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

Order reserved on: 29.08.2019

% Order delivered on: 23.09.2019

\+ **BAIL APPLN. 1638/2019**

DIGVIJAY SAROHA ..... Petitioner

Through: Mr. Akhand Pratap Singh, Advocate

versus

STATE ..... Respondent

Through: Mr. G. M. Farooqui, APP for State with Inspector Sanjay Gupta from PS-Spl. Cell.

CORAM:
HON'BLE MR. JUSTICE BRIJESH SETHI

ORDER

BRIJESH SETHI, J.

1. The Petitioner herein, **Digvijay Saroha** has preferred the present bail application seeking regular bail under **section 439** of the **Code of Criminal Procedure** (Cr.P.C) read with Section **12 & 21(4)** of **Maharashtra Control of Organised Crime Act, 1999 (MCOCA)** in case **FIR No. 252/2018, P.S. Alipur** under **sections 3 & 4 of MCOCA** titled **State v. Digvijay Saroha & Ors.** pending adjudication before Ld. ASJ-03, Patiala House Courts, New Delhi.

2. Ld. Counsel for the petitioner has prayed for bail on the ground that the petitioner who is facing trial under **section 3 and 4 of MCOC Act** and has been in **judicial custody** since **24.06.2018**. He had filed an application seeking bail before Ld. Trial Court and vide order dated **07.06.2019,** the Ld. Trial Court has dismissed the bail application. Learned counsel for the petitioner has submitted that allegations against the petitioner are totally false and frivolous. He is shown to be a member of the **Jitender @ Gogi Syndicate**. Whereas he is an accused only in one FIR bearing no. 401/14, u/s. 307/34 IPC, PS Alipur and on the basis of the said FIR, the prosecution is claiming him to be a member of the Jitender @ Gogi syndicate. Minimum two FIRs are required to have been registered against the petitioner to invoke MCOCA. Ld. Trial Court has failed to appreciate the fact that essential ingredients of Sec. 2(d) of MCOCA are not made out. It is further argued that even requirement of Section 23 (1) (a) of the MCOC Act was not complied with as no document was sent to the Competent Authority while seeking approval under the said Act.

4. It is further submitted that Ld. Trial Court has failed to appreciate that prosecution in its proposal had not placed any copy of the chargesheet which they are alleging to be that of a crime syndicate. At the time when the proposal was sent, there was no evidence with the investigating officer to show that there were some proceeds of crime from the offences committed by the petitioner. There was no evidence before Sanctioning Authority to come to the conclusion that petitioner is a member of crime syndicate.

5. It is further submitted by Ld. Counsel that on the date of commission of offence, the ingredients of Section 3 of MCOCA were not made out. The petitioner is not involved in continuing unlawful activity and as per Section 2 (d) of MCOCA, more than one chargesheet should have been filed against the petitioner within the preceding period of 10 years. Whereas, only one chargesheet is pending against him. Thus, prima facie there was no justification to invoke the provisions of MCOCA.

6. It is lastly submitted by Ld. Counsel that Ld. Trial Court has failed to appreciate that statement of Ms. Nikita Dahiya recorded

u/s. 161 CrPC was not placed before the sanctioning authority and in view of irregularities and infirmities in the prosecution version, the petitioner be released on bail, in the interest of justice.

7. In support of his argument, learned counsel for petitioner has relied upon the following judgments;

i. State v. Satya Prakash [Crl. M. C. No. 2138 of 2010 of Delhi High Court].
ii. Altaf Ismail v. State [2005(1) Bombay C.R. (Crl) 833].
iii. Maharashtra v. Lalit Somdatta Nagpal [2007] 2 SCC (cri) 241].
iv. Pankaj Jagshi Gangar v. State of Maharashtra, Cr.W.P. No. 4639/2018.
v. Chenna Boyanna Krishna Yadav v. State of Maharashtra & anr.
vi. Mahipal Singh v. CBI (2014) 11 SCC 282.

8. The Bail Application is vehemently opposed by the State. The learned Additional Public Prosecutor Mr. G. M. Farooqi, submitted that offences alleged against the accused are serious in nature. He further submitted that complete material was present before the approving authority while taking approval u/s. 23(1) & 23(2) of the MCOCA. Ld. APP has further submitted that there is sufficient material on record to show that petitioner Digvijay Saroha was member of crime syndicate of Jitender @ Gogi and petitioner has committed organized crime. It is further submitted

that there is rivalry of supremacy between Jitender @ Gogi and Sunil @ Tillu gang. Both the gang leaders belong to outer Delhi. Due to their rivalry, more than 10 murders have taken place. On 18th June 2018, in the area of Sant Nagar, Burari, two innocent persons were killed by Gogi gang besides killing of one gang member each from both the groups. In March 2016, Jitender @ Gogi was arrested by the police but on 31.07.2016, his armed associates got him forcefully released from police custody while he was being taken to court in Haryana. Since then he has been continuously involved in illegal activities and committing heinous crimes and eliminating the members of rival gang.

