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

+ CRL.A. 678/2018 and Crl. M.B. no. 1034/2018 (suspension of sentence)

BALDEV RAJ @ BILLU Appellant
Through Mr. Roshan Lal Saini and Ms. Kavita Saini, Advs.

versus

STATE Respondent
Through Dr. M.P. Singh, APP with SI Vivek Malik, P.S. Vasant Kunj (S)

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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13.09.2018

1. Admit.
2. With the consent of the parties, arguments heard.
3. Appellant has been convicted under Section 3(1)(ii) of Maharashtra Control of Organized Crime Act, 1999 (MCOCA) by the trial Court. Appellant has been sentenced to face imprisonment for the period already undergone by him, that is, eight years and 4 months and to pay fine of ₹5,00,000/-; and in default of payment of fine to undergo simple imprisonment of two years.
4. Prosecution case, in brief, is that appellant, along with co-accused, was part of an organized gang comprising of Mohd. Irfan, Shahbuddin,

Paras, Rafiq and Munesh Kumar. The gang was involved in criminal cases of kidnapping, murder, robbery, dacoity, night burglary, theft etc. Organized activities surfaced during the investigation of FIR No. 45/2009 dated 12th November, 2009 under Sections 395/397 IPC registered at police station Vasant Kunj South, regarding the incident of robbery at Farm House no. 59, Silver Farms House, Road No. 2, Near Ghitorni. It was revealed that appellant was involved in the following cases:-

S. No.	Particulars of the cases	Police station	Accused Persons	Brief facts of the case and the pecuniary gains received by accused Ajay Sethi
1	FIR No.549/09 dated 28.09.09 u/s395/397 IPC	Mehrauli ND	Rafiq, Sahabuddin @ Shabbu, Mohd. Irfan	Baldev Raj @ Ballu alongwith his associates robbed the inmates of Farm House No. A-31, Ansal Villa, Satbari, New Delhi at gun point and after tying the inmates, cash and jewellery worth Rs.8 lacs were taken away by them
2	FIR No. 325/09 dated 16.06.09 u/s 392/34 IPC	Mehrauli	Rafiq, Shahbuddin @ Shabbu, Mohd. Irfan	Baldev Raj @ Ballu alongwith his associates robbed the inmates of Farm House No.370, Near Durga Ashram Chattarpur, New Delhi at gun points and after tying them, robbed them off for cash and jewellery worth Rs. 34 lacs.

3	FIR No.45/09 dated 03.11.09 u/s 395/397/412/IPC & 25/27/54/59 Arms Act	Mehrauli ND	Rafiq, Shahbuddin @ Shabbu, Mohd. Irfan, Pappu Verma, Paras, Munesh	Baldev Raj @ Ballu and his associates robbed Farm House No. 59, Silver Oak Farms, Road no.2, Near Ghitorni. They also overpowered the German Diplomat on the point of threat to life and looted valuables including jewellery, cash, two wrist watches, two cameras, MP 3 players and a few foreign currency notes of different countries, the worth of the looted items was Rs. 3 lacs
4	FIR No. 468/07 u/s 458/380 IPC,	Sector 10, Gurgaon HR	Jai Prakash, Akram Khan, Islam	Baldev Raj @ Ballu and his associates stolen copper items worth Rs.75,000/-
5	FIR No. 390/07 u/s457/380 IPC	Sector- 10, Gurgaon HR	Jai Prakash, Akram, Hogesh, Lalit, Irshad	Baldev Raj @ Ballu and his associates burgled the factory and stolen factory items worth Rs.1 lac
6	FIR No. 433/07 u/s 380 IPC	Sector 10A, Gurgaon HR	Jai Prakash, Akram	Baldev Raj @ Ballu and his associates stolen aluminium items worth Rs. 40,000/-.
7	FIR No. 424/07 u/s 380 IPC	Sector- 10, Gurgaon HR	Jai Prakash, Akram	Baldev Raj @ Ballu and his associates stolen the aluminum spare parts worth Rs.75,000/-
8	FIR No. 394/07 u/s 457/380 IPC	PS Sector 10, Gurgaon HR	Jai Prakash, Akram	Baldev Raj @ Ballu and his associates Burgled and stolen steel plates worth Rs. 37,000/-

5. Learned counsel for the appellant submits that out of eight cases as shown above, all the cases have been disposed of except FIR no. 325/2009.

