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

+ CRL.M.C. 4393/2016 & CRL.M.A.18333/2016

VIJAY SOOD @ BILLU Petitioner

Through: Mr.Bahar U Barqi, Adv. with
Mr.Ritesh Bahari, Mr.Kaustubh and
Ms.Deepti Gupta, Advs.

versus

STATE NCT OF DELHI & ANR Respondents

Through: Mr.Sanjay Jain, ASG with Ms.Rajul
Jain, Ms.Kanika Singh and
Ms.Aastha, Advs.
Ms.Kusum Dhalla, APP for State.
Mr.Sachin Sharma, ACP/Gokalpuri
SI Vivek Sharma, PS-Gokalpuri

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

% **21.12.2016**

Counsel for the petitioner has submitted that the petitioner is apprehending arrest from Police Station-Bhajanpur in case FIR No.1227 dated 27th November, 2015 in which invocation of the MCOCA is like to take effect. Counsel for the petitioner has further submitted that as per Section 2 (d), (e) and (f), the MCOCA Act is to be applied in at least more than two FIRs registered but qua against the present petitioner in the instant case it is not the case so. Learned counsel for the petitioner has further submitted that the Investigating Officer of the case is adamant to invoke the present petitioner in the aforesaid MCOCA case which as per law should not do it as the life and liberty under Article 21 of the Constitution of India comes in the way and relied upon the flowing judgments.

1. Ranjit Singh Bharamjit Singh Sharma versus State of Maharashtra

& Anr. reported as 2005 5 SCC 294

2. State of Maharashtra & Ors versus Lalit Somdatta Nagpal & Anr. reported as 2007 2 SCR 473

3. Mahipal Singh versus CBI reported as AIR 2014 SC 2660

4. Prasad Shrikant Purohit versus State of Maharashtra reported as AIR 2015 SC 2514

5. Vikas versus State of Rajasthan reported as 2014 CRL.L.J. 183

On the other hand Mr.Sanjay Jain, learned ASG has submitted that the impugned order in challenge is dated 13th October, 2016. He has submitted that the source so as to reach to pass the order dated 13th October, 2016 is nothing but a disclosure statement made by one of the co-accused who has already been arrested in MCOCA and on the disclosure statement of the co-accused, the Investigating Officer issued notice under Section 160 Cr.P.C to the petitioner on 17th July, 2016 and thereafter again the Investigating Officer issued notice under Section 160 Cr.P.C to the petitioner on 22nd August, 2016. Learned ASG further submitted that the Investigating Officer further interrogated another co-accused and he also disclosed the involvement of the present petitioner. He has further submitted that despite issuance of notice, the petitioner did not make himself available for interrogation and subsequently on 8th September, 2016 the Investigation Officer tried to locate the petitioner but his house was found locked. Thereafter, the Investigating Officer informed the Court of the non-availability of the petitioner and the Court below proceeded with issuing NBW against the petitioner on 9th September, 2016. Learned ASG has further submitted that the petitioner was searched on 12th September, 2016, 24th September, 2016, 10th

October, 2016 and 12th October, 2016 but again his house was found locked. He has further submitted that on 13th October, 2016, the Court below found no other alternative except to proceed with the matter by issuance of process under Section 82 Cr.P.C read with Section 20 of the MCOC Act. Learned ASG further submitted that after order was passed on 20th October, 2016 for issuance of process under Section 82 Cr.P.C, letters were issued for publication of proclamation in the local newspaper Pioneer and Dainik Jagran and the same were published on 27th October, 2016 and thereafter on 17th November, 2016, the Investigating Officer once again visited the residence of the petitioner where the wife of the petitioner Smt.Sangita Sood was found which shows that the Investigating Officer was serving the petitioner at the correct address and despite taking best efforts, the petitioner has been evading the judicial process and the instant petition filed by the present petitioner is nothing but abuse of process of law. Learned ASG has further submitted that all the aforesaid dates and the Investigating Officer's best effort to arrest the petitioner shows nothing but the present petitioner is evading the process of law which cannot be permitted and all the action taken by the Investigating Officer shows that the action taken by the Investigating Officer is bonafide as per law and the present petition be dismissed.

