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# IN THE HIGH COURT OF DELHI AT NEW DELHI

**Reserved On: 23<sup>rd</sup> February, 2024**  
**Date of decision: 02<sup>nd</sup> April, 2024**

+ BAIL APPLN. 1130/2023

SUNIL KUMAR

..... Petitioner

Through: Mr. Adarsh Kumar Tiwari, Mr. Vinit Pathak and Ms. Vartika Maurya, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Sanjay Jain, Senior Advocate, Ms. Nandita Rao, Additional Standing Counsel (Criminal) for the State, Mr. Akhand Pratap Singh, SPP, Mr. Yuvraj Sharma, Mr. Abhinandan Gautam, Mr. Nishank Tripathi, Mr. Amit Peshwani, Mr. Jasraj Singh Chhabra, Ms. Anuka Bachawat, Ms. Harshita Sukhija, Ms. Samridhi Dobal, Ms. Palak Jain, Advocates.  
Mr. Virender Kadyan, ACP, EoW and Pradeep Rai, Insp., EoW Delhi Police all for Delhi Police, EoW.

**CORAM:**  
**HON'BLE MR. JUSTICE AMIT SHARMA**

## JUDGMENT

AMIT SHARMA, J.



1. The present application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') read with Sections 12 and 21(4) of the Maharashtra Control of Organised Crimes Act, 1999 ('MCOCA') seeks regular bail in case FIR No. 208/2021, under Sections 170/384/386/388/419/420/506/186/353/468/471/120B of the Indian Penal Code, 1860 ('IPC'), Sections 3/4 of MCOCA and Section 66D of the Information Technology Act, registered at P.S. Special Cell.

### **Background**

2. The case of the prosecution is as under:
- i. The present FIR was registered on basis of a complaint of Ms. Aditi S. Singh alleging that on 15.06.2020, she received a call from one landline number on her mobile phone and the caller introduced himself as a senior officer in the Ministry of Law. It is alleged that the said caller proposed to help her in securing bail for her husband, who was in judicial custody in the cases relating to M/s Religare Enterprises Ltd. It is alleged that the said person demanded Rs. 20 Crores for getting the work done and conveyed the modalities regarding delivery of the money. It is further alleged that subsequently, the said caller, through his associates, extorted money from her on multiple occasions.
  - ii. With the help of the technical surveillance of the mobile phone used by the said caller, it was revealed that the caller was one Sukash V. Chander Shekhar (hereinafter referred to as 'SCS'), who was lodged in Rohini Jail for various cases. It alleged that the complainant was to deliver Rs. 1 Crore on 07.08.2021. Accordingly, a trap was laid and accused Pradeep Ramdanee was caught accepting the aforesaid sum of



Rs. 1 Crore from the complainant. Accused Pradeep Ramdanee further revealed that he collected the money on the instructions of his brother, namely, Deepak Ramnani. The aforesaid accused persons were arrested and under interrogation and they revealed that the aforesaid SCS was the mastermind who had asked them to collect the payment from the complainant. It is alleged that the aforesaid SCS was lodged in Rohini Jail as an under trial prisoner in case of allegedly taking money from AIADMK leader TTV Dinakaran on the pretext of helping him retain 'two leaves' symbol for his party.

- iii. It is alleged that on the intervening night of 07/08.08.2021, a raid was carried out by Special Cell at Cell No. 204, Ward No. 3, Jail No. 10, Rohini Jail. During the said raid, two mobile phones were recovered from the possession of accused SCS and he was subsequently arrested in the present case. It is alleged that interrogation of the accused SCS led to the identification and arrest of his associates and co-conspirators.
- iv. During further investigation, Sections 3/4 of the MCOCA were invoked in the present FIR, with the approval of the competent authority.
- v. During further investigation, Mr. Dharam Singh Meena, Assistant Superintendent, Delhi Prisons was arrested. It is alleged that during interrogation, he accepted his role in collecting money from a person on instructions of accused SCS for himself as well as for other jail officials to provide facilities to SCS, in order to enable him to continue his illegal activities of extortion. It is alleged that he further disclosed that he had received about Rs. 60-75 lakhs from accused Deepak Ramnani and accused Pradeep Ramdanee at the instance of accused



SCS fortnightly and the said amount was distributed amongst the other staff of Jail No. 10, Rohini Jail, as per the share agreed between accused SCS and other jail officials.

