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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Order pronounced on 13.10.2022*

\+ BAIL APPLN. 943/2022
SHAHNAWAZ ..... Petitioner
Through: Mr. Ravi Drall and Ms. Aditi Singh Advocates.

versus

THE STATE OF NCT DELHI .....Respondent
Through: Mr. N.S.Bajwa, APP for State.

CORAM:
HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. This is an application for bail in case FIR No.397/2019 under Section 3 and 4 of the Maharashtra Control of Organised Crime Act (MCOCA) registered at PS Hari Nagar.

1.1 The petitioner is stated to be in judicial custody since 05.05.2021. A Charge sheet in the main case and supplementary charge sheet *qua* the petitioner has already been filed.

1.2 It has been submitted on behalf of the petitioner that he is a law-abiding citizen of the country; stated to be 31 years old; residing with his wife and children.

1.3 The FIR was lodged on 13.08.2019 against the co-accused person, however, name of the present applicant is not mentioned anywhere in the FIR. Even in the confessional statement of the co-accused, the present petitioner has not been named. He is not involved in any organised crime. Even as per the prosecution, as mentioned in the charge sheet, there is no property in the name of the applicant and there is no electronic evidence to connect the present petitioner with the other co-accused.

2. It is stated that the petitioner is residing at a separate place, away from his brothers and family members. The wife of the applicant is an educated lady and she has been working in Hotel Radisson, Paschim Vihar, New Delhi. Even as per the allegations against him, he is stated to have deposited Rs.24 lacs in his bank accounts in the span of 7 years, meaning thereby that a sum of Rs.3.4 lacs was deposited every year which is not sufficient to invoke stringent provisions of MCOCA Act and there is no unaccountable wealth in the name of the applicant.

2.1 The petitioner is stated to be in possession of 4 properties. In the list of all cases submitted by IO along with the charge sheet, detailing the crimes committed by the crime syndicate, name of the applicant and cases pending against him have not been enumerated. No offence has been committed by the petitioner with the object of gaining pecuniary benefits or undue economic or other advantage and as such, the cases are not covered under the provisions of MCOCA.

2.2 It has been further submitted that the list contained 5 cases, out of which there is no such FIR against the petitioner bearing No.642/2006 registered at PS Hari Nagar. He has been named as a co-accused in FIR No.686/2014 under Section 307/34 IPC, registered at PS Hari Nagar but the said case was not related to any organised crime, rather it was a case of road rage. Another case being FIR No.338/2012 registered at PS Hari Nagar under Section 308/323/34 IPC also does not relate to any organised crime, rather it was a case of road rage.

2.3 FIR No.338/2012 registered at PS Hari Nagar under Section 308/323/34 IPC covers a dispute of personal nature, not pertaining to any organised crime. The petitioner has been arrested in the present case after his false arrest with a weapon in case FIR No.177/2021, registered at PS Hari Nagar under Section 25 of the Arms Act. The accused/applicant is on bail in other matters where he has been falsely implicated. The gravity alone cannot be a ground to deny bail.

2.4 The petitioner has not violated the law of the land. The earlier bail application filed by the present petitioner was dismissed by the learned ASJ on 28.01.2022.

3. Notice was issued.

4. Nominal Roll has been called which shows that as on 16.08.2022, the petitioner has undergone custody of 1 year, 3 months and 12 days. The State has filed brief synopsis along with citations. Similarly, the petitioner has relied on the judgement titled as *'Sherbahadur Akram Khan and Others v. State of Maharashtra 2006 SCC Online Bom 1695'*.

5. In brief synopsis on behalf of the State, it has been stated that the sanction order under Section 23(1)(a) against the petitioner/applicant was passed on 09.08.2019 by the concerned authority elaborating the grounds as mandated in the law for invocation of MCOCA. The sanction order also takes note of the cases registered against the present petitioner and his 22 associates. 11 FIRs were registered against the organised crime syndicate. The said offences are serious in nature.