9. It is further submitted by Ld. APP that gang members of Jitender @ Gogi are committing unlawful activities continuously for gaining some pecuniary benefits for themselves, their family members & members of their organized crime syndicate and for other advantages as well. The criminal history indicates that Jitender @ Gogi and the other members of his organized crime syndicate singly or jointly have used violence by beating or firing and threatening the complainants/ victims of those cases which are

registered against the organized crime syndicate with the objective of gaining unlawful pecuniary benefits, or gaining undue economic or other advantages for himself or other members of his gang. The following cases have been registered against Jitender @ Gogi and his gang members;

SN	FIR No.	Police Station	Under Section
1	61/10	Alipur, Delhi	341/323/427/506/34 IPC
2	95/10	Alipur, Delhi	307/34 IPC & 25/27/54/59 Arms Act.
3	773/11	Jhajhhar, Haryana	380/454 IPC
4	123/12	Crime & Rly, Delhi	25/54/59 Arms Act
5	303/13	Gohana, Sonipat	125-B IPC & 25/54/59 Arms Act
6	320/13	Gannaur, Sonipat	48/149/323/506/34 IPC
7	401/14	Alipur, Delhi	307/34 IPC & 27/54/59 Arms Act.
8	60/15	Mahindra Park, Delhi	302/34 IPC & 25/27/54/59 Arms Act.
9	43/15	Narwana, Sadar, Haryana	302/148/149/120-B/216 IPC & 25/54/59 Arms Act.
10	838/15	Alipur, Delhi	307/34 IPC
11	897/15	Alipur, Delhi	302/34 IPC & 25/27/54/59 Arms Act.
12	1124/15	Alipur, Delhi	392/397/34 IPC
13	173/16	Alipur, Delhi	392/397/411/34 IPC
14	102/16	Samalkha, Panipat	297/336/186/353/307/34 IPC
15	150/16	Narwana, Sadar, Haryana	174-A IPC
16	380/16	Sadar Bahadurgarh Jhajjar, Haryana	341/332/353/186/224/225/223/395/397/120-B IPC and 25/54/59 Arms Act.
17	62/17	Alipur, Delhi	307 IPC and 25/27 Arms Act.
18	257/17	Israna, Panipat Haryana	302/34 IPC
19	340/17	Sawroop Nagar, Delhi	302/34 IPC & 25/27/54/59 Arms Act

20	38/18	Prashant Vihar, Rohini	302/307/34 IPC & 25/27/54/59 Arms Act
21	288/18	Burari, Delhi	302/307/34 IPC
22	502/18	Gannaur, Sonipat	307/34 IPC & 25 Arms Act.
23	132/18	Moohana, Sonipath	120-B/115 IPC r/w. 25 Arms Act.
24	18/19	Israna, Panipat	307/341/34 IPC 25/27 Arms Act
25	62/19	Gurugram, Haryana	25 Arms Act.
26	328/19	Bawana, Delhi	387/34 IPC
27	333/19	Bawana, Delhi	336 IPC & 25/27 Arms Act

10. It is further submitted by Ld. APP that in the present case, accused Digvijay Saroha and five more accused persons have been arrested. Accused Digvijay was arrested in this case on 24.06.2018 as he is an active member of 'Organised Crime Syndicate' led by notorious criminal Jitender @ Gogi. Ld. APP for the State further submitted that petitioner/ accused Digvijay Saroha was previously arrested with accused Jitender @ Gogi, in case FIR No. 401/2014, dated 27.04.2014, u/s. 307/34 IPC, PS Alipur, Delhi. Ld. APP has further submitted that sufficient material was placed before the Sanctioning Authority while seeking approval u/s. 23(1) (a) of MCOC Act. Sanction was also granted by Sanctioning Authority after application of mind. He further submitted that during investigation, one witness namely Ms. Nikita Dahiya has deposed that this 'Orgainised Crime Syndicate' used to collect extortion

money from her and accused Digvijay Saroha is one of the associates of this gang, who used to collect protection money from her. It is further submitted that statements of two accused persons namely Dinesh and Yogesh were recorded on 10.08.2018 u/s. 18 MCOC Act and these statements were duly vetted by the Ld. ACMM, Patiala House Court. Accused Yogesh has admitted that Digvijay Saroha is a member of Jitender @ Gogi gang.

11. Ld. APP for the state has further argued that it is wrong to assert that minimum requirement to invoke MCOCA against any individual is requirement of two FIRs against the said person. Ld. APP has submitted that the facts appearing on record establish that the petitioner accused has had a clear role in facilitating and abetting the commission of the organized crime by Jitender @ Gogi and his associates in the crime syndicate and he accordingly prayed for dismissal of the present bail application.

