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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RESERVED ON -01.06.2023
PRONOUNCED ON -11.07.2023

+ BAIL APPLN. 4262/2021
KAMLESH KOTHARI

..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Adv. with
Mr. Pallav Palit, Ms. Raavi Sharma,
Ms. Shreya B., Mr. Paritosh Mandwa,
Advs.

versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr. Sanjay Jain, ASG with Ms.
Nandita rao, ASC with Mr. Akhand
Pratap Singh, SPP with Mr. Amit
Peswani and Mr. Saransh, Mr.
Abhinandan Gautam, Ms. Deeksha
Diwedi, Mr. Nishank Triapthi, Ms.
Harshita Sukhija, Ms. Shruti
Aggarwal, Adv.
ACP Virender Kadyan, Inspector
Shikhar Chaudhary PS EOW

+ BAIL APPLN. 1170/2022
B. MOHAN RAJ

..... Petitioner

Through: Mr. Anand Grover, Sr. Adv. with Mr.
Ravinder Singh, Ms. Raveesha Gupta,
Mr. Arnav Dasgupta, Adv.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Sanjay Jain, ASG with Ms.
Nandita rao, ASC with Mr. Akhand
Pratap Singh, SPP with Mr. Amit



Peswani and Mr. Saransh, Mr. Abhinanadan Gautam, Ms. Deeksha Diwedi, Mr. Nishank Triapthi, Ms. Harshita Sukhija, Ms. Shruti Aggarwal, Advs.
ACP Virender Kadyan, Inspector Shikhar Chaudhary PS EOW

+ BAIL APPLN. 3706/2022
LEENA PAULOSE

..... Petitioner

Through: Mr. Wills Mathews and Mr. Paul John Edison, Advs.

versus

STATAE OF DELHI

..... Respondent

Through: Mr. Sanjay Jain, ASG with Ms. Nandita rao, ASC with Mr. Akhand Pratap Singh, SPP with Mr. Amit Peswani and Mr. Saransh, Mr. Abhinanadan Gautam, Ms. Deeksha Diwedi, Mr. Nishank Triapthi, Ms. Harshita Sukhija, Ms. Shruti Aggarwal, Advs.
ACP Virender Kadyan, Inspector Shikhar Chaudhary PS EOW

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 order shall dispose of the bail application no. 4262/2021 of Kamlesh Kothari, Bail Application No. of B.Mohanraj and Bail Application No. Of Leena Paulose. The bail application filed by Petitioner Kamlesh Kothari in case titled. “State v. Kamlesh Kothari” was dismissed vide order dated 02.11.2021 by Learned Additional Sessions Judge. Similarly the bail application filed by Petitioner B.Mohan Raj in case titled “State v. Sukesh Chadrashekhhar & ors” was dismissed vide order dated 19.01.2022 by Learned Additional Sessions Judge and the bail application filed by Petitioner Leena Paulose in case titled “State v. Sukesh Chadrashekhhar & ors” was dismissed vide order dated 02.11.2022 by Learned Additional Sessions Judge.
2. Briefly stated facts of the case are:
 - i. The present FIR no.208/2021 has been registered under sections 170, 384, 386, 388, 419, 420, 406, 409, 506, 186, 353, 468, 471, 120-B IPC ; section 66-D of IT Act and sections 3/4 MCOCA at PS Special cell, on the basis of complaint of Ms. Aditi S.Singh/Complainant alleging therein that on 15.06.2020 she received a call from one landline number on her mobile



phone in which the caller introduced himself as a senior officer in 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.

- ii. 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 delivery of money. The caller further through his associates extorted money from complainant on multiple occasions. The extorted money was to the tune of Rs.214 Crores.
- iii. On conducting technical surveillance of the cell phone which was 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 on the pretext of helping him retain 'two leaves' symbol for his party.
- iv. The complainant alleged that that she received a call to deliver Rs 1 Crores on 07.08.2021. On receipt of this information a trap was laid and accused Pradeep Ramdanee was caught red-handed while receiving the amount of 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.

- v. A raid was carried out in the intervening night of 07/08.08.2021 by Special Cell and two mobile phones were recovered from possession of accused Sukesh Chander Sekhar and he was arrested. The interrogation of the accused, Sukesh Chander Sekhar led to the identification and arrest of their associates and co-conspirators. During the investigation, it was revealed that the accused and his wife Leena Paulose were allegedly involved in running an organized crime syndicate with their associates since 2013 with the motive of pecuniary gain by cheating and extortion. It was further revealed that the accused Sukesh Chandra Sekhar is involved in several cases of attempt to murder, criminal intimidation, cheating and extortion by way of impersonating as high-ranking officials.
- vi. During investigation it came in light that accused Leena Paulose, Kamlesh Kothari, B Mohan Raj, Joel daniel, Arun Muthu, Subhash Batra and Dharam Singh Meena (both jail officials) were involved in running the organized crime syndicate being headed by Sukash and Leena for getting illegal pecuniary gains and other advantages. As reflected from charge sheets filed that accused Leena Paulose was earlier involved in four criminal cases alongwith accused Sukash Chander Shekar prior to registration of present case.
- vii. From the analysis of CDR/IPDR, it was revealed that accused Leena Paulose was in continuous contact with Sukash through



cell phone who was using cell phone while in prison with the help of jail staff. She allegedly procured bank entries in her account from various entitites/persons to whom she provided cash, received from Sukash through Hawala transactions with the help of Joel Daniel Jose, Kamlesh Kothari, B Mohanraj and Arun Muthu etc. and invested in high end cars, properties and her business firms. It is stated that 23 High end luxury cars were seized from her house. Accused Leena allegedly made the payment of "Silent Calling App" which was being used by accused Sukash to commit the crime, while he was in jail.

- viii. During investigation, accused Leena Paulose, Pradeep ramdani, Arun Muthu, B. Mohanraj, Joel Danial Jose, Kamlesh Kothari and Sukashchander Shekar were arrested. The accused Kamlesh Kothari was arrested on 05.09.2021 and is in judicial custody since then.
- ix. Disclosure statement of accused Arun Muthu, B. Mohanraj, Joel Danial Jose, Kamlesh Kothari and Sukashchander Shekar were recorded. During investigation, the confession statement U/s 18 MCOC Act of accused Sukash chander Shekar, B Mohan Raj, Dharm Singh Meena, Deepak Ramnani, Avtar Singh Kochar were recorded.
- x. It is mentioned in the charge-sheet as well as report filed that accused Deepak Ramdani and his brother Pradeep Ramdani collected extorted money on the directions of Sukash and delivered it to pre decided locations and disposed of the extorted funds obtained from complainant and obtained



commission on every deal. During investigation, confession statement of accused Deepak Ramdani was also recorded wherein he admitted his guilt as well as receiving of proceeds of crime and that they had knowledge that Sukash was in jail and the same was ill-gotten money.

- xi. It was further revealed *inter alia* during investigation that accused Joel Daniel had been facilitating accused Leena in disposal of cash sent by Sukash while he was in jail in Delhi. He used to collect the crime proceeds from various HAWALA Channels on the instruction of accused Leena and B Mohan Raj. Accused Sukash and Leena invested their ill-gotten money in jewellery which were purchased in the name of Joel Daniel Jose. Accused Joel Daniel stated in disclosure statement that Rs 20 Cr, in various tranches, between June, 2020 to October, 2020 were sent through hawala from Dubai by Sukash and the same were handed over to B Mohanraj for investment in lands and the same were invested in the name of Raghu, brother in law of B Mohanraj, land approx 100 acre at Uthiramerur Distt ChengarPettu. From the documents received from M/s Malabar Gold Pvt. Ltd. it was found that during the period between June, 2020 to July, 2021 accused Joel and accused Leena have purchased Gold jewelry worth Rs 4.45 lakh and Rs 2.88 lakh respectively. Joel Daniel used to reside with Leena and Sukash.
- xii. The charge-sheets have already been filed. The role of Kamlesh Kothari as surfaced in the investigation is that he was previously involved in two cases. It has further been found that



Kamlesh Kothari facilitated Sukesh and Leena to purchase the cars and house out of the extorted funds. He even arranged Surender Panwar to purchase Lamborgini car in his name from the extorted funds which was found in the possession of Leena. He even facilitated in making of rental agreement between Surender Panwar and M/s Nail Artistry (Leena). After deducting the tax from the monthly rent Surender Panwar returned the amount in cash to Kamlesh who delivered the same to Mohan Raj or Leena. Kamlesh also facilitated to buy another car 'Bentely' out of the extorted funds in the name of M/s Priyanaka Arcade which was found to be in possession of Leena. Kamlesh's brother Manish Kothari also executed hire purchase agreement with M/s Nail Artistry for three cars to facilitate the syndicate in turning their black money (extorted funds) into white money. Kamlesh also introduced his relative Jitendra Kothari to purchase benami property to the tune of Rs 7 crores on behalf of the syndicate out of the extorted funds in his name. One rental agreement was also prepared by him with the aid of another syndicate member namely Mohanraj between Jitender Kothari and Leena Paulose so that the rental amount which was transferred by Leena to Jitender can be returned to her after deducting the tax amount. He and B Mohanraj also received the cash amount sent by Sukesh through his aids. He also arranged the bank entries for legitimizing the extorted funds for the purpose of buying the benami property. Kamlesh also helped Leena in converting the proceed of crime by



purchasing the cars bought by Leena from Gaffar Khan with double the price.