6. Charge sheet giving the details of money trail has been filed. The money trail and unaccounted wealth has been found to be to the tune of Rs.24 lacs and Rs.26 lacs worth of transactions were made in the bank account of the petitioner. The job certificate of his wife only certifies approximately Rs.42,000/- earned by her from her job in a hotel.

6.1 Disclosure statement and confession statement have been recorded.

7. Learned APP has relied upon the judgements titled, *'Bharat @ Popat v. State'* passed by this Hon'ble Court in Bail Appln. No.1943/2009 dated 30.08.2010; Bail Appln. No.677/2012 titled *'Honey Sharma v. State Govt. of NCT of Delhi'* dated 02.11.2012; *'Parveen Bazard @ Lara v. State (NCT of Delhi)'* Bail Appln. No.2089/2020 decided on 26.07.2021 and *'The State of Maharashtra v. Pankaj Jagshi Gangar'* Criminal Appeal No.1493/2021 decided on 03.12.2021. I have gone through these judgements/orders.

8. The Status Report filed by the State mentions that the crime syndicate was run by the present petitioner along with his brother Salman Tyagi and the members of this syndicate have been found operating in Delhi and neighbouring states and they are involved in cases of committing murder, attempt to murder, robbery, extortion, rape, criminal assault, selling of contrabands/drugs and there are cases registered against them under the Arms Act also.

8.1 Accused Salman Tyagi had formed a gang with the objective of gaining pecuniary benefits for himself, his family members and his associates. There are total 23 alleged members, including the petitioner, named in the proposal for FIR and also in the FIR. Since, the registration of the case on 13.08.2019, the petitioner did not join the investigation and he absconded and as such, no notice could be served upon him. The petitioner was arrested on 17.04.2021 in case FIR No.177/2021 under Section 25 of the Arms Act, registered at PS Hari Nagar and he was having one pistol along with 5 live cartridges with him. The petitioner was also found in possession of one Swift car with a fake number plate. The said car was fraudulently taken away from its real owner one Nikhil, who is a desperate criminal of Punjab and an FIR in this regard was registered, being FIR No.113/2020 at PS Bala Chour in Punjab and the proclamation are pending against him before the concerned Court. Section 482 IPC was added in FIR dated 17.04.2021 registered at PS Hari Nagar.

8.2 The petitioner was interrogated after his arrest and he disclosed about the crime syndicate being run by him with the help of his brother Salman Tyagi and other associates. He also disclosed about other illegal activities being done by the crime syndicate including himself. Even in the confessional statement recorded under Section 18 of MCOCA of the co-accused, namely, Salman Tyagi, Rahul Gupta, Deepak and Mohd. Sayad, it was disclosed that the present petitioner was involved in the crime syndicate activities along with his brother Salman Tyagi and other crime syndicate members.

8.3 In FIR Nos.642/2006, 338/2012 and 374/2018, the present petitioner is involved along with co-accused, who are members of the crime syndicate. During investigation, no immovable property has been found in the name of the petitioner, however, there are 4 properties identified so far in which the petitioner, with the help of his family members/co-accused, has forcefully occupied, acquired and constructed in the names of his family members. The details of those 4 properties and the *modus operandi* adopted to acquire the said property has been also explained.

8.4 It is also mentioned in Status Report that in the bank account of the petitioner, there are multiple deposits of cash amounting to about Rs.24 lacs and there is no satisfactory explanation regarding the source of the same. During investigation, the petitioner did not reveal that his wife is earning and maintaining any bank account but while moving a bail application, the petitioner has revealed that his wife is earning from various jobs and also provided certain documents related to her employment.

8.5 After verifying the income of the wife of the petitioner from his employer, it was revealed that she had received about Rs.42,000/- from her employer so far. No other source of income was furnished by the petitioner. However, in the bank account of the applicant's wife, there is a deposit of about Rs.26 lacs and withdrawal of about Rs.18.67 lacs, which shows that there are suspicious transactions, for which further investigation is being taken up.