12. I have heard the learned counsel for the petitioner and the learned APP for the State and am of the opinion that there is no merit in the bail application as there is sufficient material available on record to, prima facie, indicate the involvement of the petitioner

in abetting, conspiring and knowingly facilitating the commission of organized crime alleged to have been carried out by Jitender @ Gogi and his associates. The judgments cited by Ld. Counsel for the petitioner on sanction are not relevant for the reason that prosecution has categorically submitted that all relevant material was placed before Sanctioning Authority before grant of sanction and moreover at the stage of bail, the Court is not supported to go into the facts in detail and give a finding that sanction is in accordance with law or not. This issue will be decided by the Ld. Trial Court at appropriate stage during the trial. So far as contention of Ld. Counsel that since two chargesheets were not in existence against the petitioner at the time of invocation of provisions of MCOCA and, therefore, requirement of Sec. 2(d) of the MCOC Act is not fulfilled, is concerned, there are two judgments to refute the said submission. One is that of Bombay High Court and another one is of Hon'ble Supreme Court. The Hon'ble Division Bench of Bombay High Court in a case titled **'Govind Sakharam Ubhe v. State of Maharashtra, 2009 SCC OnLine Bom 770'**, has interpreted the words "in respect of which more than one charge-sheet have been filed" used in section 2(d) of the Act and has held as follows:

> "35. It is now necessary to go to the definition of `continuing unlawful activity'. Section 2(1)(d) defines `continuing unlawful activity' to mean an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly as a member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one chargesheet have been filed before a competent court within the preceding ten years and that court have taken cognizance of such offence. Thus, for an activity to be a `continuing unlawful activity' –
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> a) the activity must be prohibited by law;
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> b) it must be a cognizable offence punishable with imprisonment of three years or more;
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> c) it must be undertaken singly or jointly;
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> d) it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate
>
> e) in respect of which more than one charge-sheet have been filed before a competent court.
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> 36. <u>The words 'in respect of which more than one charge-sheet have been filed' cannot go with the words 'a member of a crime syndicate' because in that case, these words would have read as 'in respect of whom more than one charge-sheet have been filed'</u>.
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> 37. A person may be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situations, the MCOCA can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOCA. This is evident from section 3(4) of

the MCOCA which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum of fine of Rs.5 lakhs. The charge under the MCOCA ropes in a person who as a member of the organized crime syndicate commits organized crime i.e. acts of extortion by giving threats, etc. to gain economic advantage or supremacy, as a member of the crime syndicate singly or jointly. Charge is in respect of unlawful activities of the organized crime syndicate.

38. In order to substantiate our construction of Section 2(1)(d) of the MCOCA, we will take hypothetical example of accused 1(A), accused 2(B), accused 3(C) and accused 4(D), who are members of the organized crime syndicate and who have committed crimes within preceding ten years. Insofar as accused A is concerned, it is alleged that he has committed an offence resulting in the death of any person which is punishable with death or imprisonment for life as described in Section 3(1) of the MCOCA. Accordingly, one charge-sheet is filed against him. Insofar as accused B is concerned, it is alleged that he has committed an offence resulting in the death of any person which is punishable with death or imprisonment for life as described in Section 3(2) of the MCOCA. Accordingly, one charge-sheet is filed against him. Likewise, insofar as accused C is concerned, it is alleged that he has committed an offence resulting in the death of any person which is punishable with death or imprisonment for life as described in Section 3(3) of the MCOCA. Accordingly, one charge-sheet is filed against him. Finally, it is alleged that accused D is a member of organized crime syndicate as described in Section 3(4) of the MCOCA and as such has indulged in

> organized crime and against whom also one charge-sheet is filed.
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> 39. The submission on behalf of the appellant is that even though all the four accused namely, A, B, C and D may be members of the organized crime syndicate since against each of the accused not more than one chargesheet is filed, it cannot be held that they are engaged in continuing unlawful activity as contemplated under Section 2(1)(d) of the MCOCA. Apart from the reasons which we have given hereinabove as to why such a construction is not possible, having regard to the object with which the MCOCA was enacted, namely to make special provisions for prevention and control of organized crime syndicate and for coping with criminal activity by organized crime syndicate, in our opinion, Section 2(1)(d) cannot be so construed. Such a construction will defeat the object of the MCOCA. What is contemplated under Section 2(1)(d) of the MCOCA is that activities prohibited by law for the time being in force which are punishable as described therein have been undertaken either singly or jointly as a member of organized crime syndicate and in respect of which more than one charge-sheets have been filed. Stress is on the unlawful activities committed by the organized crime syndicate. <u>Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate</u>." **(Emphasis supplied)**

15. The Hon'ble Supreme Court in a judgment titled **'Prasad Shrikant Purohit v. State of Maharashtra, 2015 Supreme Court Cases 440**, has also observed in Para 66 as follows:

> "In this respect, we will have to bear in mind that the implication of MCOCA would come into play only after the third occurrence takes

> place and only after that it will have to be seen whether on the earlier two such occasions involvement of someone jointly or singly, either as a member of an 'organized crime syndicate' or on its behalf indulged in a crime in respect of which a charge-sheet has already been filed before the Competent Court which Court had taken cognizance of such offence."