- vi. During further investigation, at the instance of aforesaid Mr. Dharam Singh Meena, Mr. Subhash Batra, Deputy Superintendent, Rohini Jail was also interrogated, who allegedly disclosed that he was involved in helping and facilitating SCS in his criminal activities. It is alleged that he admitted his role in helping accused SCS by providing facilities in Cell No. 204 to carry out his criminal activities.
- vii. It is the case of the prosecution that accused SCS continued to extort money and receive funds, with the help of several conspirators, each of whom played a different role by helping him in running an organized crime syndicate from inside the prison.
- viii. The case of the prosecution is that the present applicant was Superintendent, Jail No.10, Rohini from 31.12.2019 to 11.12.2020. It is the case of the prosecution that the present applicant was actively involved with the aforesaid organized crime syndicate led by accused SCS. It is alleged that he knowingly assisted accused SCS in running the organized crime syndicate inside the jail premises, in lieu of hefty shares of the crime proceeds which he received regularly every month. It is the case of the prosecution that without active involvement of the present applicant, the above organized crime syndicate could not have sustained its activities.
- ix. During interrogation, it is alleged that the present applicant could not give any justification for allotting an entire barrack to accused SCS and



also allowing prohibited items like rope, extra bed sheets, sharp-edged objects, etc. in the said barrack. Similarly, the applicant could not give any explanation for SCS using his mobile phone continuously while being in judicial custody in the jail under his supervision. It is also the case of the prosecution that the present applicant did not change the duty roster of ward no. 3 of the co-accused jail officials in order to facilitate running of the crime syndicate led by accused SCS. It is alleged that the present applicant remained evasive during his interrogation and did not cooperate with regard to the money he allegedly received from the crime syndicate. On subsequent investigation, sufficient evidences were collected and the present applicant was arrested on 09.11.2021.

### **Submissions on behalf of the Applicant/Sunil Kumar**

3. Learned counsel for the applicant submitted that sanction in the present case is improper. It was submitted that the two cases have been taken into consideration in which cognizance has been taken, i.e. FIR No. 186/2017 which is under the Prevention of Corruption Act, wherein it has been alleged that SCS had paid a bribe to Delhi Armed Police for transporting him by air instead of train. The other is FIR No. 166/2017 which is for offences of cheating and forgery under IPC for impersonating a public servant. It was submitted that no pecuniary loss has been caused to any law abiding citizen as has been observed in the sanction order. It is further submitted that the said two FIRs were registered for extortion activities and therefore, are not 'continuing unlawful activity' under Section 2(d) of MCOCA. The proposal to invoke the provisions of MCOCA was itself defective. In absence of an



organized crime, it is submitted that there can be no 'organized crime syndicate'. It is submitted that the objective of MCOCA does not cover the offences like the aforesaid and therefore, the approval and the sanction suffers from non-application of mind and the sanctioning authority while adding two more FIRs has gone beyond the proposal itself.

4. Learned counsel appearing on behalf of the applicant submits that the entire case of the prosecution is primarily based on confessional statements of the co-accused persons. It is pointed out that the case of the prosecution with regard to the applicant receiving his alleged share of crime proceeds is based on the aforesaid confessional statements of the co-accused persons, which have not been corroborated by any other evidence. It is submitted that the crux of the prosecution case is that the present applicant provided a separate barrack to accused SCS in order to keep him single so that he can continue with the activities of the crime syndicate by making calls to persons for the purpose of extortion. The case of the prosecution is that the said act was in violation of Jail Manual/rules and in particular against mandate of order dated 07.07.2020, which is as under:

“The Competent Authority has directed to transfer below mentioned inmate to the jail mentioned against his name, as under:

The inmate shall be lodged as under:

| S. No. | NAME & PARENTAGE                                    | FROM<br>(JAIL) | TO<br>(JAIL)               |
|--------|-----------------------------------------------------|----------------|----------------------------|
| 1.     | Sukesh Chandrashekhar<br>S/o Vijayan Chandrashekhar | CJ-3<br>(HSW)  | CJ-10<br>(General<br>Ward) |

The above said UTP be kept under close surveillance.



The complete record of prisoners to be shifted such as Custody warrant/conviction warrant, Medical record, Punishment record, PP account, Smart Card Amount, should be sent along with the inmates without any delay.

In case, there is any special order by the Court or any other agency in respect of above prisoners with regard to their lodging and restraining the execution of the present order, the same may be brought into notice of Prison Headquarter for necessary consideration and appraisal of Competent Authority.

This order is issued in terms of Rule 666(a) of Chapter-IX (Transfer of Prisoners) of Delhi Prison Rules-2018.

This issues with the prior approval of Competent Authority.”

5. It is submitted that the accused SCS was provided a separate barrack from the very first day of his admission in Rohini Jail, which is evident from the ‘barrack *bandi*’. It is submitted that SCS was kept in a separate barrack, which was not in violation of the aforesaid order dated 07.07.2020. It is in fact, one of the measures taken so that close surveillance, as required pursuant to the said order, can be effectively ensured.
6. It is submitted that the prison headquarters itself did not want to keep SCS with other inmates as is evident from the additional status report filed by the Superintendent-PHQ, Tihar, New Delhi in W.P. (CRL) 819/2020 titled ‘Sukash @ Sukesh Chandra Shekhar v. Central Tihar Jail’ filed before this Court. Reliance was further placed on the reply to a notice under Section 91 of the Cr.P.C. received from the Office of Superintendent, Rohini Jail to demonstrate that a person can be kept single for keeping him under strong surveillance, which was the mandate of order dated 07.07.2020. It is further submitted that accused SCS was kept alone in a barrack and not in a cell because no cell was available in the general ward, i.e., ward no. 3 and for the



