicant was in constant touch with the absconding accused Vijay Shetty. I, therefore, do not find any merit in the submission of Mr. Gupte that the Apex Court while allowing the appeal of the State of Maharashtra, did not consider telephonic conversations with the

applicant.

23. As noted earlier, by order dated 10.08.2011, this Court enlarged the applicant on bail. Aggrieved by that decision, the State of Maharashtra approached the Apex Court. By order dated 19.10.2012, the Apex Court allowed the Appeal and set aside this Court's order dated 10.08.2011 in Criminal Bail Application No.872 of 2011 and restored the order dated 07.05.2011 passed by the learned Special Judge. The Apex Court considered various provisions of the MCOC Act and more particularly, Sections 2(1)(a), (d), (e) and (f), 3, 4 and 21 thereof. The Apex Court also considered decision in the case of *Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra*, **(2005) 5 SCC 294**, and in particular paragraphs 36, 38, 44 and 46 thereof. The Apex Court considered the statement of objects and reasons for enacting MCOC Act, the provisions of Section 37 of the the Narcotic Drugs and Psychotropic Substances Act, 1985 as also the decision in the case of *Union of India Vs. Rattan Mallik @ Habul*, **(2009) 2 SCC 624**, and in particular paragraphs 12 to 14 thereof.

24. The Apex Court considered the materials placed by the prosecution in paragraphs 16 to 19 and held in paragraph 22 that on the basis of material placed on record, the High Court did not satisfy the twin tests laid down under Section 21(4)(a) and (b) of the MCOC Act while granting the bail. In paragraph 23, the Apex Court held that the High Court passed the order ignoring the mandatory requirements of Section 21(4) of the MCOC Act and consequently cannot be sustained. Mr. Gupte submitted that the Apex Court did not consider retraction of the confessional statement of the accused No.2 and 6. I have carefully perused the confessional statement of accused No.2 . It was recorded by the Deputy Commissioner of Police, Zone I, Mumbai on 22.07.2010. As

required by Section 18(3), prima facie, the said Police Officer had followed the procedure laid down therein. The statement of the accused No.2 was recorded between 13.30 p.m. and 14.30 p.m. He was thereafter asked to be produced on 24.07.2010. The said police officer satisfied himself that the accused No.2 proposed to make a confessional statement voluntarily. Accordingly, on 24.07.2010, the confessional statement of accused No.2 was recorded. Perusal of this statement, prima facie, shows that the accused No.2, on the basis of the instructions given by the accused No.1, came to Mumbai. He was informed that the accused Vijay Shetty's associate, by name Shankar, will contact him, as also show him residence of the person at Chembur who has to be done away. The statement further shows that Shankar is none other than accused No.6. Accused No.6 gave him Sim card bearing Mobile No.9594699924 and accused No.6 and accused No.2 were in constant touch with each other. The wanted accused Vijay Shetty, through one of his associates, handed over pistol and revolver as also bullets. Accused No.6 handed over Rs.1,00,000/- to him. Accused No.6 thereafter gave him another Sim card and on 23.05.2010, accused No.6 informed accused No.2 that Farid Tanasha had gone out of Mumbai along with his wife. Thereafter, on 01.06.2010, accused No.6 contacted accused No.2 and informed that Farid Tanasha returned to Mumbai. Accused No.2 along with the wanted accused Jishan, accused No.3 Twinkal and accused No.4-Pankaj came to Tilak Nagar at 8.30 p.m. on 03.06.2010. At 9.30 p.m., accused No.6 contacted accused No.2 on mobile and thereafter accused No.2, accused No.3 Twinkal, accused No.4-Pankaj and accused No.5-Randhirsingh @ Nikhil proceeded towards Farid Tanasha. Accused Jishan came on bike. They forcibly entered the house of Farid Tanasha and he went in search of Farid Tanasha and ultimately found him in bedroom. He fired seven bullets on Farid Tanasha and Randhirsingh @ Nikhil fired two bullets and thereafter they

escaped.

