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

Judgment reserved on : 17.10.2023

% Judgment pronounced on: 29.11.2023

\+ BAIL APPLN. 1811/2023

AVTAR SINGH KOCCHAR @ DOLLY ..... Petitioner

Through: Mr. Vikas Pahwa, Sr.Adv. with Mr.Mrinal Bharti, Mr.Manish Shekhari, ms.Sanjana Srivastava, ms.Nancy and Mr.Siddharth Singh, advts.

versus

THE STATE OF NCT OF DELHI ..... Respondent

Through: Ms.Anandita Rao, ASC with Mr.Akhand Pratap Singh, SPP, Mr.Amit Peswani, Mr.Jasraj Singh, advts.
ACP Virender Kadyan, Insp.Pradeep Rai

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

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J U D G M E N T

DINESH KUMAR SHARMA, J.

FACTUAL MATRIX

1. The present Bail Application has been filed under Section 439 of CrPC r/w Sec. 21 (4) of MCOCA in FIR bearing no. 208/2021 registered at Special Cell Police Station (Delhi) under Sections 170/186/386/388/419/420/406/409/468/471/353/506/120B of IPC and Section 66D of IT Act and Section 3 & 4 of Maharashtra Control of Organized Crime Act, 1999 [‘MCOCA’]. The bail application filed by the petitioner in case titled *“State v. Sukesh Chandrashekhar & ors" was* dismissed vide order dated 08.07.2022 by Learned Additional Sessions Judge
2. Briefly Stated facts of the case are:
    i. The present FIR has been registered on the basis of the complaint of the Complainant Ms. Aditi Singh alleging therein that on 15.06.2023 she received a call from one landline number on her mobile phone in which the caller introduced himself as a senior officer in the Ministry of Law and proposed to help her in securing bail for her husband who was running in Judicial Custody in cases related to M/s Religare Enterprises Ltd. It is alleged that the said caller demanded a sum of Rs.20 crores from the complainant for getting the work done and conveyed the modalities regarding the delivery of money. The caller further through his associates extorted money from the complainant on multiple occasions. The extorted money was to the tune of Rs.217 Crores.

ii. It is alleged upon conducting technical surveillance on the cell phone used by said caller, the identity of the caller was found to be Sukash Chander Shekhar, who was already lodged in Rohini Jail as UTP in the case of allegedly taking money from AIADMK leader TTV Dinakaran under the guise of assisting him in retaining the 'two leaves' symbol for his party. Further, the complainant alleged that she received a call demanding Rs 1 crore on August 7, 2021. Following receipt of this information, a trap was laid down, and accused Pradeep Ramdanee who came in a Hyundai I-20 was apprehended red-handed while receiving Rs 1 Crore from the complainant. Accused Pradeep Ramdanee disclosed that he collected the money on the instructions of his brother Deepak Ramnani and at the instance of Pradeep Ramdanee, his brother Deepak Ramnani was also arrested. Their interrogation led to the mastermind Sukesh Chander Shekar who had roped both of them to collect the extortion money from the complainant.

iii. On the intervening night of 07/08.08.2021 raid was carried out by Special Cell at Cell No. 204, Ward No. 3 of Jail No. 10, Rohini Jail, and two mobile phones were recovered from the possession of Sukesh Chander Sekhar. He was arrested in the present case. Further, the interrogations of the accused led to the identification of their associates and co-conspirators and each facilitator played a different role thereby it was revealed that Avtar Singh Kochar has played an important role as a Hawala Operator in running the crime syndicate led by Sukash.

iv. During the investigation, it was further revealed that the accused/ applicant Avtar Singh Kochar, Hawala Operator, joined the organized syndicate of crime led by Sukash and he knowingly helped Sukash in running a crime syndicate inside Jail premises in lieu of hefty commissions and without his help, the syndicate could not have been able to achieve its goal. On 14.09.2021, accused/applicant Avtar Singh Kochar@Dolly was brought to the office of EOW by the team of Special Cell and was apprehended from Panchkula.