8.6 While seeking bail from the learned Sessions Judge, the petitioner tried to mislead the said Court by stating that his wife was working in Radisson Hotel, Paschim Vihar, New Delhi and Start Solar Pvt. Ltd., Narayana, Delhi. The report received from Radisson Hotel shows that the wife of the petitioner worked there hardly for 40 days and she received total salary of about Rs.22,000/- and from Start Solar Pvt. Ltd., she worked from 19.02.2019 and left the job in April 2019 and earned about Rs.20,000/- from the said employer.

8.7 Although, the petitioner claims that he was living separately from his brothers and family, however, during the course of inquiry, it has been found that he is residing in a joint family with his brother Salman Tyagi, Muntizeer and other family members at House No. WZ-72, Tihar Village, Hari Nagar. The Aadhar cards have been issued to the petitioner and his wife from the same address and at the time of admission of his child in 2018, the same address was given, however, on the fee card, another address being, 17/33, near Arjun Hospital, Subhash Nagar, Delhi has been mentioned. Even, in the police clearance certificate of the wife of the petitioner, the address given is

House No. WZ-72, Tihar Village, Hari Nagar, where she claimed to be residing from April, 2009 to July, 2018. House No.72 and 74 are the same/joint property in which the accused and his family members are residing.

8.8 In most of the criminal cases registered against the petitioner, he has given his address as House No. WZ-72, Tihar Village, Hari Nagar. Even when the wife of the petitioner joined her job with both the employers, she has given her address as House No. WZ-72, Tihar Village, Hari Nagar. However, the address of the petitioner furnished before the learned Trial Court is House No.3, Flat No.201, Village Baprola, Sector-8, Dwarka and the rent agreement was executed only on 14.07.2021. Statements of the witnesses have been recorded to the effect that the present petitioner, along with other members of the crime syndicate, has threatened the witnesses to sell their properties to them and the petitioner is putting his illegal money in constructing floors on his house.

8.9 The petitioner and the co-accused have uploaded photographs, images and videos on social media, showing illegal fire arms, solidarity and strength of their gang with the intention to convey a message to their targets/victims as to their desperate nature.

8.10 The call detail report shows that co-accused Rahul Gupta was in touch with the present petitioner apart from being in touch with the other co-accused persons. 20 witnesses have deposed during investigation against the accused, Salman Tyagi and his associates including the present petitioner. The kingpin of the crime syndicate, namely, Salman Tyagi was earlier arrested in the year 2018 under the NDPS Act. In the bail application of Salman Tyagi, the present petitioner and other syndicate members hatched the conspiracy and affidavits from public persons were filed.

8.11 One person named Dikshit Sharma was abducted, taken to Dwarka Court and he was made to sign an affidavit to the effect that the case against Salman Tyagi was false. In the said matter, FIR No.374/2018 under Section 195A/506/365/209/120B/34 IPC was registered on the statement of the complainant, Dikshit Sharma and the present petitioner was also arrested in the said case. It shows the association of syndicate members with each other and the length to which they can go to free their kingpin Salman Tyagi.

8.12 The co-accused Muntzeer was arrested in FIR No.424/2021 dated 30.07.2021 registered under Section 387/336/506/120-B IPC and Section 25/27 Arms Act on 01.10.2021 and during interrogation, he disclosed that his brother Salman Tyagi, lodged in Tihar Jail, used to make phone calls from inside the jail on mobile numbers of his family members. Muntzeer further disclosed that he hatched the conspiracy with his mother and uncle to extract money from the complainant Bhumi and in this regard, the accused Salman Tyagi made phone calls from inside the jail and Salman Tyagi demanded protection money of Rs.15 lacs from Bhumi. When Bhumi could not fulfil the demand of money, Salman Tyagi, with the help of his syndicate members, got shots fired upon the house of Bhumi.

8.13 Thereafter, Salman Tyagi made a call on the mobile number of his wife and asked the co-accused Muntzeer and his family members to threaten Bhumi to get money from her. As per the instructions of Salman Tyagi, on 28.07.2021, his mother had gone to collect money from Bhumi but she did not give any money. Later on Bhumi was called at the house of Ibrahim @ Munna, where she was threatened by the members of crime syndicate with dire consequences. Bhumi made a complaint to the police, and thereafter, the accused/applicant Muntzeer and his family members fled from their house. An FIR in this case was registered. Statement of the witnesses was recorded and the accused persons were arrested.