3. During investigation it was found that Leena Paulose was in continuous contact with her husband and main accused Sukash. It is also a matter of record that she was previously involved in four cases with Sukash. Leena also remained in contact with jail officials namely D S Meena and Subhash Batra and was actively coordinating with Sukesh and other syndicate members in furtherance of organized crime and disposal of crime proceeds. It was also revealed that she Procured bank enteries in her account from various entities/person to whom she provided cash, received from Sukesh through Hawala with the help of Mohanraj, Kamlesh, Arun Muthu and Joel Daniel. The investigation revealed the she purchased high end cars and properties in benami name. Leena was found in possession of 23 high end cars.
4. The investigation revealed that Leena made the payment of “Silent Calling App” which was being used by Sukesh in his mobile to commit the crime while he was in the Jail. In this regard Naufal in his statement u/s 164 crpc and 161 crpc stated that he used to recharge the mobile number 9311910260 through his paytm ID 9964666644@paytm with email address noufuhinda@gmail.com on the instruction of Leena. Number 9311910260 was found to be used by Sukesh in jail to commit the crime and was recovered from the possession of Sukesh at the time of raid in Rohini Jail.
5. During investigation Sarvana Priyan in his statement 161 crpc stated that he had transferred Rs 1 Crore in the account of Leena Paulose on his friend’s direction namely Siva Subramanian. Siva Subramanian



Chelladurai in his statement 161 crpc stated that he was approached by Arun Muthu to transfer funds through banking channel in lieu of cash. He arranged 3 different accounts and transferred Rs 2.20 Cr in the bank account of Leena Paulose provided by Arun Muthu.

6. During investigation T. Michael in his statement 161 crpc stated that he had transferred Rs 1 Crore in the bank account of Leena, provided by Leena to Arun Muthu and Arun Muthu to Siva Subramanian and finally Siva Subramanian to T Michael. Similarly Jagdish Navin Kumar in his statement 161 crpc had transferred Rs 2.90 Cr. from different accounts into the bank account of Leena's firm M/s Super Car Artistry on the commission of 1%. During investigation Alok Damani in his statement 161 crpc stated that he was contacted by one person namely Sunil Kumar from mobile No.+17242765376 and he introduced himself as secretary to accused Leena Paulose and Mr. Shekhar office and handles their firm M/s LS corporation. After that Alok Damani received a call from accused Leena Paulose from mobile No.8011151608 for booking another artist for an event in Kochi. Leena stated that Mr. Sunil shared his number with her and also advised to book a celebrity for Kochi event.
7. During investigation Nora Fatehi in her statement u/s 161 and 164 crpc stated that she attended a charitable event in Chennai organized by accused Leena Paulose for her firm M/s LS corporation. On the day of event in Chennai, prior to the event, she was in her hotel room. Leena came in her Hotel Room and made her talk to her husband Sukash Chandra Shekar on her mobile phone. During investigation Shoby T. Paul in his statement u/s 161 crpc stated that through him Leena



booked chartered flights for Sukesh Chandra Shekhar. Investigation revealed that an amount of Rs. 21 Crores were deposited into the above mentioned five bank accounts maintained by Leena Paulose which were either in her own name or in the name of her Proprietorship concerns.

8. During investigation B. Mohanraj in his confessional statement revealed that he knew that Sukesh was serial offender and has been arrested number of times. B Mohanraj knew Sukesh since 2013 and even appeared for him in Courts. He not only facilitated the purchase of cars but also handled the delivery of cash. B. Mohanraj organised persons who could arrange transactions to route the money through banking transactions. He was also instrumental in purchase of a huge property worth crores in Chennai, which was a benami property of accused Leena which has been purchased in the name of Jitendra Kothari on the instructions of Kamlesh Kothari, giving the cash back to Leena after receiving from Kamlesh Kothari. Accused prepared a rent agreement with the knowledge that he was preparing a sham agreement for a benami property. The above acts of the applicant do not come under the discharge of his duties as an advocate. These acts were in the nature of facilitating the activities of the organized crime syndicate with the full knowledge that there was no legal source of income for syndicate headed by Sukesh. Also the presence of B Mohanraj mobile number in the data provided by Hushed App also clearly establishes that Sukesh while running into Judicial Custody was in direct touch with B Mohan Raj to fulfill the objectives of the syndicate.



9. In his confessional statement petitioner B.Mohanraj stated that while he was handling the case of Sukash and Leena he found that they were working as a group and obtaining lots of money from their activities and he got into managing their funds. Petitioner B. Mohanraj stated that co-accused Sukash and Leena gave him lots of commissions and over the time, he became integral part of their group. Petitioner B.Mohanraj specifically stated that though overtly he was managing their legal affairs, but covertly he was managing their funds obtained from their illegal activities. In the disclosure statement petitioner B.Mohanraj submitted that he was continuously in touch with Sukash and Leena since 2015 when they were arrested by EOW Mubai for running a Ponzi Scheme.
10. It also came in the disclosure statement that petitioner B.Mohanraj had introduced his friend Kamlesh Kothari, a high-end car dealer in T Nagar to Leena from whom Leena bought 3 cars, Range Rover Sport, Bentley and Fortuner. It was stated that the cars were bought in cash on paper and payments were made by others. Petitioner B.Mohanraj stated that he and Kamlesh arranged all this and got huge commission. It has also come in the disclosure statement of Petitioner B.Mohanraj that Sukash called him on Telegram and asked him to buy a house for Leena in some other person's name during August 2020 which he discussed with Kamlesh Kothari and finalized the deal. Petitioner B.Mohanraj stated that Sukash sent cash Rs.7.75 Crores through Sudheer and Joel and handed over the money to Kamlesh Kothari at his office at T. Nagar in his presence.



11. It came in the disclosure statement of B.Mohanraj that Leena occupied the said house and did the renovation work. It was also came in the statement that a rental agreement for this house was entered between Leena and Jitendra Kothari for Rs 2.5 lakhs, from January 2021 and Leena used to send the monthly rent through RTGS to Jitendra Kothari and he in turn used to deduct the tax amount and return the balance amount to Kamlesh Kothari and he used to get that amount and hand it over to Leena. In confessional statement under Section 18 MCOCA of Sukesh Chandrashekhar he also indicated the role of petitioner B.Mohan raj. It came in his disclosure statement that the cash was delivered to B. Mohan Raj and he further delivered to Kamlesh Kothari and Arun Muthu. Sukash also stated in his confessional statement that petitioner B. Mohan Raj arranged some entity for purchasing house also and petitioner Mohan Raj and Kamlesh connected them to Jitender Kothari and brought house at 12/13, Kannathur Village, opp Mayajaal Cinemas, ECR, Chennai in name of Jitender Kothari in August 2020.

SUBMISSIONS OF BEHALF PETITIONER B.MOHAN RAJ

12. Mr.Anand Grover, learned senior counsel for Mr.B.Mohanraj has submitted that the prosecution has failed to show any reasonable ground for believing that petitioner B.Mohanraj has committed the alleged offence and there are no allegations in the chargesheet of committing under IPC or IT Act. It has been submitted that the case of the prosecution against the petitioner is that he helped main accused Sukesh Chandrashekar, and his wife Leena in conduiting money for the Main accused and in facilitating the purchase of properties and cars. It was submitted that even if this allegation is taken at face value as



contended by the Respondent, *prima facie* the petitioner has not committed any offence u/s 170 / 384 /386 /419 /420 /406 /409 /468 /471 /186 /353 / 506 /120B IPC & 66-D IT Act. Learned senior counsel submitted that the perusal of the charge sheet would not reveal any act which may constitute an ‘organised crime’ as defined under Section 3 (1) of the MCOCA. It has been submitted that ‘organized crime’ requires ‘**continuing unlawful activity**’ by an individual, singly or jointly, as a member of an organised crime syndicate. Learned senior counsel submitted that in order to constitute ‘**Continuing unlawful activity**’ *it is necessary that:* a) The accused has engaged in activity prohibited by law, cognizable and punishable with imprisonment of three years or more; b) The accused has undertaken that activity as a member of an organized crime syndicate or on behalf of such syndicate; c) In respect of the accused more than one charge-sheet has been filed and cognizance is taken by the competent Court in the last 10 years. Learned senior counsel submitted that there is no allegation that the Applicant has engaged in continuing unlawful activity. Learned senior counsel submitted that the list of previous cases of criminal conspiracy and other offences as stated in the charge-sheet only reflect on the activities of other co-accused regarding their impersonation as government officers and such acts cannot be attributed to the applicant in any of the cases. It has been submitted that therefore no offence under Section 3(1) \ (i) of the Act. Learned senior counsel has submitted that prosecution has alleged that that the Applicant was in possession of unaccountable wealth in terms of land and monies however, the investigation could not substantiate the allegation. It has also been



submitted that there is no allegation in the chargesheet qua the applicant before the alleged commission of extortion or during the course of extortion. It has been submitted that even as per case of the prosecution, the role of the applicant started after extortion was over on the ground that he allegedly facilitated the buying of properties for Leena Paulose, wife of the main accused Sukesh Chandrashekar. Learned senior counsel submitted that admittedly Petitioner had been the lawyer for the main accused in many matters and he was acting in his capacity as the lawyer and therefore there is nothing on record to suggest that petitioner B.Mohanraj was member in any organised crime syndicate or had any connection, link or nexus. Reliance has been placed upon ***Ranjitsing Brahmajeetsing v. State of Maharashtra (2005) 5 SCC 294.***

13. It has further been submitted that the prosecution has only brought on record the statements of the Accused and the co-accused that the petitioner was requested by Sukash to buy properties for his wife Leena, in the form of cars and houses. It has been submitted that this alone does not constitute any offence. It has further been submitted that the prosecution is duty bound to bring legally admissible evidence against the petitioner and the role attributed to others cannot be attributed to the petitioner. Learned senior counsel submitted that the confession as recorded under Section 18 of MCOCA cannot be used against the petitioner. It has been submitted that the statement of the petitioner was taken forcibly under coercion. The petitioner was harassed physically and mentally. In any case, It has been submitted that the petitioner retracted the statement. Learned senior counsel



submitted that the procedure prescribed under Section 18 of MCOCA was not complied with, therefore the confessional statement cannot be read against the accused. It has further been submitted that the cooling off period as provided in MCOCA Maharashtra Rules has not been complied with in this case.