3. During the investigation, the applicant/accused disclosed that his transport business was in losses.. Thereafter, he jumped into finance and took a rented shop near Ajmal Khan Road, Bata Showroom in Karol Bagh. Gradually, he got acquainted with Angadias and Hawala traders and he started sending the money of merchants to different cities through Hawala. Further, it was stated that he met Deepak Ramnani and thereafter he told him about A-1 Sukash Chandrasekhar and offered 7-8 % commission for transferring the extorted money through the Hawala Channel to various destinations in India as well as foreign countries. It was further stated that Deepak started working with him and from June 2020 to July 2021 around Rs 90-100 Crore was sent through Hawala, out of which about 10-12 crores rupees were delivered to Mumbai, Pune, Chennai and Hyderabad. It was also stated that the details of his contacts in Dubai such as Shetti, Rajiv Khurana, Rahul Kumar, and Pankaj helped him in transferring the funds from Delhi to Dubai and in Delhi who received the money are Lalu, Govind, Tiwari, Vishnu Vijay and Raju Online. It was further disclosed that his work in Beadenpura was done by

one Pappu Sardarji and in Chandni Chowk, Raju@ Lambu used to handle it.

4. During investigation, It was also revealed that apart from this, fake companies of his men have been formed in Dubai, Singapore, Hongkong, U.S.A, etc. He sent money through banking channels from fake companies and got it back to India through telegraphic transfer. He further disclosed that he used to contact his employees and associates through mobile phones taken on fake identities and he used to contact them through WhatsApp, Signal App, etc. He also used virtual I digital numbers. It was also confessed that he had earned around Rs 8-10 crore as commission out of the extorted funds.

5. During the investigation, it was also disclosed by Deepak Ramnani that cash was handed over to the employees of accused Avtar Singh @ Dolly based on the token number, persons having specific token numbers were sent by accused Avtar Singh @ Dolly and cash was handed over to them. It was one of the token numbers provided by the complainant and this token had the number lr. 59A847526 and lr. 30D887046 and mobile number 9773584552. Further Investigation also revealed that this mobile number was being used by an employee of accused Avtar Singh@ Dolly namely Raju@ Lambu@ Rajkumar Chaurasia and he was living in the adjoining building of Hotel Kochar International, owned by accused Dolly and used to look after the Hawala operations of accused Avtar Singh@ Dolly from an office situated at Kucha Mahajani, Chandni Chowk, Delhi.

6. Furthermore, accused Deepak Ramnani also revealed that he used to converse with accused Dolly through WhatsApp and used to call him

through a separate phone number starting with +85. Upon checking of mobile phone recovered at the instance of accused Deepak Ramnani, it has been found that one virtual number +85257161763 was stored in the contact list of the mobile phone used by the accused Deepak Ramnani. This fact was further corroborated by the employee working for accused Avtar Singh@ Dolly, namely Sant Lal who was interrogated and during his interrogation, his mobile phone was checked and it was found that in his mobile phone, mobile No. +85257161763 was saved as Avtar Singh@ Dolly's number. It was also stated that this number was used by accused Avtar Singh@ Dolly while conversing with him.

7. The applicant/accused had preferred a bail application which was dismissed vide order dated 24.03.2022 by Ld. Trail court, thereafter the applicant/accused moved another bail application before the LD. Trial Court which was dismissed vide order dated 08.07.2022, wherein the Ld. ASJ observed that the said application was a complete misuse of the process of law where without detailing any grounds of regular bail to satisfy the requirement of section 21 (4) of MCOCA Act and without even forwarding any argument on this issue, ld. Counsel for the applicant/accused had insisted on having a fresh decision on an issue that had already been decided by this Court. Therefore, the bail application of the present applicant/accused was dismissed.

SUBMISSION ON BEHALF OF THE PETITIONER

8. Mr. Vikas Pahwa, learned senior counsel for the petitioner, submitted that there is no evidence to establish any nexus between the petitioner and the offences alleged in the FIR. It has been submitted that the

petitioner is a law-abiding citizen who has been wrongfully and maliciously dragged into criminal proceedings arising out of the FIR. Learned Senior counsel further submits that the prosecution has also failed to prove through evidence the petitioner's role with the crime syndicate. It has been submitted that the primary allegation against the petitioner is that he orchestrated Hawala operations, but there is no independent evidence/documents to establish the fact. It has been submitted that the main accused Sukash Chandra Shekhar (A-1) used the company and has no nexus with the petitioner.