8.14 Another incident, which is the subject matter of FIR No.354/2022 has also been detailed, where 3 assailants opened burst fire on the vehicle of victims with a motive to kill them. The assailants at the time of firing shouted that if somebody takes up issues with Salman Tyagi, the result would be this. The victims sustained gun shot injuries and they were admitted to hospital. Thereafter accused were arrested. It has been further submitted that there is sufficient evidence in the MCOCA case against all the accused persons; real uncles of the accused, namely Hazi Mansoor Tyagi and Ibrahim Tyagi have not joined the investigation. The activities of the present petitioner clearly falls under the definition of 'organised crime' under the MCOCA.

8.15 Pecuniary gains were obtained by the petitioner and his other associates, using their undue influence as members of the organised crime syndicate by committing continuous unlawful activities. Under these circumstances, it is prayed that the bail application may be dismissed.

9. I have heard the arguments. During arguments, it has been submitted by the learned counsel for the petitioner that the petitioner is not named in the FIR; he is not even named in the confession statements of the other co-accused; he was arrested on 05.05.2021; no non-bailable warrant was issued against the petitioner although as per the version of the prosecution, the petitioner was absconding; the petitioner had appeared in one of the other cases in Court and even then, he was not arrested; there is no property in the name of the petitioner and he has been residing separately from his family

members. It has been also submitted that as per Section 4 of MCOCA, there has to be unaccountable wealth connected to accused. The allegation regarding accumulation of Rs.24 lacs in a span of 7 years is nothing and even a rikshaw puller earns more than that.

9.1 It is further submitted that wife of the petitioner is working in a Hotel and she has been trained to work in aviation industry. His two children are attending DPS School; there is no unaccounted wealth; he only owns one car, which is a gift from his wife; none of the properties attributed to the petitioner are in the name of the petitioner or his wife. Out of these 4 properties, 2 are joint family properties. It has been also submitted that the matter is at the stage of charge.

9.2 Learned counsel for the petitioner also submitted that mere pendency of few FIRs against the present petitioner, which are not related to the organised crime syndicate, cannot be the basis of invoking MCOCA as the same are individual crimes not covered under the definition of MCOCA. His only fault is that he is the brother of accused Salman Tyagi, who is stated to be the kingpin of the crime syndicate. Under these circumstances, it has been prayed that the petitioner may be allowed to be released on bail.

10. On behalf of the State, it has been submitted that the impugned order passed by the learned Special Judge deals with all the averments, which has been reiterated herein above. The Status Report states that the petitioner is a member of a crime syndicate, which is being run by his brother Salman Tyagi. There are 22 accused, out of which only 8 have been arrested till date. This crime syndicate is also being run from jail. The bail application of the co-accused has been rejected by the Hon'ble Supreme Court. An imported pistol was recovered from the present petitioner when he was

travelling in a car with a fake number plate. There is a confessional statement of the petitioner recorded under relevant provision of law.

11. The charge sheet stands filed. The petitioner is a common accused in 3 FIRs.

12. It is also the case of prosecution that the petitioner owns 4 properties. His bank account has got transactions worth Rs.24 lacs in cash. The applicant is not an income-tax payee. A sum of Rs.26 lacs is lying in the bank account of the wife of the present petitioner, although, she has worked just for a few days in a Hotel. The petitioner is trying to intimidate the public at large. So, under these circumstances, it has been prayed that bail application of the present accused be dismissed.

13. The Nominal Roll shows that the petitioner is in judicial custody since 05.05.2021 for a period of one year and about three months till 16.08.2022. The said Nominal Roll also mentions about pendency of 3 cases against the petitioner being FIR No.177/2021 under Section 25/54/59 Arms Act, FIR No.338/2012 under Section 308/323/34 IPC and FIR No.374/2018 under Section 365/306/195-A/209/120-B/34 IPC, registered at PS Hari Nagar.