14. Learned senior counsel submitted that even the disclosure statement of the petitioner establish that the petitioner was not a member of organised crime syndicate and that he was the lawyer for the Main Accused, Sukesh Chandrashekhar and his wife, Leena. Learned senior counsel took the court through the statement of the petitioner B.Mohanraj to emphasise that he had no role to play in the organised crime syndicate. Learned senior counsel further submitted that the disclosure statements by other co-accused co-conspirator namely, Leena Paulose, Arun Muthu, Kamlesh Kothari, Joel Daniel Jose were forcibly taken and are not in compliance the sec 18 of MCOCA. It has been submitted that in any case the confession of co-accused do not constitute substantive evidence. The reliance has been placed upon *Kashmira Singh v State of HP* Cr.MP(M) No.1741 of 2020; *Hari Charan Kurmi v State of Bihar* (1964) 6 SCR 623 ; *Param Hans Yadav v State of Bihar* (1987) 2 SCC 197; *Kalp Nath Rai v State* (1997) 8 SCC 732; *Jayendra Saraswathi v State of Tamil Nadu* (2005) 2 SCC 13; *Mahabir Viswas v State of West Bengal*.
15. Learned senior counsel has also submitted that the case of the prosecution is based on statement/confession recorded under Section 18(3) of MCOCA which requires that a certificate of the police officer recording the statement must be there at the bottom of the confession



after the statement is recorded. It has been submitted that in all the statements that are recorded under Section 18 (3) of the Act, there is no certificate of the officers and therefore statements which do not comply with the mandate of Section 18 (3) of the Act cannot be relied upon. Learned senior counsel further emphasized that the disclosure statement by co-accused/co-conspirators are not voluntary.

16. Learned senior counsel further submitted that the Facts stated or acts done after the conspiracy is over are not admissible. It has been submitted that in the present case, the conspiracy was to extort money from the Complainant and even as per the Prosecution, it is long after the alleged extortion that the role of the Applicant allegedly crops up. Learned senior counsel further submitted that the material against the Applicant shows 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. Learned senior counsel has also assailed the sanction order and stated that it is not valid and even cognizance could not have been taken. Learned senior counsel submitted that while granting sanction, authority has to examine the individual role of the accused. It has further been submitted that the sanction Order merely stated that the main accused Sukesh and Leena formed an organized crime syndicate with assistance from arrested members of the syndicate and even the names of the members of the crime syndicate were not indicated. Learned senior counsel submitted that the validity of the sanction is required to be seen even at the stage of bail. Learned senior counsel further submitted that petitioner was arrested on 05.09.2021. The investigation is complete. The charge-sheet has been filed and



charges are yet to be framed. It has further been submitted that the prosecution has cited 203 witnesses and it will be a very lengthy trial, therefore, the petitioner may be released on bail. It has been submitted that the petitioner is a lawyer and has roots in the society and has no criminal antecedents. It has further been submitted that the petitioner is married and has a small child and old sick father. It has been submitted that there is no flight risk.

17. Learned senior counsel has also assailed the arguments of the prosecution that mobile number of the petitioner B.Mohanraj 9884477669 was found in the data provided by Hushed App. It was submitted that the plea of the prosecution that Suresh used virtual number 44753105176 and +16692594162 to contact complainant of the present case and both the virtual numbers were subscribed with Hushed App. is a new case set up by the prosecution only to defeat the right of the petitioner. In support of his contention, learned senior counsel has placed reliance upon *UOI vs. KA Najeer* 2021 SCC OnLine SC 50, *Junaid vs. State of Gujarat* SLP CrI. No.11608/2022, *Raju Ram vs. state of Bihar* SLP CrI. No.307/2023, *Dhiraj Kumar Shukla vs. State of UP* SLP CrI. No.6690/2022, *Jitendera Jain vs. NCB & Anr.* SLP CrI.No.8900/2022 and *AbulHossain Mondal vs. state of WB* SLP CrI. 3400/2022.

SUBMISSIONS ON BEHALF OF PETITIONER KAMLESH KOTHARI

18. Mr.Vikas Pahwa, learned senior counsel for the petitioner Kamlesh Kothari submitted that there is no evidence to establish any nexus whatsoever between the Petitioner and the offences as 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. It has been submitted that even if facts of the allegations as asserted in the FIR are taken to be true, the offences in the FIR are not made out as provisions of MCOCA, 1999 are not applicable to the petitioner. Learned senior counsel submitted that the applicant is not an accused in any of the charge-sheet filed against the accused persons. It has been submitted that in order to invoke the provisions of MCOCA, 1999 against a person alleging him to be involved in the commission of any 'organized crime' by acting as a member of an 'organised crime syndicate' or on its behalf, it is necessary for the prosecution to demonstrate that two chargesheets filed against the accused in question in the preceding 10 years from the crime in consideration, wherein he/ she has been co-accused with at least one of the other co-accused persons. Learned senior counsel submitted that there is neither a single registered crime nor a chargesheet which has been filed or cognizance has been taken by any court wherein the present petitioner Kamlesh Kothari is co-accused. It has further been submitted that the Sanction Order dated 31st October 2021 (or 1st November 2021) is illegal and unsustainable. Learned senior counsel further 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 commission of extortion and not the alleged illegal purchase of cars. Learned senior counsel submitted that the necessary ingredient to attribute Section 3 (2) of MCOCA is 'knowingly'. It has been submitted that therefore it



is necessary for the prosecution to establish that petitioner had the knowledge of the crime alleged.

19. Learned senior counsel submitted that the allegations against the petitioner is limited to arranging/facilitating sale of car and real property to Leena Paulose, for which he has allegedly received commission. However, there is no material on record to substantiate this allegation. Learned senior counsel submitted that even otherwise selling a car or arranging buyer for such cars for a monetary commission is not an activity prohibited in law and as such does not attract the charges levied against the Petitioner. Learned senior counsel submitted that the role of the petitioner as per the chargesheet is only limited to the sale and purchase of luxury cars by Leena Paulose and a real estate property in Chennai. It has been submitted that there is no material whatsoever to indicate any connection between the Petitioner and the principal accused, Sukash or any role of the Petitioner in the crime of extortion which took place in Delhi in June-July 2020. It has been submitted that further there is not even a shred of evidence to show that the Petitioner was the beneficiary of the monies extorted from the complainant. Learned senior counsel submitted that there is no allegation that the petitioner had the knowledge, intent or mens rea. Learned senior counsel further submitted that the petitioner Kamlesh Kothari was approached by co-accused B.Mohanrajon behalf, Leena Paulose (proprietor of M/s Nail Artistry and M/s Supercar Artistry), who wanted to purchase luxury cars on finance for the family. It has been submitted that the petitioner's family has only financed cars for M/s Nail Artistry under legitimate hire purchase agreements and



further bought cars from M/s Supercar Artistry, which in the course of their usual business, where they deal and transact with multiple customers. Learned senior counsel submitted that even as per charge-sheet the petitioner has only received a sum of Rs.23,50,000/- as commission on sale of cars and not the extortion amount of Rs. 200 Cr. It has been submitted that there is not even an iota of evidence to show the nexus of the petitioner with the extortion activity alleged to be committed against the complainant. It has been submitted that even as per fact the complainant received the first call from the main accused on 15th June 2020 whereas the first payment of extortion was made by complainant in July 2020. It has further been submitted that petitioner had sold the first car to Nail Artistry under hire purchase agreement dated 15th June 2020 i.e. before the first payment made in the present crime of extortion. Learned senior counsel submitted that the same reflects that the Petitioner was merely transacting with the co-Accused Leena Paulose's firms in the regular course of his business.

20. Learned senior counsel submitted that the only evidence sought to be relied against the petitioner are the Disclosure Statementu/s 18 of MCOCA of co- accused persons, Sukash and B.Mohan Raj. Learned senior counsel submitted that even these disclosure statements do not indicate the Petitioner to be involved in the crimes or having knowledge of the same that the money being used for purchasing cars were the proceeds the crime arising from alleged crimes against the complainant.
21. It has further been submitted that even B. Mohanraj in his confessional statement revealed that the Petitioner had rejected the offer for taking



cash of 1 crore and transmitting funds for purchase of vehicle for M/s Supercar Artistry of Leena. Learned senior counsel submitted that if the Petitioner was a part of the alleged crime syndicate acting on instructions of syndicate leaders, then there would be no reason or occasion for the Petitioner to decline the instruction/ offer extended by Sukash Chander Shekahr to take 1 crore rupees . It has further been submitted that even otherwise such disclosure statements are inadmissible and cannot be relied upon as proper procedure under Section 18 of MCOCA was not followed by the investigating authority. It has further been submitted that even otherwise co-accused Sukash and B.Mohanraj have retracted the statements.