9. Learned Senior counsel submitted that the allegations against the petitioner are being in possession of large sums of cash, but not a single unaccounted rupee or immovable/moveable assets has been found by the two leading investigating agencies (EOW and ED). It has been submitted that no seizures of cash or other incriminatory material have been made from the possession of the petitioner. It has been further submitted that alleged that cash was handed over by the accused Deepak Ramnani to the employees of the Petitioner based on token numbers, however, the charge sheet is completely silent on the supposed use of the token numbers Lr 59A847526 and Lr 30D887046. It has been further submitted that the petitioner doesn't have any contact with the co-accused persons namely Leena Paulose, Subhash Batra, DS Meena, B Mohnraj, Arun Muthu, Joel Daniel Jose, Kamlesh Kothari, Komal Poddar, Avinash Narula nor he has been mentioned in their in confessional statement.

10. Learned Senior Counsel submitted that the confessional statement retracted by the petitioner and co-accused cannot be relied upon since the statements were forcibly taken and not in compliance with the **section 18**

of MCOCA. The **r**eliance has been placed upon ***Raman Bhuraria v. Directorate of Enforcement*** 2023 SCC Online Del 657 wherein it was held that the reliability of the retracted statements is questionable. The retracted statements cannot form the basis of the guilt of the Petitioner of the offences as alleged.

11. Learned Senior Counsel submitted that there is no independent material against the petitioner except a confessional statement procured from him through coercion and disclosure statements of other co-accused persons. It has been further submitted that the petitioner was only named in the statements of Sukash Chandrashekhar, Deepak Ramnani and Pradeep Ramdance. It has been also submitted that Pradeep Ramdance, on whose disclosure statement the petitioner was arraigned, has already been enlarged on bail vide order dated 02.08.2022.

12. Learned Senior Counsel submitted that the petitioner also satisfies the twin conditions under section 21(4) of MCOCA. Reliance has been placed upon ***Chenna Boyanna Krishna Yadav v. State of Maharashtra & Anr.*** (200) 1 SCC 242, wherein it was held that it not necessary or desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the appellant has committed offences under Section 3(2) or Section 24 of MCOCA. (5.1)

13. Learned Senior Counsel submitted that the essential ingredients of the offence u/s 3 of the MCOCA are not made out against the applicant as the provision requires the applicant to have abetted the criminal activity and before the commission of criminal activity.It has been also submitted that the essential ingredient to attribute Section 3 (2) of MCOCA is 'knowledge'. It has been submitted therefore it is necessary for the

prosecution to establish that the petitioner knew about the crime alleged. Learned Counsel further submits that there is no CDR between Deepak Ramanai and the petitioner, the only evidence the prosecution has been able to show is that there is a number saved as '*dolly'.* Reliance has been placed upon ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294.***

14. Learned Senior Counsel submitted that the petitioner is a senior citizen aged about 69 years with heart ailments, suffering from prolonged geriatric illness i.e., asthma, diabetes, hypertension etc. since 2020 and requires medical treatment and attention from time to time. It has been submitted that the petitioner has been in custody even after the investigation is complete and not a shred of evidence apart from the coerced disclosure statements has been found against the Petitioner. It has further been submitted that the continuous detention of the petitioner is in violation of the Article 21 of the Constitution of India as he was denied life with dignity. It has also been submitted that the petitioner has been in custody for more than 665 days. Learned senior counsel has placed reliance upon ***Chenna Boyanna Krishna Yadav v. State of Maharashtra & Anr***, 2007 1 SCC 242, wherein it was interalia that period of incarceration and factum of trial not likely to be concluded in near future, may be taken into consideration while granting bail.

15. Learned Senior Counsel also submitted that the co-accused who had allegedly similar roles in the present case have been already granted bail, co-accused Pradeep Ramdance vide order dated 02.08.2022, Joel Daniel Jose vide order dated 21.11.2022, Avinash and Komal Poddar vide order date 23.10.2021 and Jai Prakash Singhal vide order dated 20.04.2023.

16. Learned Senior Counsel submitted the present case is also distinct from the Judgment pronounced by this court vide judgement dated 11.07.2023, wherein this court rejected the bail of co-accused persons Leena Paulose, Kamlesh Kothari, B. Mohanraj. It has been further submitted that the petitioner has already been granted bail in FIR bearing no. 124/2021 vide order dated 31.05.2022 and therefore petitioner is entitled to bail.