14. The impugned order dated 28.01.2022 is on record as Annexure-G. Perusal of the said order shows that all the grounds which have been taken in the present application, were also taken before the learned ASJ as enumerated in para 2 of the said order and the same are reproduced hereunder:

> "(a) He is not named in the FIR.
>
> (b) He is not named in the confessional statements of co-accused persons.
>
> (c) He is not involved in any organized crime alongwith co-

accused persons or independently.

(d) There is no property in his name, being purchased out of the proceeds of organized crime.

(e) There is no electronic or documentary evidence that he is partner in crime with co-accused persons in an organized crime syndicate, or conspired with them to commit an organized crime.

(f) He resides separately, at a distant place, away from his brothers and parents at a rented accommodation.

(g) His wife is educated and earning woman and she has been working in Raddison Hotel, Paschim Vihar.

(h) He has no unaccounted wealth.

(i) His prior criminal involvements are not related to an organized crime syndicate.

(j) He has not derived pecuniary benefit from an organized crime syndicate.

(k) He is on bail in prior cases and there is no likelihood of his abscondance during trial.

(l) The investigation as against him is already complete and he is ready to co-operate in further investigation, if required.

(m) No offence under The Maharashtra Control of Organized Crime Act. 1999 is made out against him."

15. I have gone through the said detailed order. Learned Sessions Judge has dealt with the each and every averment which was raised before the said Court and he has reached to the following conclusion:

"17. Thus there is sufficient prima facie evidence that Applicant/accuscd Shahnawaz @ Maanu acted and continued as an active gang member of the crime syndicate operated by his real brother and kingpin Salman Tyagi, till his arrest in Apri1 2021. The Court is neither convinced that applicant/accused Shahnawaz @ Maanu did not commit an offence under MCOCA Act, nor that he is unlikely to commit an offence if granted bail. As a necessary consequence, the bail application is dismissed."

16. Learned counsel for the petitioner has relied upon the judgement of the Hon'ble High Court of Bombay in the matter of *'Sherbahadur Akram Khan and Others v. State of Maharashtra 2006 SCC Online Bom 1695'* wherein it was held as under:

> "10. Taking into consideration the details of the various chargesheets which have been filed by the prosecution and admitted by the learned A.P.P., it is obvious that some of the accused have been charged for offences which can, by no stretch of imagination, be considered to give the accused any pecuniary or undue economic or other advantage, either for the accused himself or for any other person. Offences punishable under Sections 323, 324, 325 and 326 read with 34 are not such as would provide any pecuniary benefit or undue economic gain to the accused. Some of these offences have resulted from a quarrel at a public water tap. Fist blows have been allegedly used by the accused in most of the cases whereas in one or two instances the accused has allegedly used a chopper or an iron rod to assault the victim. Amin Momin Khan, accused No. 6 is involved in most of the cases mentioned and two of such cases relate to offences under Section 379 read with 34 of the Indian Penal Code. However, there is no material on record to indicate as to how the accused who may be a part of one family belong to an organised crime syndicate. The mere fact that the accused are related to each other and have committed offences either individually or jointly, would not, in our opinion, lead to the inference that the accused formed an organised crime syndicate. Admittedly, there is no chargesheet at all pending against accused No. 11. The only allegation against accused No. 11 is that, she sheltered two of her sons after they had allegedly committed certain offences. There is no material on record to demonstrate as to how she could be linked with any of the offences allegedly committed by the accused in the previous 10 years. In our opinion, members of one family need not necessarily be part of an organised crime syndicate merely because some of the members of the family are involved in unlawful activities.