22. Learned senior counsel further submitted that learned trial court granted the bail to Joel Daniel Jose whereby rejecting the disclosure statements given by Sukash Chandrashekar and B.Mohan Raj. Learned senior counsel submitted that the confessional statements can only be acted upon if it has been corroborated by independent evidence. Reliance has been placed upon ***Tofan Singh v State of Tamil Nadu*** (2021) 4 SCC 1. Learned senior counsel submitted that compliance to Section 18 of MCOCA has not been followed while recording the confessional statements and granting the sanction. Learned senior counsel submitted that that petitioner completely fulfils the triple test. It has further been submitted that since the trial will take a long time, the petitioner is entitled to be admitted to bail.
23. Learned senior counsel has placed reliance upon ***Mohd.Muslim vs. State of NCT of Delhi***, 2023 SCC OnLine 352, where it has been inter alia held that if the court is reasonably satisfied on a prima facie look at



the material on record (whenever the bail application is made) that the accused is not guilty, bail should be granted to the accused. Learned senior counsel has also placed reliance upon *Mohamad Ilyas Mohamad Bilal Kapadia v The State of Gujrat, SLP (Crl) No. 1815 of 2022 decided on 30th May 2022* to buttress his contention that minimum two charge sheets are required where applicant/accused has been previously accused with other members of the alleged crime syndicate to establish unlawful activity which is an essential requirement for invoking the crime under Section 3 of MOCOCA in relation to the applicant/accused. Learned senior counsel also placed reliance upon *State of Maharastra v Lalit Somdatta Nagpal, (2007) 4 SCC 171* in which it was inter alia held that if the material is not available to show that accused has been involved in any continuing unlawful activity the MOCOCA should not be invoked. In this regard reference has also been made to *Mahipal Singh v Central Bureau of Investigation & Anr, (2014) 11 SCC 282*. Learned senior counsel has also placed reliance upon *State of Maharastra v Rahul Ramchandra Taru, Criminal Appeal No. 239 of 2011 decided on 6th May 2011* wherein it was inter-alia held that one or more chargesheets, containing allegations that the alleged offence was committed either singly or jointly as a member of the organized crime syndicate or on behalf of such syndicate, is sine qua non for invoking stringent provisions of MCOCA. It was further held that mere filing of more than one chargesheets within the preceding period of ten years, alleging commission of cognizable offence punishable with imprisonment of three years or more, is not enough.



24. Learned senior counsel also submitted that the reliance of the prosecution on *Kavitha Lankesh v State of Karnataka 2022 12 SCC 753; 2021 OnLine SC 956* is not applicable as the issue under consideration before the Hon'ble Supreme Court was regarding the quashing of prior approval under Section 21 (4) of MCOCA. It was submitted that in this case it was inter alia held that on the facts of the aforementioned case the FIR was registered against unknown persons and observations were made in the context of initial stage of investigation and it did not pertain to the question of grant of bail, therefore it did not involve any consideration as regards the essential requirement of establishment of continuing unlawful activity i.e. presence of two chargesheets for invocation of MCOCA against the accused as was the case in the aforesaid judgment.
25. Learned senior counsel further submitted that reliance of prosecution on *Zakir Abdul Mirajkar vs. State of Maharashtra 2022 SCC OnLine 1092* is also not applicable as the aforesaid judgment does not consider that Section 23 (1) (a) of the Act is applicable when case is at initial stage and not when detailed and roving enquiry has already been made. Learned senior counsel further submitted that the statement under Section 18 of MCOCA and statement made under Section 164 and 161 cannot be relied upon to deny bail to the petitioner.

SUBMISSIONS ON BEHALF OF THE PETITIONER LEENA PAULOSE

26. Mr. Wills Mathews, learned counsel for the petitioner Leena Paulose submitted that the petitioner was falsely arrested in this case on 20.09.2021. It has been submitted that the petitioner is a Dentist



Doctor / Model, Actor, successful Business Women, with strong roots in society, and belongs to a respectable and educated family. It has been submitted that the petitioner in good faith and as a dutiful wife, complied with many of the suggestions/ demands of her accused husband in good faith, without understanding various alleged issues and consequences involved. It has been submitted that the petitioner was made to understand that, the amount credited in her Bank account are all loans taken/arranged by her husband for business and there was nothing to disbelieve her husband and the applicant was paying the EMI for the Loan as is generally done.

27. It has further been submitted that the petitioner was earning well as reflected from the Income Tax Return filed for the assessment year 2020 -2021 showing an income of Rs.43,69,050.00. Learned counsel submitted that the allegations are baseless and petitioner has been implicated only because she is the wife of the main accused. Learned counsel submitted that there is no case of unjust, dishonest or malafide intentions attributed to the petitioner and the petitioner is innocent. 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 she was denied the life with dignity. It has further been submitted that the petitioner who is 41 years of age and still does not have a child as she had suffered miscarriage in the past. It has been submitted that it is her right to conceive and have child and any order denying that right would be in violation of the fundamental rights as enshrined in the Constitution of India. Learned counsel for the petitioner submitted that the petitioner is not threat to the society and her release is necessary for



the proper conduct of the case. Learned counsel for the petitioner submitted that the petitioner is not a beneficiary of the crime receipts.

28. It has been submitted that the petitioner has already been granted bail in (i) case No 33/2015 u/s 420, 120B IPC & 3,4 Price Chits & Money Circulation Act, EOW, Mumbai (ii) FIR No 186 / 2017 U/s 7/12/13 POC Act & 120B IPC, (iii) Cr No 24/2013 U/s 406, 409, 420 r/w 34 IPC & under section 66 of Information Technology Act, (iv) in Crime No 64/2011, RC 63/E/2014 /BSFC u/s 406, 409, 420, 120B IPC & 13(2) r/w 13(1)(d) of PC Act, 1988, Chennai. It has been submitted that in this case even the applicant was not charge sheeted and was dropped from the case. It has further been submitted that the petitioner is a sick woman suffering from depression, with no previous conviction, is entitled to be admitted to bail. It has been submitted that the petitioner has always joined the investigation and now since charge sheet has been filed there would be no purpose of keeping the petitioner in custody. It has been submitted that the petitioner had employed 40 persons and their future is also uncertain because of the petitioner's continuous detention.

29. Learned counsel for the petitioner submitted that all the transactions of the applicant were through Banking channels in the most transparent manner, bonafidely and there is no recovery of any cash/proceeds of crime from the petitioner. Learned counsel submitted that therefore the petitioner is entitled to be admitted to bail.

SUBMISSIONS ON BEHALF OF RESPONDENTS

30. Mr. Sanjay Jain, learned ASG for the State has submitted that the allegations against the petitioners are very serious in nature and they



are not entitled to be admitted to bail. Learned ASG submitted that the learned special judge has rightly rejected the bail application of the petitioners vide a detailed and reasoned order and there is no ground to interfere in the same. Learned ASG submitted that the all the petitioners have been active member of the organized crime syndicate being run by Sukash Chander Shekhar for carrying out an organized crime. Learned ASG submitted that the requirement of filing of more than one chargesheets as specified under Section 2 (1) (d) of MCOCA is not individual centric but is syndicate centric and this aspect is already settled by the Hon'ble Supreme Court in ***Kavitha Lankesh v. State of Karnataka and Others***; (2022) 12 SCC 753. Reliance has also been placed upon ***Zakir Abdul Mirajkar*** (*supra*). Learned ASG submitted that in MCOCA a person can be prosecuted even if his role is of a facilitator or of an abettor as referred to in Sections 3 (2), 3 (3), 3 (4) or 3 (5) of MCOCA. Learned ASG submitted that in the present case the provisions of MCOCA were added in a pre-existing FIR bearing No.: 208 of 2021, registered by Special Cell, Delhi Police, u/s.: 170, 186, 384, 386, 388, 419, 420, 353, 506 and 120-B of IPC r/w. Section 66-D of Information and Technology Act, 2000. Learned ASG submitted that to attribute MCOCA, it is not mandatory that each member of the syndicate should have a direct role to play in the foundational crime. Learned ASG submitted that if any individual abets (as defined u/s. 2(1)(a)(i) and (iii) of the MCOCA as distinct from the definition of the said expression under IPC in the commission of crime while the same is being committed the organised crime syndicate or in other words facilitates the continuing commission of the crime by or on



behalf of the syndicate, 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. Learned ASG submitted that one *member* of the syndicate need not necessarily have the same or similar role as another *member* of the syndicate concerned. Reliance has been placed upon ***Ranjitsing Brahmajeetsing*** (supra). Learned ASG submitted that it is a settled proposition that mere membership/nexus with the organised crime syndicate is sufficient to prosecute under MCOCA. Reliance has been placed upon ***Sachin Bansilal Ghaiwal v. State of Maharashtra; (2014) SCC OnLine Bom 725.***

31. Learned ASG submitted that confession recorded under Section 18 of MCOCA is admissible against the person making it as well as against the co-accused. It is submitted that legal position as regards the confession *u/s. 18 of the MCOCA* is that the factors such as voluntary nature of the confession, the procedural requirements of recording of the statements and the other aspects including retraction can be gone into only at the stage of the trial and not before. It has further been submitted that MCOCA Rules 1999 have not been made applicable in Delhi.
32. Learned ASG submitted that the challenge to the procedural irregularities, if any, can be gone into only at the stage of trial and not for the purposes of bail. Learned ASG submitted that it is a settled proposition that the confessional statements recorded under Section 18 of MCOCA is applicable to the other co-accused as well. Reliance has



been placed upon *Mohd. Farooq Abdul Gafur v. State of Maharashtra, (2010) 14 SCC 641*.