SUBMISSION ON BEHALF OF THE STATE

17. Mr. Sanjay Jain learned senior counsel for the state/Special PP has submitted that the role of an individual as a member of an organised crime syndicate has to be evaluated from the point of view of his association with the organised crime syndicate against whom, more than one charge-sheet is filed and in relation to a cognizable offence punishable with imprisonment of three years or more. The requirement of more than one chargesheet is not against the individual members but against the organised crime syndicate, which is engaged in continuing unlawful activity.

18. Learned SPP submitted that the applicant has been an active member of the Organized Crime Syndicate [S. 2(f) of the MCOCA] (hereinafter referred to as Syndicate), being run by Sukesh Chandra Shekhar for carrying out Organized Crime [S. 2(e) of the MCOCA], which surfaced upon the investigation having been carried out by Delhi Police, EOW.

19. Further, it was submitted that the MCOC Act was introduced in order to curb the continuing unlawful activity [S. 2(1)(d)] carried out either singly or jointly with the objective of gaining pecuniary benefits to constitute it to be an organized crime [S. 2(1)(e)], which when having been carried

out in a planned manner in a group is an organized crime carried out by an organized crime syndicate [S. 2(1) (9]. Ld. Senior PP also submitted that the distinguishing feature of MCOCA, as distinct from a standalone act of crime, stems from the continuity factor attached to unlawful activity, as would be evident from the definitions quoted hereafter.

20. Mr. Sanjay Jain learned SPP submitted that mere facilitation with the organised crime syndicate is sufficient to constitute an offence under MCOCA. It has been submitted that the investigation agency could register a fresh FIR under the MCOCA, however, it was deemed prudent to add the provisions of MCOCA in the same FIR rather than registering a new FIR.

21. Learned SPP further submitted that it has been sought to be contended on behalf of the applicant that unlike Leena Paulose, B. Mohanraj raj, Kamlesh Kothari, whose bail applications have been dismissed by this Hon'ble Court, there is no material on record to show that the applicant had any link with the foundational allegation of extortion. It has been submitted that this contention is meritless as it is not mandatory for each syndicate should have a direct role to play in the main crime. In the context of MCOCA, the concept of abetment is of utmost significance. It is submitted that if any individual abets, such an individual will attract all the trappings of being a member of the organised crime syndicate and can be charged under the provisions of the MCOCA as part of the syndicate.

22. Elaborating on the contention further, Learned SPP further submitted that one member of the syndicate need not necessarily have the same or similar role as another member of the syndicate concerned. Different

members may have different roles, not overlapping or for the entire period of commission of a crime and may or may not have a role the same as the mastermind of the syndicate. The role of the Applicant here was distinct from other members of the Syndicate, as his role comprised of facilitating the collection of examined money and then facilitating the same, reaching the intended hands situated at various places in the country and at various places in Dubai. For that purpose, the Applicant was using many individuals, some of whom were working under forged identities as an integral part of his m*odus operandi.*

23. To buttress the submission learned SPP placed reliance on the decision of the Hon'ble Supreme Court in ***Ranjitsing Brahmajeet Singh Sharma v. State of Maharashtra; (2005) 5 SCC 294*** where it was held that it must mean assistance to organised crime or organised crime syndicate or to a person involved in either of them. It, however, includes (a) communication, or (b) association with any person with the actual knowledge, or (c) having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate.

24. Learned senior counsel/SPP further submitted that the Applicant has alleged that the confession made under section 18 of MCOCA is to be disregarded in the present case as the same was retracted and the procedure for recording the satisfaction by the competent authority was not followed. It has been submitted that the above contention is completely misconceived as the legal position as regards the confession under section 18 of the MCOCA is that factors such as the voluntary nature of the confession, the procedural requirements of recording the

statements and the other aspects including retraction can be gone into only at the stage of the trial and not before.