In rebuttal, learned counsel for the petitioner has submitted that all the documents relied upon by the respondent-State brought to the notice of this Court is fabricated and opposed the same.

In rebuttal, learned ASG has pointed out that the aforesaid document can be conveyed only to the Court and not to the opposite party as the same pertains to the ongoing investigation and the documents have been

shown from case diary and the same cannot be informed to the opposite party.

From the perusal of the record it shows that the petitioner is wanted for investigation in the instant case on the disclosure of the co-accused persons. However, to attract the provisions of MCOCA it has to meet the requirements as per the law laid down in the following judgments:

(i) ***State of Maharashtra versus Jagan Gagansingh Nepali @ Jagya & Anr.*** reported as ***2011 AIIMR (Cri) 2961*** where it has been observed that “.....From the perusal of section 2(e), it can be seen that the following ingredients will be necessary to make out the case of an organised crime: (i) that there has to be a continuing unlawful activities; (ii) that such an activity will have to be by an individual, singly or jointly; (iii) that such an activity is either by a member of an organised crime syndicate or on behalf of such syndicate; (iv) that there has to be use of violence or threat of violence or intimidation or coercion or other unlawful means; (v) that such an activity has to be with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for the person who undertakes such an activity or any other person or promoting insurgency. The ingredients of continuing unlawful activities would be: (i) that such an activity should be prohibited by law for the time being in force; (ii) that such an activity is a cognizable offence punishable with imprisonment of three years or more (iii) that such an activity is undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate; (iv) that in respect of such an activity more than one charge-sheet must have been filed before a competent Court; and (v) that the charge-sheets must have

been filed within a preceding period of ten years; and (vi) that the Courts have taken cognizance of such offences.....”

(ii) ***State of Maharashtra & Ors. versus Lalit Samdatta Nagpal & Anr.*** reported as **2007 2 SCR 473** where it has been observed that “..... to apply the provisions of MCOCA something more in the nature of coercive acts and violence is required to be spelt out so as to bring the unlawful activity complained of within the definition of “organized crime” in Section 2 (a) of MCOCA.....”

(iii) ***Prasad Shrikant Purohit versus State of Maharashtra & Anr.*** reported as **AIR 2015 SC 2514** wherein it has been observed that “.....A strict interpretation of Section 2(1)(d) would definitely mean the fulfillment of such requirement since the definition specifically reads to the effect 'undertaken either singly or jointly as a member of an organized crime syndicate or on behalf of such syndicate'. Therefore, even if the earlier offences were not initiated under the provisions of MCOCA such initiations should have been capable of being brought within the provisions of MCOCA, namely, as part of an activity of an organized crime syndicate either by its own members either singly or jointly or though not as a member but such participation should have been on behalf of an 'organized crime syndicate'. As far as filing of the charge-sheet is concerned what all it refers to is such filing before a Competent Court and that Court should have taken cognizance of such offence.....”.

Since the petitioner has not joined and avoided the investigation and the process under Section 82 Cr.P.C has already been initiated, it is appropriate for the petitioner to surrender either before the concerned

Court or before the Investigating Officer forthwith and the concerned Court below is directed to proceed with the matter while attracting the MCOCA in the instant case as per the law laid down in ***State of Maharashtra & Ors. versus Lalit Samdatta Nagpal & Anr.*** reported as ***2007 2 SCR 473***, ***State of Maharashtra versus Jagan Gagansingh Nepali @ Jagya & Anr.*** reported as ***2011 AIIMR (Cri) 2961*** and ***Prasad Shrikant Purohit versus State of Maharashtra & Anr.*** reported as ***AIR 2015 SC 2514***.

The present petition is dismissed. All pending application(s) (if any) also stand disposed of. Trial Court Record be sent back forthwith alongwith copy of this order.

Copy of this order be given *dasti*, as prayed.

I.S.MEHTA, J

DECEMBER 21, 2016/radhika