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

+ **CRL.A. 837/2018**

RAFIQ

..... Appellant

Through Mr. Anuj Kapoor, DHCLSC with Mr.
Hemant Singh, Adv.

versus

STATE

..... Respondent

Through Ms. Aashaa Tiwari, 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

Crl. M.A. No. 30096/2018 (for condonation of delay in filing)

1. Delay in filing is condoned. Application is disposed of.

CRL.A. 837/2018 and Crl. M.A. No. 30097/2018 (for reduction of simple imprisonment of two years in case of default of payment of fine to the period already undergone)

2. Admit.

3. With the consent of the parties, arguments heard.

4. 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.

5. Prosecution case, in brief, is that appellant, along with co-accused, was part of an organized gang comprising of Mohd. Irfan, Shahbuddin, Paras, Baldev Raj @ Billu 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:-

Sl . N o.	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/s 395/397 IPC	Mehrauli, ND	Mohd. Irfan, Sahabuddin @ Shabbu, Baldev Raj @ Ballu	Rafiq 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	Mohd. Irfan, Shahbuddin @ Shabbu, Baldev Raj @ Ballu	Rafiq 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	Vasant Kunj South, ND	Mohd. Irfan, Shahbuddin @ Shabbu, Baldev Raj @ Ballu, Pappu Verma, Paresh, Munesh	Rafiq 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. 1493/08 u/s 457/380/511/34 IPC	Loni Ghaziabad	Mohd. Irfan, Baldev Raj and Driver Pappu	Rafiq and his associates were found in the possession of stolen Tata-407 No. UP-13M-9764 alongwith Brass Taps worth Rs. 4 lacs
5	FIR No. 37/07 u/s 399/402 IPC and 25/54/59 Arms Act	Hodal, Faridabad	Shaheed, Zameel, Zalim, Noor	Rafiq and his associates were caught red handed while planning to commit dacoity
6	FIR No. 29/07 u/s 392 IPC PS	Hodal, Faridabad	Shaheed, Zameel, Zalim, Noor	Rafiq and his associates robbed one Tata LPT worth Rs. 6 lacs and cash Rs.7000/- was also robbed from the complainant.

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 has already been acquitted in three cases. In two cases, prosecution filed closure reports; whereas in one case, he has been convicted and completed the sentence. Trial is pending only in respect of one case and he is on bail in the said case. Appellant is 32 years of age

and has a family comprising of his old and ailing parents, who are leading life of vagary in view of the fact that appellant is in continuous incarceration for about 9 years.

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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