25. learned senior counsel/SPP further submitted that the Applicant has alleged that the statement u/s. 18 of MCOCA cannot be the beginning or the end of the case against the Applicant and there ought to be independent material corroborating Section 18 statements. It would here be pertinent to mention that the investigating agency has not traced any documentary evidence in their files, which would corroborate the statement made on behalf of the accused, that the Section 18 statement of accused Avtar Singh Kochhar @ Dolly had been retracted on the same day when it was made. It has been submitted that there is a settled position of law by the Hon'ble Supreme Court as well as the recent Judgment rendered by this Hon'ble Court in the bail applications of 3 other co-accused, which made it clear that the validity of Section 18 statements i.e. whether admissible or not, whether the same were duly retracted or not are to be seen at the stage of trial and not during bail.

26. Learned SPP further submitted that the Applicant has alleged that MCOCA mandates satisfaction of the twin condition for the grant of bail as provided in Section 21(4). It has been submitted that as per, Section 21 (4), the Court has to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. The above position is buttressed by the decision of the Hon'ble Supreme Court in the ***State of Maharashtra v. Vishwanath Maranna Shetty (2012) 10 SCC 561 wherein inter-alia was held as under:***

"29 . ... What would rather be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea . ...

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 subsection (4) of Section 21 is sine qua non for granting bail under MCOCA."

27. Mr. Sanjay Jain, learned senior counsel/special PP for the State has submitted that the modes operandi of the petitioner was that he was running his Hawala business from the *two premises* at *Karol Bagh and Chandni Chowk,* both *rented in benami names,* using *sim cards obtained on fake identities for himself and his employees namely Harish, Narender, Paramjeet @Pappu, Ramesh, Rohit, Raj Kumar Chaurasia and Sant Lal* who used to collect money for Hawala transactions *for and on behalf of Avtar Singh Kochar @ Dolly;* that these employees were found to be in constant telephonic connect with each other at the numbers mentioned in the boxes; that these employees, after collection would ensure that the cash reaches *Raj Kumar Chaurasia @Lambu (presently untraceable);* that subsequent in point in time, the cash so collected by

the aforesaid employees working in the network of Avtar Singh Kochar @Dolly, would be *delivered at the direction of Avtar Singh Kochar @Dolly* to various destinations, *instructed by the mastermind of the syndicate i.e. Sukash Chandrashekhar,* through Hawala network, in India as well as abroad.

28. Reliance has also been placed upon the confessional statement under Section 18 MCOCA of the petitioner and Sukash Chandrashekhar and Deepak Ramnani and the statement under Section 161 Cr.P.C. of i. Nitesh Nath (Landlord of Beadenpura Office) ii. Abhishek Sharma (Landlord of Kunncha Mahajani, Chandni Chowk office) iii. Harish (Employee) iv. Narender (Employee) v. Paramjeet (Employee) vi. Ramesh (Employee) vii. Rohit (Employee) viii. Sant Lal (Employee).

FINDINGS AND CONCLUSION

29. Before proceeding to analyze the contentions of the parties which have been recorded herein above, it is necessary to refer to the relevant provisions of the MCOC Act. In order to understand the relevant provisions, it is also necessary to look at the statement of object and reasons of the Act.

> *"Organised crime has been for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract, killing, extortion, smuggling in contrabands, illegal trade in narcotics kidnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organised crime being very huge, it has had serious adverse effect on our economy. It was seen that the organised criminal syndicates made a common cause with terrorist gangs and foster narco-terrorism which extend beyond the national boundaries. There was reason to*

believe that organised criminal gangs have been operating in the State and thus, there was immediate need to curb their activities.

It was also noticed that the organized criminals have been making extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission would be an indispensable aid to law enforcement and the administration of justice.

2. The existing legal framework i. e. the penal and procedural laws and the adjudicatory system were found to be rather inadequate to curb or control the menace of organised crime. Government, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime."

30. The bare perusal of the statement of object and reasons make it clear that MCOCA was enacted with a special purpose to tackle the serious offences committed in an organized manner. The statement reveals that intention of the legislature is to curb such activities.

31. The relevant definitions are given in Section 2(d), 2(e) and 2(f). The punishment for organised crime has been prescribed in Section 3 which reads as under:

"2(d) "continuing unlawful activity" means 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 organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;

2(e) "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;

2(f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime;"

32. In the ***State of Gujrat vs. Sandeep Omprakash Gupta,*** 2022 SCC OnLine SC 1727 the Apex Court whilst dealing with a case under the Gujarat Control of Terrorism and Organized Crime Act, 2015; which has similar provisions as that in MCOC Act, inter alia held as under:

"In understanding the ambit of the enactment, emphasis must be given to three definitions:

a. Organised crime (Section 2(1)(e))

b. Organised crime syndicate (Section 2(1)(f)); and

c. Continuing unlawful activity (Section 2(1)(c).