33. In regard to the approval under Section 23 (1) (a) and 23 (2) of MCOCA, it has been submitted that in the Approval Order u/s. 23 (1)(a) of MCOCA it is not necessary to include the names of all the members at the threshold stage. It has been submitted that as the investigation proceeds, revealing the involvement and identity of more and more members, their names can always be added later on. Reliance has been placed upon *Vinod G. Asrani v. State of Maharashtra; (2007) 3 SCC 633*. It has also been submitted that the approval order under Section 23 (1) (a) of MCOCA is with respect to the offence and not with respect to the offender. Learned ASG submitted that validity for sanction for the prosecution under Section 23 (2) of MCOCA is a matter of trial. Learned ASG submitted that under Section 21 (4) of MCOCA, it is necessary that accused must pass the twin conditions as prescribed under Section 21 (4) of MCOCA for grant of bail.
34. Learned ASG has also placed reliance on the Confessional statement u/s 18 MCOC Act of Dharam Singh Meena, statements under Section 164 Cr.P.C. of Jitendra Kothari and statement of Gaffar Khan under Section 161 Cr.P.C. Reliance has also been placed upon disclosure statement of accused Arun Mutthu indicating the role of petitioner B.Mohan Raj. Learned ASG highlighted the role of the petitioners as revealed during the course of investigation which has been discussed in earlier part of this order, and has not been discussed here to avoid repetition.



FINDINGS AND CONCLUSION

35. The Maharashtra Control of Organised Crime Act, 1999 was enacted to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang, and for matters connected therewith or incidental thereto.
36. Continuing unlawful activity is defined under Section 2 (d) of MCOCA as under:
- (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 ;*
37. Section 2 (e) of MCOCA defines 'organised crime', which reads as under:
- (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*
38. The MCOCA was made applicable to the National Capital Territory of Delhi by Ministry of Home Affairs by virtue of a order dated



02.01.2002. It is a matter of record that MCOCA Rules, 1999 were not brought in force.

39. The plea on behalf of B.Mohanraj and Kamlesh Kothari is that there is requirement of more than one chargesheets as defined under Section 2 (1) (d) of MCOCA. The reading of Section 2 (1) (d) indicates that 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 is a continuing unlawful activity, if in respect of such offence 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. However, this question has come up for consideration before the Supreme court in *Kavitha Lankesh (supra)* wherein it was held that requirement of more than one charge-sheets is in reference to the continuing unlawful activities of the organised crime syndicate and not qua individual member thereof.
40. Similarly, in *Zakir Abdul Mirajkar (supra)* the Supreme court has inter alia held that it is settled law that more than one charge sheet is required to be filed in respect of the organized crime syndicate and not in respect of each person who is alleged to be a member of such a syndicate.
41. Similarly in *Govind Sakharam Ubhe v. State of Maharashtra; (2009) SCC Online Bom 770*, it was inter alia held that if within a period of preceding ten years, one charge-sheet has been filed in respect of organized crime committed by the members of a particular crime



syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOCA against him even if he is involved in one case.

42. In fact dealing with all these judgments makes it clear that the salient point in the nexus or link with the “organized crime syndicate” is basically the foundation and a person can be prosecuted if the link is established. It is not necessary that the persons who are alleged to be members of organized crime syndicate have more than one chargesheets filed against them in an individual capacity. The prerequisite condition is that chargesheet should have been filed against the syndicate. Thus, second proposition seems to be that the chargesheet in respect to the organized crime syndicate is sufficient to fulfill the conditions under Section 2 (1) (d) of MCOCA. A provisions of MCOCA can be attributed if a person is found to be a facilitator or of an abettor as referred to in Sections 3 (2), 3 (3), 3 (4) or 3 (5) of MCOCA.
43. In ***Digvijay Saroha v. State***; 2019 SCC Online Del 10324, it has *inter-alia* been held as under:

“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 required 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' -

- a) the activity must be prohibited by law;*
- b) it must be a cognizable offence punishable with imprisonment of three years or more;*
- c) it must be undertaken singly or jointly;*
- 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.*



36. 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'.

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.

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. Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate.”

(Emphasis supplied)

44. *In Mujahid S/o Ibrahim v. The State of Maharashtra*; (2014) SCC Online Bom 4048, it has inter-alia been held as under:



"10. From the above referred fact what is established before this Court is, against the said gang leader more than one charge-sheets are pending and in most of the charge-sheets offences alleged, are punishable with more than three years of imprisonment. It is also required to be taken note of the fact that the offences alleged to have been committed by the gang leader of which present applicants are alleged to be members are for financial gain. It is also required to be taken note of the fact that the investigation in the matter is incomplete and same is under progress. In view of above, the invocation of the provisions of MCOCA, in our opinion, at this stage, prima facie appears to be justified as the requirement of clause (d) of section 2 of MCOCA is very much justified. What is contemplated under said section is a situation where a group of persons as members of organised crimes syndicate indulge in organized crime who use the violent means to gain pecuniary benefit or un-due economic or other advantage for themselves or any other persons. The clause which defines the 'continuing unlawful act 'which is prohibited by law and must be cognizable offence punishable with imprisonment for three years or more. Such unlawful activity can be undertaken by 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. The words 'in respect of which more than one charge-sheets have been filed', in our opinion, cannot be stretched to the extent that minimum one charge-sheet is required to be pending against each member of the crime syndicate. A reading of the entire scheme of the Act reflects that pendency of more than one charge-sheets within a period of ten years is enough qualification for invoking the provisions of the MCOCA, provided same is pending against the members of the crime syndicate, who operates as individually or jointly in commission of organised crime. What is required to be taken note of is the very involvement, attachment, nexus or the link of such member/person with the organised crime syndicate while commission of the offence, the very link of such member of the crime syndicate is considered to be the crux of the term



”continuing unlawful activity”. It is also required to be taken note of the fact that if the contention of the learned Counsel for the applicants i.e. the requirement of the statute, in their submission, is the pendency of the minimum two charge-sheets for an offence punishable with more than three years imprisonment in the last period of ten years is to be accepted, the same shall take the very object and intention of the statute to illogical end. What is contemplated under section 2(1)(d) of MCOCA is the activities prohibited by the law have been undertaken either singly or jointly, as a member of an organised crime syndicate and as such the requirement of one or more charge-sheets is in relation to the unlawful activity of the unlawful crime syndicate and not of each and every member of such syndicate.

45. Thus, from the discussion made herein above, it is no longer res integra that it is not necessary that such charge-sheet should be against an individual. If the charge sheet is filed against the syndicate that would be sufficient compliance of Section 2 (1) (d) of MCOCA.
46. It is also a settled proposition that it is not necessary that each member of the syndicate should have a similar role. The individual members can have different roles in the commission of the crime. The petitioners herein have argued that there are no allegations which would link them to the foundational allegation of extortion and therefore there is no prima facie case to invoke the provisions of the MCOCA as against them. This court considers that there is no merit in the said contention. The allegations as being made by the investigating agency is that these accused persons were in fact channelizing the ill-gotten money received through foundational crime of extortion. Their role is in fact facilitating the continuing commission of the crime by or on behalf of the syndicate. The provisions of MCOCA can be



attributed to an individual if his role amounts to any assistance to organized crime or organized crime syndicate or to a person involved in either of them.

47. It is settled proposition that mere membership/nexus with the organized crime syndicate is sufficient to prosecute under MCOCA. In ***Sachin Bansilal Ghaiwal v. State of Maharashtra; (2014) SCC OnLine Bom 725,***

”38. Thus, according to us and in our humble opinion and our earnest consideration, the expression ‘member’ as has been termed in Section 2(1)(d) of the MCOC Act can be interpreted and defined as, a person who participates in the crime either actively or passively or a person who facilitates the commission of the crime committed by the organised crime syndicate or on behalf of the organised crime syndicate, automatically becomes the member of the said crime syndicate which commits the offence or on whose behalf the offence in question is committed, as contemplated under Sec. (2)(1)(d), 2(1)(e), Section 3 and other provisions of the MCOCA.”

48. Therefore, I consider that the arguments of the learned defence counsel that in absence of more than one chargesheet having been filed against Petitioners B. Mohanraj and Kamlesh Kothari the MCOCA could not have been attributed against them is liable to be rejected.
49. The next contention raised by the learned counsels for the petitioners are that the confessional statement recorded under Section 18 of MCOCA cannot be read against them in absence of any independent corroboration. The defence has also raised a plea that since the procedural requirement under Section 18 have not been fulfilled therefore the same cannot be read. It has also been submitted that the confessional statement which have been retracted cannot be taken into



consideration. I consider that these submissions also cannot be considered at this ground as it is a matter of trial.

50. It is also a settled proposition that the confessional statement can also be attributed to the co-accused in ***Mohd. Farooq Abdul Gafur v. State of Maharashtra, (2010) 14 SCC 641***, wherein *inter alia* has been held as under:

“84. So far as the conviction (of Accused 1) under MCOCA is concerned, it is quite clear that conviction could be based solely on the basis of the confessional statement itself and such conviction is also permissible on the basis of the confessional statement of the coaccused which could be used and relied upon for the purpose of conviction.”