> 11. Apart from this, as aforesaid, the unlawful activity is not relatable to any pecuniary advantage or economic gain for the accused. The words in Section 2(e) "with the objective of gaining pecuniary benefits or gaining undue economic or other advantage" will have to be given some effective meaning.
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> 13. In the case of *State of Maharashtra v. Bharat Baburao Gavhane and Ors.* reported in 2006 ALL MR (Cri) 2895, a learned Single Judge of this Court, while considering the provisions of Section 2(1)(e) of the MCOC Act has observed that, merely stating that a gang leader and his associates run a crime syndicate with a view to gain pecuniary benefits and advantages and supremacy over rival gangs by violence, intimation and other coercive means, is not sufficient to maintain a prosecution under the MCOC Act. The learned Judge has observed that there must be some material even at the prima facie stage in that behalf."

17. In my view, this judgement is not applicable to the facts of the present case as the petitioner has been clearly shown to be involved, as detailed above, in the criminal activities along with his associates, who are members of the crime syndicate and the above-mentioned FIRs have not been registered only for some stray incidents where the petitioner is involved in his personal capacity. Rather, the contents of these FIRs point towards well-organised criminal activities of the present petitioner which are relatable to obtaining unjust pecuniary advantage or economic gain. No explanation is coming forward regarding the cash deposits made in the bank accounts of the petitioner and his wife, amounting to about Rs.50 lacs. Statements of witnesses have been recorded during investigation, detailing the *modus operandi* adopted to forcefully take possession of their properties by illegal means.

18. Learned APP has relied upon the judgement of this Court in the matter of *'Bharat @ Popat v. State'* (supra) wherein a coordinate bench of this Court reached to a conclusion that in case, the applicants are granted bail, they are likely to indulge in the similar kind of activities and the bail application was dismissed. In the present case also, co-accused Salman Tyagi is engaged in criminal activities as detailed above, while being detained in Tihar Jail. In case, the present applicant is admitted to bail, there is a strong possibility that he may again engage in the criminal activities at the behest of his crime syndicate members.

18.1 In *'Honey Sharma v. State Govt. of NCT of Delhi'* (supra), a coordinate bench of this Court has referred to the stringent provisions for grant of bail and the said conditions are cumulative and not alternative. The past conduct of the petitioner was also considered to be a relevant factor. In the present case, since, the petitioner has, in recent past, been involved in criminal activities on behalf of the crime syndicate, he may indulge in the said activities again. In the matter of *'Parveen Bazard @ Lara v. State (NCT of Delhi)'* (supra), the coordinate bench of this Court reached to a conclusion. After detailed examination of the facts and circumstances of the case, that there was nothing on record to show that there are any grounds for believing that the applicant is not guilty of any offence punishable under Section 3 and 4 of MCOCA or that he is not likely to commit any offence if he is granted bail, so the bail application was declined. In the present case also, the past conduct of the petitioner shows his inclination and willingness to be a part of the crime syndicate and the petitioner has failed to place anything on record to show that he was not at all involved in the criminal activities of the crime syndicate and if he is released on bail, he may not again indulge in the same activities.

18.2 In the matter of *'The State of Maharashtra v. Pankaj Jagshi Gangar'* (supra), it was noticed that the allegations against the respondent (accused) were very serious in nature and as he was found to be involved in offences under Section 384 read with Section 34 IPC and as such MCOCA was invoked and charge sheet was filed. The Hon'ble Supreme Court further observed that the High Court has not at all considered the seriousness of the offences alleged against the accused and had released him on interim bail, while exercising the writ jurisdiction and the said order of grant of interim relief was recalled by the Hon'ble Supreme Court and the respondent/accused was directed to surrender. In the present case also, the contents of the FIR, as detailed above, are quite serious and accordingly, the State has no option but to invoke the stringent provisions of MCOCA against the present petitioner.

19. There is no change in circumstance after dismissal of the bail application of the present petitioner vide impugned order dated 28.01.2022 passed by the learned Sessions Judge and keeping in view his past conduct, his involvement in the serious offences, and as the State has been able to demonstrate that he is part of the crime syndicate, this Court is not inclined to grant bail to the present petitioner.

20. The bail application is accordingly dismissed.

TALWANT SINGH, J

OCTOBER 13, 2022/pa

Click here to check corrigendum, if any