The expression "organised crime" is defined with reference to a "continuing unlawful activity".

The definition is exhaustive since it is prefaced by the word 'means'.

The ingredients of an organised crime are:

a. The existence of a continuing unlawful activity;

b. Engagement in the above activity by an individual;

c. The individual may be acting singly or jointly either as a member of an organised crime syndicate or on behalf of such a syndicate;

d. The use of violence or its threat or intimidation or coercion or other unlawful means; and *e. The object being to gain pecuniary benefits or undue economic or other advantage either for the person undertaking the activity or any other person or for promoting insurgency.*

The above definition of organised crime, as its elements indicate, incorporates two other concepts namely, a continuing unlawful activity and an organised crime syndicate. Hence, it becomes necessary to understand the ambit of both those expressions.

The ingredients of a continuing unlawful activity are:

a. The activity must be prohibited by law for the time being in force;

b. The activity must be a cognizable act punishable with imprisonment of three years or more;

c. The activity may be undertaken either singly or jointly as a member of an organised crime syndicate or on behalf of such a syndicate;

d. More than one charge-sheet should have been filed in respect of the activity before a competent court within the preceding period of ten years; and

e. The court should have taken cognizance of the offence.

The elements of the definition of organised crime syndicate are:

a. A group of two or more persons;

b. Who act singly or collectively, as a syndicate or gang; and

c. Indulge in activities of organised crime.

Section 2(1)(c) while defining "continuing unlawful activity" and Section 2(1)(e) while defining "organised crime", both contain the expression "as a member of an organised crime syndicate or on behalf of such syndicate." While defining an organised crime syndicate, Section 2(1)(f) refers to "activities of organised crime".

Section 3 provides for the punishment for organised crime. Sub-section (1) of Section 3 covers 'whoever commits an offence of organised crime'. Sub- section (2) covers whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime. Sub-section (3) covers whoever harbours or conceals or attempts to harbour or conceal any member of an organised crime syndicate. Sub-section (4) covers any person who is a member of an organised crime syndicate. Sub-section (5) covers whoever holds any property derived or obtained from the commission of an organised crime or which has been acquired through the funds of an organised crime syndicate. Section 4 punishes the possession of unaccountable wealth on behalf of a member of an organised crime syndicate.

23. For charging a person of organised crime or being a member of organised crime syndicate, it would be necessary to prove that the persons concerned have indulged in:

(i) an activity,

(ii) which is prohibited by law,

(iii) which is a cognizable offence punishable with imprisonment for three years or more.

(iv) undertaken either singly or jointly,

(v) as a member of organised crime syndicate i.e. acting as a syndicate or a gang, or on behalf of such syndicate,

(vi) (a) in respect of similar activities (in the past) more than one charge- sheets have been filed in competent court within the preceding period of ten years,

(b) and the court has taken cognizance of such offence.

(vii) the activity is undertaken by:

(a) violence, or

(b) threat of violence, or intimidation or

(c) coercion or

(d) other unlawful means

(viii) (a) with the object of gaining pecuniary benefits or gaining undue or other advantage or himself or any other person, or

(b) with the object of promoting insurgency.

24. A close analysis of the term, 'organised crime' would indicate that there has to be 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 as singly or jointly as a member of organised crime syndicate or on behalf of such syndicate, in respect of which activity more than one chargesheets have been filed before a competent court within the preceding period of ten years and the Court has taken cognizance of such offence."

33.Before proceeding further, it is also necessary to be reminded that the provisions of the MCOC Act have to be strictly construed. The reading of the relevant provisions and statement of object and reasons also makes it clear that this is special enactment for dealing with the menace of organised crime which poses a serious threat to the society. The purpose and intent of the legislation is to tackle organised crime. In **State of Maharashtra & Ors. v. Lalit Somdatta Nagpal & Anr. (2007) 4 SCC 171**, it was inter alia held that the provisions of MCOCA have to be strictly interpreted as the provisions seek to deprive the accused of their right to freedom at the initial stage of investigation making it extremely difficult for them to obtain bail.