51. The defence has also raised a plea that the sanction granted under Section 23 (1) (a) and 23 (2) of MCOCA are also faulty and cannot be seen into. I consider that argument is also not tenable. The mere reading of Section 23 (1) (a) of MCOCA indicates that it does not require inclusion of all the names of all the members at the threshold stage. It is per natural that as the investigation proceeds the names of the persons would be revealed and their names can always be added later on. In *Vijay G. Asrani (supra)* it has *inter alia* been held as under:

“8. We have carefully considered the submissions made on behalf of the respective parties and the relevant provisions of MCOCA and we are of the view that the High Court did not commit any error in dismissing the petitioner's writ application. We are inclined to accept Mr Altaf Ahmed's submissions that non-inclusion of the petitioner's name in the approval under Section 23(1)(a) of MCOCA was not fatal to the investigation as far as the petitioner is concerned. On the other hand, his name was included in the sanction granted under Section 23(2) after



the stage of investigation into the complaint where his complicity was established.

9.

There is no hard-and-fast rule that the first information report must always contain the names of all persons who were involved in the commission of an offence. Very often the names of the culprits are not even mentioned in the FIR and they surface only at the stage of the investigation. The scheme under Section 23 of MCOCA is similar and Section 23(1)(a) provides a safeguard that no investigation into an offence under MCOCA should be commenced without the approval of the authorities concerned. Once such approval is obtained, an investigation is commenced. Those who are subsequently found to be involved in the commission of the organised crime can very well be proceeded against once sanction is obtained against them under Section 23(2) of MCOCA.

10. As to whether any offence has at all been made out against the petitioner for prosecution under MCOCA, the High Court has rightly pointed out that the accused will have sufficient opportunity to contest the same before the Special Court."

52. Similarly, the objection regarding Section 23 (2) of MCOCA also cannot be considered at this stage as it is a matter of trial and can only be seen at the stage of trial. Reliance can be placed upon ***Abhishek v. State of Maharashtra***; (2022) 8 SCC 282

'63. The learned counsel for the State has fairly and rightly indicated, with reference to the decision of this Court in Vinod G. Asrani [Vinod G. Asrani v. State of Maharashtra, (2007) 3 SCC 633 : (2007) 2 SCC (Cri) 129] , that the validity of sanction could always be determined by the trial court during the course of trial where the sanctioning authority could be examined and the appellant will have sufficient opportunity to contest the same, including that of cross-examining the sanctioning authority. In fact, the High Court has also taken care in its impugned order to make it clear that the observations were only prima facie and nothing in the order would influence or



prejudice the trial or pre-empt any legitimate defence of the appellant.”

53. In *Farman Imran Shah v. State of Maharashtra*; (2014) SCC Online Bom 408, it was inter-alia held as under;

“18. The Division Bench of this Court in the case of Anil Nanduskar v. State of Maharashtra, (2008) 12 LJSOFT 156, after taking into consideration the law laid down by the Hon'ble Supreme Court in case of State of Bihar v. P.P. Sharma reported in 1992 Supp (1) SCC 222 and after considering the judgment of the Division Bench of this Court in case of Sherbahadur Akram Khan v. State of Maharashtra reported in (2007) 1 Bom CR (Cri) 26, has in paragraphs 13 and 24 observed thus:

“13. The settled law by a catena of decisions of the Apex Court is to the effect that it is desirable that every order whether the approval or sanction it should speak for itself, i.e. ex-facie it should disclose consideration of the materials placed before it and application of mind thereto. However, failure to reproduce or refer those recitals in the resolution or order itself would not render the order of approval or sanction to be invalid unless the prosecution fails to establish by leading evidence that all the materials necessary for the grant of approval or sanction were placed before the concerned authority for due application of mind by such authority before the grant of approval and or sanction. It apparently discloses that question of validity of approval or sanction cannot be decided unless the prosecution is afforded opportunity to lead evidence in that regard. Undoubtedly, an accused desiring to raise objection regarding the defects in such approval or sanction, or grant, he can raise such objection; however, for conclusive decision on the said point the accused has to wait till the trial is complete and on that ground he cannot insist for discharge unless the objection relates to inherent lack of jurisdiction to the concerned authority to grant sanction or approval and such issue can be decided on undisputed facts. The law being well settled to the



effect that the prosecution in a case where sanction or the approval order does not ex-facie show consideration of all the materials and/or application of mind, is entitled to establish the same by leading necessary evidence regarding production of materials before the concerned authority, the question of discharge of accused merely on the basis of such objection being raised cannot arise. The decision on the point of defect, if any, in the order of approval or sanction will have to be at the conclusion of the trial.”

.....

“24. The contention that the order of approval or order of sanction should disclose consideration of material qua each of the accused sought to be prosecuted is devoid of substance. That is not the import of section 23 of MCOC Act. Section 23(1)(a) as well as section 23(2) with reference to approval and sanction speaks of commission of offence and cognizance of the offence. In fact the law on this aspect is also well settled and reiterated by the Apex Court in Dilawar Singh's case (supra) itself. It was held therein that, court takes cognizance of offence and not of an offender when a Magistrate takes cognizance of an offence, under Section 190 Cr.P.C. Undoubtedly, it was also held that it was necessary for the Sanctioning Authority to take note of the persons against whom the sanction is sought to be granted. However, those were the requirement under Section 19 of the Prevention of Corruption Act. The said section specifically requires sanction with reference to a particular person. That is not the case under section 23 either in relation to the approval or in relation to the sanction. As already seen above section 23(1)(a) of MCOC Act speaks of approval for recording of information about commission of offence of organized crime under MCOC Act, whereas sanction is for initiating proceeding for the offence under MCOC Act. The sanction order or the approval order on the face of it need not speak of the individual role of each of the accused. Being so, contention that the order of approval or sanction should reveal consideration of the overt acts or otherwise of each of the accused while granting approval or



sanction is totally devoid of substance. Of course, the involvement in organized crime of each of the persons sought to be prosecuted should necessarily be considered by the concerned authority before the grant of approval or sanction, but need not be specifically stated in the order and the consideration thereof can be established in the course of trial.

54. Thus the above discussed judgment settles the legal proposition that the validity of sanction can only be examined during the trial, except in the cases where the objection is raised as to the inherent lack of jurisdiction. However, this is not the case in the present case.

55. Section 21 (4) of the MCOCA mandates that the court has to be satisfied 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. It is a settled proposition that at this stage, the court has not to evaluate the material on the scale which is required to be evaluated at the stage of final judgment. At this stage, the finding regarding the accused being not guilty has to be based on reasonable grounds. The 'reasonable grounds' though has not been defined but it is something more than prima facie grounds.

56. The investigation has revealed that was Leena Paulose was involved in running an organized crime syndicate since 2013 with the motive of pecuniary gain by cheating and extortion. It is a matter of record that Leena Paulose was accused along with Sukash in the following four cases:

1. FIR No 186/2017 u/s 7,12,13 POC Act & 201,120B IPC PS Crime Branch, Delhi Police.



2. Cr.No.24 of 2013 Central Crime Branch Police, Chennai u/s 406, 409, 420 r/w 34 IPC and u/S 66 D of Information Technology Act.

3. Crime No.33/2015 u/S 420, 120B IPC and 3/4 Prize Chits and Money Circulation Act, EOW, Mumbai.

4. CCB Crime No.64/13, now RC 6E/2014/BSFC u/s 406, 409, 420, 120B IPC & 13 (2) r/w 13 (1) (d) of PC Act, 1988, Chennai.

57. The investigation revealed that the petitioner Leena Paulose was in continuous contact with Sukash through her mobile phone, as Sukash was using mobile phone with the connivance of jail staff during custody period. Further, she also remained in contact with Sukash's associates jail officials namely Dharm Singh Meena and Subhash Batra. Thus, she was actively and continuously coordinating with Sukash as well as his associates in furtherance of organized crime and disposal of crime proceeds. She procured bank entries in her account from various entities/persons to whom she provided cash, received from Sukash through Hawala transactions with the help of Joel Daniel Jose, Kamlesh Kothari, B Mohanraj and Arun Muthu etc. and invested in high end cars, properties and her business firms. The Enforcement Directorate, seized 23 High end luxury cars from her house at ECR Chennai in Aug 2021. During interrogation, the accused applicant failed to justify as to how she got funds to purchase 12 cars in Super Car Artistry. Further, it was revealed that she made the payment of "Silent Calling App" which was being used by accused Sukash in his mobile phone, to commit the crime, while he was in Jail.



58. During investigation, the statements of Mr. Noufal T S/o Late Hamza Koya Thyayyil, Mr. Surendar Panwar s/o Sh. Satya Narayan, Sarvana Priyan, Shiva Subramanian Chelladurai, Mr. T. Michael, Jitender Kothari s/o Late Sh. Mahaveer Chand, Bharat Kumar Duggar s/o Sh. Mangal Chand, Jagdish Navin Kuamr, Alok Damani, Nora Fatehi and Mr. Shoby T. Paul have been recorded which revealed the active role of Leena Paulose. The reference to the statements of these witnesses have not been made in detail here, so as to not to cause any prejudice to the defence.
59. During investigation, the statement under Section 164 Cr.P.C. of witnesses were recorded which proves that Leena Paulose was actively involved in converting cash amount (crime proceeds) into banking transactions to show her legitimate business. The prosecution has referred to the statement under Section 164 Cr.P.C. of Bharat Kumar Duggar, Jitender Kothari, Anand Murthi and Jagdish Navin Kumar. The prosecution has also referred to the confessional statements under Section 164 Cr.P.C. of co-accused Sukash Chander Shekar, B. Mohan Raj and Dharm Singh Meena.
60. During the course of investigation, it has been revealed that bank statement of M/s Nail Artistry, M/s Super Car Artistry, M/s LS Fisheries, M/s LS Education and M/s News Express Post were obtained. All these are proprietorship firms operated by accused Leena Paulose. Out of these (05) five M/s Nail Artistry, M/s Super Car Artistry and M/s News Express Post were extensively used for parking of crime proceed and its further conversion into legitimate business transactions. Further, during the relevant period i.e. June