25. I have also carefully perused the confessional statement of accused No.6. From the material on record, it is evident that statement of accused No.6 was recorded by Deputy Commissioner of Police, Zone-II, Mumbai on 22.07.2010. The first part of the confessional statement was recorded between 11:15 and 12:30 hours. The questions and answers recorded in Marathi were read over by the said officer. Accused No.6 was informed that he will be produced before him i.e. the said officer after completion of 24 hours i.e. on 23.07.2010 at 13 hours. On 23.07.2010, part II confessional statement of accused No.6 was recorded. The said officer satisfied himself that accused No.6 is ready to confess without fear and pressure and that his confession is voluntary. The said statement was recorded between 14:40 and 16:45 hours. After recording of that statement, he issued certificate under Section 18(1) of MCOC Act. Accused No.6 was immediately produced before the Chief Metropolitan Magistrate on 23.07.2010 at 6:10 p.m. along with the letter addressed to him and the sealed envelope stating that it was containing confessional statement Part I and Part II made by accused No.6 Perusal of part I and part II of the confessional statement, prima facie, shows that the said officer has followed the procedure laid down under Section 18(3) of the Act.

26. Perusal of part-I of the said confessional statement, prima facie, indicates that the Deputy Commissioner of Police, Zone-II, Mumbai recorded the confession in the language known by accused No.6. Perusal of questions No.4, 7 to 12 and answers given by accused No.6, prima facie, indicates that the said police officer has followed the procedure laid down under Section 18(3). I have also perused part-II of the confessional statement of the accused No.6. Perusal of this part, prima facie, indicates that accused No.6 was in constant touch with

wanted accused Vijay Shetty, accused No.2 (one of the assailants), accused No.7, accused No.1 and accused No.10. Mr. Gupte submitted that accused No.6, thereafter retracted his confessional statement and therefore, no reliance can be placed on that confession. Prima facie, I do not find any substance in the submission advanced by Mr. Gupte. In the case of **State of Maharashtra** (*supra*), and in particular paragraph 36 thereof, the Apex Court, while construing the provisions of Rule 15 of the TADA Rules and Section 15 of the TADA Act, held that the Magistrate, at the most, can record the statement of accused, **if made**, regarding alleged harassment, torture or the like. If the Magistrate referred to in sub-rule (5) of Rule 15 has to ascertain the voluntary nature of the confessional statement, the purpose of Section 15 authorizing police officer to record confessional statement shall stand frustrated.

27. As noted earlier, in the instant case, after recording the confession of accused No.6, he was immediately produced before the Chief Metropolitan Magistrate on 23.07.2010 at 6.10 p.m. along with a letter addressed to him along with a sealed envelope stating that it was containing confessional statement part-I and part-II made by the accused No.6. The Chief Metropolitan Magistrate, with respect, followed the procedure not contemplated by Section 18 of the MCOC Act. In that, the Chief Metropolitan Magistrate opened the sealed cover and read over and explained the entire contents of the statement of part-I recorded on 22.07.2010 and thereafter recorded response of accused No.6. In my opinion, the procedure followed by the Chief Metropolitan Magistrate, prima facie, is contrary to the provisions of Section 18 of the MCOC Act as also the judgment of the Apex Court in the case of **State of Maharashtra** (*supra*). Prima facie, the procedure followed by the learned Magistrate has frustrated the purpose of Section 18 authorizing police officer to record confessional statement.

28. In the case of *S. N. Dubey Vs. N. B. Bhoir*, **2000 (2) SCC 254**, the Apex Court has held that confession of the accused recorded under Section 15 of the TADA Act is a substantive piece of evidence which can be used even against the co-accused, if held to be admissible, voluntary and believable. The Apex Court referred to its earlier decision in the case of *State Vs. Nalini*, **(1999) 5 SCC 253**, wherein it is held that a confession recorded under Section 15 of the TADA Act is to be considered as a substantive piece of evidence not only against the maker of it but also against its co-accused. The said principles are reiterated by the Apex Court in the case of **Bharat C. Raghani**, (*supra*). Prima facie, the confessional statements of accused No.2 and 6 are recorded by following due process of law. The statements are also prima facie admissible as they are voluntary and believable.

29. Mr. Gupte relied upon Rule 15 of the TADA Rules vis-a-vis Section 18 of MCOC Act. The said provisions in juxtaposition reads thus,

Rule 15 of TADA Rules:

15. Recording of confession made to police officers.- (1) A confession made by a person before a police officer and recorded by such police officer under Section 15 of the Act shall invariably be recorded in the language in which such confession is made and if that is not practicable, in the language used by such police officer for official purposes or in the language of the Designated Court and it shall form part of the record.