34.The Apex Court in ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra & Anr. (2005) 5 SCC 294,*** *inter-alia*, held that the role of the appellant was said to be of rendering help and support to the organizing crime syndicate while functioning as Commissioner of Police at different places. The Apex court was essentially concerned with the operation of Section 24 of MCOCA providing for punishment of public servant failing in discharge of their duty. However, the court taking overall view of the matter with reference to the facts from the prima facie opinion that the High Court might not have been correct while coming to the conclusion that the appellant committed an offence under Section 3(2) as well as Section 24 of MCOC Act; the interim bail granted to the appellant was continued. In this case, it was inter alia held as under:

> *"24. The Statement of Objects and Reasons clearly states as to why the said Act had to be enacted. Thus, it will be safe to presume that the expression "any unlawful means" must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control. <u>In other words, an offence falling within the definition of organised crime and committed by an organised crime syndicate is the offence contemplated by the Statement of Objects and Reasons.</u> There are offences and offences under the Penal Code, 1860 and other penal statutes providing for punishment of three years or more and in relation to such offences more than one charge-sheet may be filed. As we have indicated herein before, only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA. <u>Furthermore, mens rea is a necessary ingredient for commission of a crime under MCOCA."</u>*

35. The bare reading of this makes it clear that each and every offence cannot be brought within the purview of the MCOC and in order to penalise a person under the MCOC, the ingredients of Section 2(d), 2(e) and 2(f)

must be fulfilled. It is also pertinent to mention, that mens rea is a necessary ingredient for the commission of crime under MCOCA.

36. It is also necessary to understand that the factum of recording of offence of organised crime and not the recording of a crime against an offender as such is required to attribute to the provisions of MCOCA.

37. In ***State of Gujrat vs. Sandip Omprakash Gupta*** (Supra) the apex court also enumerated the conditions which normally weigh with the court states in granting bail in non-bailable offences.

> *"26. The considerations which normally weigh with the Court in granting bail in non-bailable offences are:*
> *(1) the nature and seriousness of the offences;*
> *(2) the character of the evidence;*
> *(3) circumstances which are peculiar to the accused;*
> *(4) a reasonable possibility of the presence of the accused not being secured at the trial;*
> *(5) reasonable apprehension of witnesses being tampered with; (6) the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case."*
>
> *However, in addition to the above conditions, the conditions as laid down in Section 21(4) are also required to be taking into account which reads as under:*
> *"21. (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—*
> *(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and*
> *(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."*

36. It is a well-settled proposition that these conditions are cumulative and not alternative. It was reiterated in Sandeep Omprakash Gupta (supra) that the satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds and the expression "reasonable grounds" means something more than prime facie grounds. It was further inter alia held that it contemplates substantial provable causes for believing that the accused is not guilty of the alleged offence.

38.In ***Sandeep Omprakash Gupta (supra)*** the judgement of ***Ranjitsing Brahmajeetsing Sharma (Supra)*** was also cited with approval which reads as under:

"29. The Court should bear in mind the principles enunciated in the case of Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and Another reported in (2005) 5 SCC 294. We quote paras 43, 44 and 46 resply: "43. Section 21(4) of MCOCA does not make any distinction between an offence which entails punishment of life imprisonment and an imprisonment for a year or two. It does not provide that even in case a person remains behind the bars for a period exceeding three years, although his involvement may be in terms of Section 24 of the Act, the court is prohibited to enlarge him on bail. Each case, therefore, must be considered on its own facts. The question as to whether he is involved in the commission of organised crime or abetment thereof must be judged objectively.

44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not *committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in future must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessartly consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.*

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."