2020 to August 2021 funds were transferred from various firms/individuals in Leena Paulose accounts and investigation revealed that all these transactions were sham transactions. It was also found that the proceed of crime were transferred by Arun Muthu, B Mohanraj and other persons related to accused Leena Paulose against cash provided by Leena Paulose and her husband Sukash Chandershekhar. The details of bank accounts held in the name of Leena Paulose and her proprietorship concerns are as under:-

Name of the party	Bank Account No.	Name of the Bank
Ms. Leena Paulose	603301112877	ICICI Bank
Ms. Leena Paulose	0646073000000140	South Indian Bank
<i>The Nail artistry</i>	<i>919020018650555</i>	<i>Axis bank</i>
<i>Super Car Artistry</i>	603305020407	ICICI BANK
The News Express	603305020438	ICICI BANK
The Nail Artistry	603305020683	ICICI BANK
The Nail Artistry	603305020662	ICICI BANK

61. During the period of the offence, i.e. June 2020 to August 2021 while the complainant was extorted by the crime syndicate, an amount of Rs. 21 Crores were deposited into the above mentioned five bank accounts maintained by Lena Paulose which were either in her own name or in the name of her Proprietorship concerns. Further, investigation revealed that this amount consists of cash deposit, card swiping and entries arranged through Arun Muthu, B Mohanraj and their associates. This money was nothing but crime proceeds. Accused Leena Paulose



and other members of syndicate took entries, deposited cash, and indulged in card swiping to inflate the earnings of her saloon Nail Artistry. All this was done to give legitimacy to the crime proceeds through sham banking transactions. Accused Arun Muthu in addition to his company M/s Stash Wears Pvt Ltd, also provided entries for adjusting the crime proceed through firms namely M/s Servana Enterprises, M/s Goodtime Retail and Marketing Pvt Ltd, M/s Muthaiya Enterprises, M/s INI International through Mr. Shiva Subaramaniyam, who is known to Arun Muthu. Statement of Shiva Subaramaniyam U / s 161 CrPC was recorded and these facts got corroborated through his statement.

62. Investigation has also revealed that the amount of Rs.217 crores extorted from the complainant of the present case was used by accused Sukash Chander Shekhar and his wife Leena Paulose for creation of wealth and to establish business concerns such as M/s Nail Artistry and M/s Super Car Artistry. The crime proceeds was also used for undertaking air travels and purchase of high-end branded gifts for Bollywood celebrities. A substantial part of crime proceeds was also used by accused Sukash Chander Shekhar to bribe the jail officials of Jail No. 10, Rohini, Delhi in lieu of getting facilitation such as single use of barrack, uninterrupted use of mobile phones and electronic gadgets to run the organized crime syndicate. Further, funds out of crime proceeds were also distributed amongst members of the crime syndicate for carrying out individual assignments tasked to them either by accused Sukash Chander shekhar or Leena Paulose. Investigation has also revealed that accused Sukash Chandra Shekhar and Leena



Paulose were constantly in touch with each other and acted in tandem for furtherance of the organized crime syndicate by using the proceed of crime for promoting their business and other interests orchestrated for the purpose of the converting/laundering their proceed of crime.

63. In respect of Kamlesh Kothari, the investigation has revealed that accused Kamlesh Kothari helped Sukash & Leena in purchasing of Luxury cars out of the extorted funds. Kamlesh has introduced his friend Surender Panwar (Financial Broker) to purchase the car "Lamborghini Urus TN 04 BE 0006" from the extorted funds of complainant, transferred from Sukash via B. Mohan Raj to Kamlesh and finally to Surender Panwar. This car was actually purchased in name of Surender Panwar for total consideration of Rs 3.50 Crores but the same was used by Sukash & Leena. One Rental Agreement was also prepared between Surender Panwar and M/s Nail Artistry wherein it was mentioned that the car was used by M/s Nail Artistry and monthly rent of Rs 2.42 Lakhs/ month would be paid to Surender Panwar. However, during investigation, it surfaced that the said amount was immediately withdrawn by Surender Panwar and handed over to Kamlesh after deducting tax. Kamlesh in turn would deliver the said amount to Mohan Raj or Leena. The above car was recovered from the possession of Leena. The buying of the above mentioned car through the money received from Hawala clearly demonstrate that the present applicant was active member of the organized crime syndicate led by Sukash in disposal of the extorted amount from the complainant. In the raid by the Enforcement Directorate, the said Car was recovered from the possession of Leena.



64. Similarly, likewise, as mentioned about "Lamborghini Urus" another car "Bentley" was allegedly also purchased in name of one firm M/s Priyanka Arcade. In similar manner, Rs 1.50 Crores out of the extorted funds were transferred with the help of Kamlesh Kothari and the same was used by Leena & Sukash. Kamlesh disclosed that said amount was handed over to the owner of M/s Priyanka Arcade by present applicant. However, during investigation, Mr. Francis Bastiyan, owner of M/s Priyanka Arcade submitted that he had received part payments from Kamlesh and remaining from other parties. In the raid by the Enforcement Directorate, the said Car was recovered from the possession of Leena. Manish Kothari, brother of Kamlesh Kothari had executed Hire/Purchase agreement with M/s Nail Artistry, for three cars in June/July 2020 viz. Bentley, Range Rover and Fortuner for financing amounts of Rs 40 Lakhs, Rs 30 Lakhs and Rs 30 Lakhs respectively. The said amount was financed by Manish & Kamlesh Kothari and the cars were used by Leena & Sukash and were recovered from the possession of Leena by the Enforcement Directorate. Applicant accused Kamlesh Kothari has introduced his relative Jitender Kothari, Director M/s Jai Jinender Construction to the accused person namely B. Mohanraj and the extorted funds of Rs 7.75 Cr were used to purchase the house for Leena. Kamlesh in connivance with B. Mohan Raj purchased property of 12/13, Kannatur Village, ECR, Chennai in name of Jitender Kothari in Aug 2020 for total consideration of Rs 7 Cr. For the payment of Rs 7 Cr, Rs 5 Cr which was received by Kamlesh Kothari in Cash through Hawala Channel was transferred through Sham transactions into the account of Jitender Kothari. This is



the same Rs 5 Cr which was paid by Jitender Kothari, Director M/s Jai Jitender Construction to the respective owner of ECR house including registration charges. The Remaining amount of Rs 2 Cr was delivered in Cash to the owner of ECR house through Kamlesh Kothari & B. Mohan Raj. After that, one rental agreement was made between Jitender Kothari and Leena Paulose for total rent of Rs.2.50 Lakhs, and in similar manner likewise of "Lamborghini Car", the said rental amount was withdrawn and delivered to Kamlesh Kothari and then to Mohan Raj for finally back to Leena. In this way, the extorted money was routed through different channels and finally arrived at the destination. Accused Kamlesh Kothari admittedly obtained Rs 10 Lakhs as commission for dealings of Car and Rs 15 Lakhs for dealing of House. In the raid by the Enforcement Directorate, the said House was found to be in the possession of Leena in which crores of rupees has been invested in the interior of the house. During investigation, it has been revealed that, Sukash with the help of his aid Sudheer Abu (absconding) and Joel has delivered the money to B. Mohanraj, present applicant Kamlesh Kothari and others.

65. The reference can also be made to the confessional statement of accused Sukash Chander Shekar and B.Mohan Raj. Kamlesh Kothari in his disclosure statement has stated that on the direction of Sukash, he, Mohanraj and Joel have received approx Rs.20.0 Cr from Dubai on the basis of token provided by him to Mohanraj from June-Oct. 2020. Thus, the investigation revealed that the money which was sent by Sukash through Hawala was the proceeds of crime and was in the knowledge of the present applicant and the applicant actively facilitated



in the disposal of the proceeds of crime. The case of the prosecution is that he accused Sukash with active connivance of the present petitioners extorted Rs.214 Cr. from the complainant in a very organized manner and the extorted money was used in different ways including investing the same in purchase of luxury cars, house and other movable and immovable properties. The investigation revealed that the accused Kamlesh Kothari has played pivotal role in commission of crime. The investigation revealed that accused Kamlesh Kothari came in touch with accused Sukash through co-accused Mohanraj. He managed to get invested ill-gotten money of accused Sukash in purchase of luxury cars & house. It has also been alleged that he received the cash through co-accused Mohanraj and got the money used by diverting it through different entities and invested the money of the crime syndicate. The disclosure statement of the accused applicant which has been further corroborated in the confessional statements of co-accused B. Mohanraj & Sukash Chandra shekar. The accused got the properties purchased in the name of others from the ill-gotten money of Sukash and Leena. The prosecution has also alleged that Firm/ company of Leena has received money through different shell companies and accused Kamlesh has facilitated the same with others.

66. It is also a matter of record that the accused was earlier involved in two FIRs i.e FIR No.1319/2017 U/s 294(b), 341, 342, 363, 506(1), 149 IPC PS Soundarapandiyanar Angadi, Distt. T. Nagar Tail Nadu and FIR No. 470/2012 u/s 75 TNCP Act PS Soundarapandiyanar Angadi, Distt. T. Nagar Tail Nadu.