(2) The confession so recorded shall be shown, read or played back to the person concerned and if he does not understand the language in which it is recorded, it shall be interpreted to him in a language which he understands and he shall be at liberty to explain or add to his confession.

Section 18 of MCOC Act:

18. Certain confessions made to police officer to be taken into consideration.- (1) Notwithstanding anything in the Code or in the Indian Evidence Act 1872, but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator:

(3) The confession shall, if it is in writing, be - (a) signed by the person who makes the confession; and

(b) by the police officer who shall also certify under his own hand that such confession was taken in his presence and recorded by him and that the record contains a full and true account of the confession made by the person and such police officer shall make a memorandum at the end of the confession to the following effect:

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing and recorded by me and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

Sd/- Police Officer"

(4) Where the confession is recorded on any mechanical device, the memorandum referred to in sub-rule (3) in so far as it is applicable and a declaration made by the person making the confession that the said confession recorded on the mechanical device has been correctly recorded in his presence shall also be recorded in the mechanical device at the end of the confession.

(5) Every confession recorded under the said Section 15 shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Designated Court which may take cognizance of the offence.

Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him.

(3) The Police Officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is being made voluntarily. The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and time of the same.

(4) Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.

(5) The person from whom a confession has been recorded under sub-section (I) shall also be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under sub alongwith the original statement of confession, written or recorded on mechanical device without unreasonable delay.

(6) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon.

30. Section 18 (6) of the MCOC Act lays down that the Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, **if any, made** by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon. In paragraph 36 of **State of Maharashtra** (*supra*), the Apex Court while construing sub-rule (5) of Rule 15 of the TADA Rules held that Rule 15 does not oblige Magistrate either to open the envelope containing the confessional statement recorded by the police officer or to satisfy himself regarding the voluntary nature of the confession. The Magistrate, at the most, can record the statement of the accused if made regarding alleged harassment, torture or the like. If the Magistrate, referred to in sub-Rule (5) of Rule 15 has to ascertain the voluntary nature of the confessional statement, the purpose of Section 15 authorizing a police officer to record the confessional statement shall stand frustrated. In my opinion, the said decision applies on all fours while construing Section 18(6) of the MCOC Act. In fact, Section 18(6) of MCOC Act is in tune with decision of **State of Maharashtra** (*supra*). In my opinion, the procedure followed by the Chief Metropolitan Magistrate prima facie is contrary to the provisions of Section 18 of the MCOC Act as also the decision of the Apex Court in the case of **State of Maharashtra** (*supra*). Prima facie, the procedure followed by the learned Magistrate has frustrated the very object of Section 18 authorizing police officer to record confessional statement.

31. Mr. Gupte also relied upon the decision of the Apex Court in the case of **Jameel Ahmed** (*supra*). The Apex Court held that Rule 15(5) of TADA Rules is directory and not mandatory. In my opinion, the decision is not applicable to the facts of the present case. In the light of

the aforesaid discussion, I do not find that this case advances the case of the applicant.

32. Mr. Gupte submitted that in any case, at the highest, it can be said that the applicant has committed offence under Section 4 of the MCOC Act, which is punishable with an imprisonment for a term, which shall not be less than 3 years and which may extend to 10 years in addition to minimum fine of Rs.1,00,000/- among others. He submitted that the applicant is languishing in jail for more than 3 years, and therefore, this is a fit case of enlarging him on bail. In view of the materials on record, I do not find any merit in this submission.

33. Ms Pai submitted that the prosecution has moved the Special Court for securing presence of accused No.2 so as to frame charges in the present case. She submitted that the learned Special Judge has issued production warrants against accused No.2 on - (i) 12.05.2014, (ii) 23.06.2015 and (iii) 31.07.2015. The learned Special Judge has also issued a letter on 27.07.2015 in that regard to the learned Additional Sessions Judge / Special Judge, Allahabad.

34. Having regard to the material placed on record prima facie, I am satisfied that there are reasonable grounds for believing that the applicant is guilty of offences of which he is being tried. Hence, no case is made out for enlarging the applicant on bail. Application fails and the same is rejected reserving liberty to the applicant to apply for bail after 6 months depending upon the outcome of prosecution in ensuring framing of charges in the presence of accused No.2.

(R. G. KETKAR, J.)