6. Prosecution examined 54 witnesses to support the allegation that appellant was a member of the organized gang along with the co-convict, details of these witnesses are PW1 Faizan Elahi, PW2 HC Ram Chander, PW3 Ct. Joginder Singh, PW4 SI Gajraj Singh, PW5 Rahim Khan, PW6 SI

Pratibha Sharma, PW7 ASI Krishan Lal, PW8 Shakuntala, PW9 Kamal Kant Gautam, PW10 HC Jeet Ram, PW11, HC Dilbag Singh, PW12 HC Gajanand, PW13 Retired ASI Attar Singh, PW14 Shishir Malhotra, PW15 Retired ASI Attar Singh, PW16 SI Darshana, PW17 HC Ram Kumar, PW18 Retired ASI Attar Singh, PW19 SI Zilley Singh, PW20 Retired SI Surjit, PW21 WSI Suman, PW22 ASI Rajinder Singh, PW23 WSI Poonam, PW24 SI Jai Singh, PW25 Retired ASI Rajender Singh, PW26 HC Krishan, PW27ASI Zile Singh, PW28 Retired SI Chand Singh, PW29 ASI Jagmer Singh, PW30 SI Ram Phal, PW31 SI Satyadev Singh, PW32 SI Dhanesh Kumar, PW33 SI Kundan Lal, PW34 ASI Ram Chandeer, PW35 SI Liyaqat Ali, PW36 SI Raj Bala, PW37 Insp. Jai Prakash, PW38 SI Sukram Pal, PW39 Rajesh Panwar, PW40 Virender Singh Chahal, PW41 Ct.Ajay Pal Singh, PW42 Ms. Kiran Bansal, PW43 Satpal, PW44 Dinesh Kumar, PW45 SI Pramod Kumar, PW46 Satpal, PW47 Retired SI Ram Ratan, PW48 Insp. OP Thakur, PW49 Ms. Aruna Chettri, PW50 Sameer Singh, PW51 Ajay Kashyap, PW52 Addl. DCP Mohd. Ali, PW53 Chander Kant, PW54 Raj Kumar Sharma.

7. Trial court has found the testimonies of these witnesses to be trustworthy and reliable and has concluded that the appellant was one of the

members of this organized gang, consequently, convicted the appellant for the offence punishable under Section 3(1)(ii) of MCOCA.

8. During the course of hearing, no discrepancy could be pointed out by the learned counsel for the appellant in the statements of these witnesses so as to make them unreliable and untrustworthy, inasmuch as challenge to the conviction of appellant has been given up on merits, on instructions of the appellant present in Court. The only prayer pressed by the appellant is that the sentence of two years of simple imprisonment awarded to the appellant in default of payment of fine, may be reduced to the period already undergone by him, which is about five months. It is submitted that appellant is a poor person. Appellant is 35 years of age and has a family comprising of his wife and a minor daughter, who are leading life of vagary in view of the fact that appellant is in continuous incarceration for about 9 years. During his incarceration, he has lost one child.

9. Keeping in mind the totality of facts and circumstances, as detailed above, sentence of the appellant in default of payment of fine is also reduced to the period already undergone by him, while confirming his conviction under Section 3(1)(ii) MCOCA. Appellant be released from jail forthwith, if not required in any other case.

10. Appeal is disposed of in the above terms. Miscellaneous application is disposed of as infructuous. Copy of the order be sent to Superintendent Jail for compliance.

A.K. PATHAK, J.

SEPTEMBER 13, 2018

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