16. Similarly Hon'ble Supreme Court in another judgment **'Brijesh Singh @ Arun Kumar And Anr., (2017) 10 Supreme Court Cases 779** has also held as under;

> '25. Organised crime which is an offence punishable under Section 3 of MCOCA means a continuing unlawful activity committed by the use of force or violence for economic gain. One relevant pre-condition which has to be satisfied before any activity can be considered as a continuing unlawful activity is that there should be at least two charge sheets filed against the members of an organised crime syndicate within the previous 10 years and a competent Court has taken cognizance of such charge sheets'.

17. Perusal of the above judgments reveal that the requirement of one or more chargesheet relates to unlawful activities of the organized crime syndicate and does not pertain to a particular member of the crime syndicate accused. The contention of Ld. Counsel for the petitioner that in the absence of two chargesheet against the petitioner, he could not have been charged with

MCOCA and he be released on bail is, therefore, not in consonance with law.

18. Section 21(4) of the MCOC Act contemplates the factors on the basis of which accused is entitled to bail and the same runs as follows;

> "(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless-
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> (a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and
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> (b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

19. The Hon'ble Supreme Court has interpreted the above provisions in **'State of Maharashtra v. Vishwanath Maranna Shetty, (2013) 1 SCC (Cri) 105'** in Para 29 has held as follows:

> "Since the respondent has been charged with the offence under MCOCA, while dealing with his application for grant of bail, in addition to the broad principles to be applied in prosecution for the offences under IPC, the relevant provision in the said statute, namely, sub-section (4) of Section 21 has to be kept in mind. It is also further made clear that a bare reading of the non obstante clause in sub-section (4) of Section 21 of MCOCA that the power to grant bail to a person accused of having committed offence under the said Act

> is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 but also subject to the restrictions placed by clauses (a) and (b) of sub-section (4) of Section 21. Apart from giving an opportunity to the prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. The satisfaction contemplated in clauses (a) and (b) of sub-section (4) of Section 21 regarding the accused being not guilty, has to be based on "reasonable grounds". Though the expression "reasonable grounds" has not been defined in the Act, it is presumed that it is something more than prima facie grounds. We reiterate that recording of satisfaction on both the aspects mentioned in clauses (a) and (b) of sub-section (4) of Section 21 is sine qua non for granting bail under MCOCA."

19. Let us examine the present bail application in view of the above law laid down by the Hon'ble Supreme Court. Perusal of the material brought on record reveals involvement of petitioner Digvijay Saroha to the effect that he has been a part of organized crime syndicate and has knowingly facilitated the alleged organized crime syndicate. The MCOCA does not contemplate that the petitioner should have direct role to play as regards the commission of an organised crime. If there is a nexus of the petitioner who is a member of an 'organised crime syndicate', or nexus with the

offence in the nature of an 'organised crime' is established, the petitioner will prima facie satisfy the ingredients of Section 3(2) of MCOCA. In the present case, the petitioner Digvijay Saroha is alleged to be a member of an organized crime syndicate run by Jitender @ Gogi. There are approximately 27 cases filed against this organized crime syndicate. As per reply filed by the prosecution, there is confessional statement of co-accused Yogesh, which reveals that petitioner Digvijay Saroha is the member of an organized crime syndicate being run by Jitender @ Gogi. It has also come on record that during interrogation petitioner/ accused Digvijay Saroha has disclosed that he is an active member of Jitender @ Gogi Gang and used to collect information regarding members of opposite gang as well suspected targets from whom money can be extorted. During the investigation one witness namely Ms. Nikita Dahiya has deposed that this 'Orgainised Crime Syndicate' used to collect extortion money from her and accused Digvijay Saroha is one of the associates of this gang, who used to collect protection money from her. Thus, Prima facie, the prosecution has established petitioner's role in conspiring, assisting and managing the crime syndicate. There are no reasonable grounds to believe that petitioner is not guilty of the offences, he has been charged with. On the contrary, the material brought on record, points to his role in the abetment of the offences committed by the crime syndicate.

21. In view of the above discussion and keeping in mind serious nature of allegations and the fact that if the petitioner is released on bail, he may temper with the witnesses and the evidence and may even commit other offences, no grounds for bail are made out.

22. For all the aforesaid reasons, the present bail application is dismissed.

BRIJESH SETHI, J

September 23, 2019