39. The bail in the present case has been opposed by the State on the ground that it is not necessary to show that the petitioner had any link with the

foundational allegation of extortion or with the mastermind of the Syndicate. It has further been submitted that mere membership/nexus/facilitation in the organized crime syndicate is sufficient to constitute an offence under MCOCA. The prosecution has stated that it is not mandatory that each member of the syndicate should have a direct role to play in the foundational crime or that he should be shown to be having direct transactional contact with the mastermind of the syndicate. The plea is that one member of the syndicate need not necessarily have the same or similar role as another *member* of the syndicate concerned. The prosecution has stated that the role of the applicant/petitioner is distinct from other members of the Syndicate, and his role comprised of facilitating the collection of extorted money and then facilitating the same, reaching the intended hands situated at various places in the country and at various places in Dubai, for which purpose the petitioner was using many individuals, some of whom were working under forged identities as an integral part of his *modus operandi.*

40. In the present case, the role of the present petitioner is confined to the extent that he has allegedly facilitated the transfer of extorted money through Hawala. It is a matter of record that there is no evidence of direct interaction between the accused and *Sukash Chandrashekhar.* The evidence against the petitioner are confessional statement which though can be seen at this stage but the evidentiary value of the same has to be seen during the trial. It is also a settled proposition that at this stage it is not necessary or desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the petitioner has committed an offence under Section 3(2) as well as Section 24 of MCOCA Act. At this

stage, the court is only required to see if there is a reasonable ground for believing the petitioner is not guilty of the offence he has been charged with and he is not likely to commit an offence under MCOCA.

41. To determine whether such crimes qualify as "continuing unlawful activity," "organized crime," it is necessary to determine if "continuing unlawful activity" falls with the ambit of "organized crime." In order to bring an offence under the definition of "continuing unlawful activity" it is necessary that;

    i. The act must be prohibited by law for the time being in force;

    ii. The alleged act must be a cognizable act punishable with imprisonment of 3 years or more;

    iii. The act might have been undertaken either singly or jointly as a member of an organized crime syndicate or on behalf of such syndicate; and

    iv. More than one charge sheet should have been filed in respect of activity before a competent court within the proceeding period of 10 years and the court should have taken cognizance of the offense.

42. The learned senior counsel for the petitioner has submitted that the petitioner did not participate in the foundational crime. However, the petitioner might not have participated directly, but this court is required to examine whether the petitioner possessed the appropriate mens rea or was a part of an organized criminal syndicate. It is important to note that the alleged act committed by the accused should not only be illegal, but also a cognizable offense that carries a minimum sentence of three years in prison. Additionally, the alleged act must have been carried out alone,

or, in concert with others, as a member of an organized crime syndicate, or on behalf of such a syndicate. It is also important to note that the alleged offense relate to the statement of the object and reasons, as well as the components of "organized crime" and "continuing unlawful activity." It is also to be seen that whether the petitioner committed the alleged act only at the instructions of the Deepak Ramnani or as a member of an organized crime syndicate or on behalf of such syndicate.

43. It is also pertinent to mention here that the petitioner is a senior citizen aged about 69 years and stated to be suffering from heart ailments and suffering from prolonged geriatric illness i.e., asthma, diabetes, hypertension etc. It is also a settled proposition that the period of incarceration and factum of trial not likely to be concluded in the near future may be taken into consideration while considering the bail.

44. The Hon'ble Supreme Court in ***Union of India vs. K.A. Najeeb*** in **Criminal Appeal No. 98 of 2021** *inter alia* held as under:

> *18. It is thus clear to us that the presence of statutory restrictions like Section 43-D (5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.*

> *19. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.*

45. I consider that taking into account the totality of the facts and circumstances of the case, the petitioner is admitted to court bail subject to the following conditions:

a) The Applicant shall furnish a personal bail bond in the sum of Rs.5,00,000/- with two sureties of the like amount subject to the satisfaction of the learned Trial Court/CMM/Duty MM.

b) The Applicant shall appear before the I.O./ Competent officer of EOW thrice a week i.e., Tuesday, Thursday and Saturday between 3 P.M to 5 P.M. personally or through V.C.

c) The Applicant shall under no circumstances leave NCR without prior permission of the Court concerned;

d) the applicant shall not leave India without prior permission of the Court concerned;

e) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case;

f) The Applicant shall provide his mobile number(s) to the concerned police officer at PS Special Cell; and

g) In case of a change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

h) The learned trial court shall be at liberty to grant exemption on the sufficient cause being shown from appearance before E.O.W or court in accordance with law.

46.In view of the above, the present application stands disposed of.

DINESH KUMAR SHARMA, J

NOVEMBER 29, 2023
rb/sj/ak