67. Accused B.Mohan Raj also played an important role to run the syndicate led by Sukash. Accused B. Mohanraj is an Advocate by Profession and he was looking after his Sukesh V. Chandreshekhar's legal matters since 2013, hence, he was well aware of the criminal history of the accused Sukash and modus operandi used by the accused Sukash. It is very much known to accused B. Mohanraj that accused Sukash is lodged in Delhi Jail since 2017 and has no legal source of income. He was also aware that he was committing criminal extortion from jail and sending huge amounts of crime proceeds through Hawala Channel. B.Mohan Raj, played an active role in assisting the crime syndicate led by accused Sukash and Leena to manage their crime proceeds of cheated and extorted funds. He is also a member and integral part of the group led by Sukash and Leena.
68. During the course of investigation petitioner B. Mohanraj has also confessed that he knew Sukash since 2013 and it was in his knowledge that Sukash was serial offender and had been arrested number of times. The investigation has also revealed that accused B.Mohanraj not only facilitated the purchase of cars but also handled the delivery of cash. Accused was also instrumental in purchase of a huge property worth crores in Chennai, which was a benami property of accused Leena. This property was purchased in the name of Jitender Kothari on the instructions of accused Kamlesh Kothari. There is ample material on the record that this accused has facilitated the activities of the organized crime syndicate with the full knowledge that there was no legal source of income for syndicate headed by Sukash.



69. It is also pertinent to mention here that the petitioner B.Mohanraj admitted that he became integral part of their group and though overtly he was managing their legal affairs, but covertly he was managing their funds obtained from their illegal activities. It is also revealed during the investigation that in fact it was petitioner B.Mohanraj who introduced co-accused Kamlesh Kothari to another co-accused Leena Paulose. It was also admitted by petitioner B.Mohanraj that principal accused Sukash called him on telegram and asked him to buy a house for co-accused Leena in some other person's name during August, 2020. Principal accused Sukash also in his confessional statement revealed the role of petitioner B.Mohanraj. It came on the record that the cash was delivered to B.Mohanraj and he further delivered to Kamlesh Kothari and Arun Muthu.
70. Learned Trial Court while rejecting the bail of accused Kamlesh Kothari has observed that in the present case the Petitioner is seen acting as an agent of co-accused Leena Paulose. He was involved in arranging money in lieu of cash and then he was active in buying car and after this he organised this car on lease to accused Leena. The investigation revealed that the accused continued to further aid and assist accused Leena when he would collect in cash amount equivalent to the amount of monthly lease and would give it to accused Leena. Thus, it cannot be said that the Petitioner was merely acting in the capacity of his routine business. He was aware of and even aided in the activities of this organised crime syndicate as he was actively doing acts which would facilitate accused Leena and through her accused Sukash to procure property by using proceeds of crime. The deliberate



act of dealing with money obtained by extortion cannot be severed from foundational crime. The money obtained by extortion and further channels using it prima facie seem to be a part of the same transaction.

71. The learned Special Judge inter alia held that on instructions of Leena and B.Mohanraj, the Petitioner arranged for a property to be purchased benami for Leena, to put the black money into bank channels and get the property transferred into the name of his relative. He arranged a Lease agreement between Leena and his relative and after the monthly rent got transferred in the account of the person in whose name the property was purchased, he collected the same amount in cash from that person so that it could be handed to Leena Paulose. Thus, the court observed that it cannot be said that the Petitioner was a simple business man who was dealing with the co-accused Leena in his business capacity and was aware of the activities of the crime syndicate. Learned Special judge further observed that knowledge and intention are usually known to the person who has knowledge or who holds the intention. Others have to infer the knowledge or intention from the circumstances surrounding the events or the actions of that person. It was inter alia further held that the circumstances surrounding this crime and the role which this accused had played, at least at this stage, cannot lead to a conclusion that accused had no knowledge of the activities of the crime syndicate or that he was acting without any guilty intent.
72. Learned Trial Court while rejecting the bail of accused Leena Paulose has analysed the disclosure statements of accused persons which clearly show that the Petitioner received money through Hawala transactions and in lieu of the cash amount credit entries were taken



into the account of the Petitioner. Furthermore, the Petitioner failed to explain the details of such entries credited in her bank account. Learned trial Court inter-alia observed that the disclosure statement of other accused persons as well as from the documentary evidence and statement of other witnesses clearly show that the extortion money was allegedly being collected through various channels on the instructions of applicant/accused Leena Paul as well as B. Mohanraj. During the relevant time when accused Sukesh Chandra Shekhar was in prison, applicant/accused Leena allegedly purchased different luxury cars, but failed to explain as to how she got such huge amount of money for purchasing those cars. Learned Trial Court has further observed that even though it is not required to go into the merits of the case however it is pertinent to mention here that there exists different evidences which show that the Petitioner not only gained pecuniary advantage from the extortion money received through other accused persons, on different occasions from the complainant in this case but was also actively coordinating with main accused Sukesh Chandra Shekhar while he was in prison. Accused/applicant was allegedly communicating with him directly as well as through jail officials. These evidence show that the entire crime was being committed in an organized manner in coordination with each other as well as other accused persons. Learned Special Judge pointed out that the argument that the Petitioner is a successful business woman with strong roots in the society, hardly makes any difference when there are sufficient evidence on record indicating an organized crime being committed. More particularly, when there are more than one crime reported



indicating commission of cognizable offence of cheating etc. on earlier occasions during preceding ten years showing continuous unlawful activities going on by Petitioner jointly or individually.

73. Learned Trial Court while rejecting the bail of accused B.Mohanraj placed reliance on the confessional statements of accused persons and stated that the these statements reveal that the Petitioner facilitated the purchase of luxury cars for accused Sukesh and Leena, handled the delivery of cash, found persons who could arrange transactions to route this money through banking transactions and then was instrumental in purchase of a huge property worth crores in Chennai, which was a benami property of accused Leena which had been purchased by witness Jitender Kothari on the instructions of accused Kamlesh Kothari who in turn had received these instructions from this accused B. Mohanraj. Moreover, the confessional statement of accused B. Mohanraj is corroborated by the statement of Jitender Kothari where he states that it was accused B. Mohanraj who instructed Kamlesh Kothari to find someone to purchase property for accused Leena and it is then Kamlesh Kothari approached Jitender Kothari for purchasing the said property. Not only this, after the said property was purchased, accused B. Mohanraj prepared a rent agreement between Jitender Kothari and Leena knowing fully well that he was preparing a sham agreement for a benami property where the owner of that benami property was shown to be a tenant of the person who had purchased that property on papers.
74. The exercise of discretion at the stage of bail is very well defined. The MCOCA is a special legislation and there is modified provision in the same which has been incorporated in Section 21 (4) MCOCA provides



that the accused can only be released on bail if there are reasonable ground for believing that he is not guilty of such offence and he is not likely to commit any offence while on bail.

75. It is a settled proposition that such provision do not impose complete restriction on the grant of bail. It is also a settled proposition that at this stage the court cannot evaluate the material on the scale which is required at the time of the conclusion of the trial. The court has not to record the finding of guilt or acquittal at this stage. The court is only required to see that whether there are reasonable grounds to believe that the accused persons have not committed offence. The reasonable grounds as stated above are more than prima facie grounds. It can also be said that at this stage, the court has to see the preponderance of probabilities. If there is preponderance of probabilities that the accused can be convicted on the material available, the bail is liable to be rejected.
76. It is a settled proportion that at the stage of bail, the meticulous examination of evidence is not required at this stage so as to not cause any prejudice to the parties. The probative value of the witnesses also cannot be examined at this stage. At the stage of bail, the mini trial is totally prohibited. This court therefore has not entered into the detailed discussion on the statement of the witnesses and the disclosure/confessional statement of the accused persons. However, the record amply indicates that Leena Paulse was involved in the organized crime syndicate. It is unbelievable that such huge amount of money were coming in her account and she was accepting the same only as a dutiful wife. It does not appeal to the reason that the high end cars



were being purchased, the flights were being taken on charter without having any knowledge about free flow of money. It is beyond comprehension that a lady who is well educated will not know the source of money. The other grounds taken by the petitioner relating to her Fundamental Rights and right to be mother are liable to be rejected as she does not fulfill the twin conditions as laid under Section 21 (4) MCOCA. It is also pertinent to note that her husband is also in custody.

77. Similarly, in respect of B.Mohan raj who has stated himself to be a lawyer, it cannot be believed that he was only acting as a lawyer and had no role. There is material on record that he was in constant touch with Sukash Chandar Sekhar, his wife Leena and other co-accused persons. The role of a lawyer is only limited to extent of given legal advice. In the present case, as a matter of record, the petitioner B. Mohan Raj was doing more than what he was required to do as a lawyer. In his disclosure statement also it has come he was having complete knowledge of the sources of fund. It is not necessary that the accused persons must have involved in the foundational crime of extortion. These accused persons were in fact aiding and abetting the foundational crime by channelizing this money. The role of Kamlesh Kothari is also no less. He had also been purchasing cars and property for Sukash and Leena Paulose. His role is equally incriminating as he was actually aiding and abetting the main accused in the parking of extorted money. In view of the discussion made hereinabove, this court is not able to persuade itself on the basis of the material on record that the petitioners are not guilty of crime.



78. Thus, this court is if the considered opinion that the case is of a very sensitive nature and prima facie petitioners are involved in offences of MCOCA and the finding cannot be recorded at this stage that the petitioners are not guilty of such offence and they are not likely to commit any offence while on bail. This court also does not find any illegality or infirmity in the order of the learned trial court.
79. Hence, the bail applications of Ms.Leena Paulose, B.Mohan Raj and Kamlesh Kothari are rejected.

DINESH KUMAR SHARMA, J

JULY 11, 2023

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