fact that he was supposed to be kept under close surveillance. It is stated that the cells were available in ward no. 5, which was high security ward and not a general ward. Similarly, it is pointed out that accused SCS was not the only person who was kept in a single barrack; therefore, no special treatment was given by the applicant to accused SCS. Reliance is placed on a reply under RTI dated 18.03.2023 received from the office of Superintendent, Rohini Jail. It is pointed out that accused SCS was kept in a single barrack even prior to the time period in question and subsequently as well. Reliance was placed on various replies to RTI applications filed by applicant from Tihar Jail. It was submitted that he is still kept in a single cell.

7. It is submitted that the allegation with respect to covering of CCTV vision of the barrack where accused SCS was lodged is also unfounded as in the statement of Neeraj Mann relied upon by the prosecution, he does not state anything against the present applicant. In fact, it is pointed out that the said witnesses noticed the blocked vision of the CCTV during the period when accused Sunder Bora was the Superintendent and not the present applicant. It is stated that the said witnesses, in his statement under Section 164 of the Cr.P.C. has mentioned that he had informed the co-accused Sunder Bora, who was Superintendent at that time with regard to the blocked vision of CCTV cameras. It is further stated that all the relevant entries made by the said witnesses with regard to blocked vision of CCTV cameras are of July 2021, when the present applicant was not Superintendent.

8. The allegation with respect to continuous deployment of the other co-accused persons who are officials in Rohini Jail in order to facilitate SCS is again based on confessional and disclosure statements of the said accused



persons. It is pointed out that on an analysis of duty roster during the tenure of the present applicant, it is evident that duty of other Assistant Superintendent and Deputy Superintendent also were not changed.

**9.** With regard to the mobile phones recovered from accused SCS, it is submitted that it is the case of the prosecution that the said phone was purchased by the said accused during his custody parole from Chennai. The allegation that the same was being used by him is based on analysis of call records. It is submitted that guards from Tamil Special Police are deployed at the entrance of the prison and entry of mobile phones from the said gate to the barrack cannot be attributed to the applicant. It is further submitted that even as per the statement of witness Neeraj Mann, Warder, Rohini Jail was “throw prone”, i.e., anybody could throw the mobile in the compound.

**10.** It is further submitted that the case of the prosecution is that the present applicant in conspiracy with other co-accused persons was facilitating the crime of extortion committed by accused SCS. It is pointed out that as per the chargesheet, the said extortion continued from 15.06.2020, i.e., prior in time to the admission of accused SCS in Rohini Central Jail no. 10 on 08.07.2020.

**11.** It is submitted that the prosecution has heavily relied upon a document in the form of a comprehensive list having names of all jail officials obtained from accused D.S. Meena’s phone. It is pointed out that the name of the present applicant although figures in the list but there is no amount which has been correspondingly reflected against his name. Moreover, the said co-accused has himself stated in his statement that the said list is not related to the applicant, therefore cannot be relied upon by the prosecution. It is submitted that the prosecution has not been able to establish any *mens rea* in



part of the applicant to cover his case under Section 3/4 of the MCOCA. It is vehemently argued that the prosecution has not been able to establish any pecuniary gain to the applicant till date.

**12.** It is further submitted that the applicant was not named in the initial chargesheet and was arrayed as accused no. 15 in the supplementary chargesheet. It is pointed out that there are 21 accused persons in the present case and prosecution has cited 371 prosecution witnesses. The proceeding before the learned Trial Court is at the stage of Section 207 of Cr.P.C. and charges are yet to be framed. It is further pointed out that accused no. 7, Joel Daniel Joes has been granted bail by learned Trial Court itself and two other co-accused persons, i.e., accused no. 21, namely, Pinki Irani and accused no. 11, namely, Avatar Singh Kocchar @ Dolly have been granted bail by a Coordinate bench of this Court vide order dated 20.10.2023 and 29.11.2023 respectively. It is pointed out that the case of the applicant is on a better footing than the aforesaid co-accused persons as they had allegedly confessed under Section 18 of MCOCA, whereas there is no confessional statement of the present applicant.

**13.** It is finally submitted that the applicant was the Jail Superintendent of Central Jail-10, Rohini from 31.12.2019 to 10.12.2020 and accused SCS was admitted in said Jail on 08.07.2020. It is pointed out that during said period accused SCS was on custody parole for 49 days. It is further submitted that the present applicant had been released on interim bail for 15 days and did not misuse the liberty granted to him.

**14.** Learned counsel for the applicant relies upon the following judgments:



| Proposition                                                                              | Case Law                                                                  | Relevant Paragraphs                                                   |
|------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|-----------------------------------------------------------------------|
| Section 21(4) of the Indian Evidence Act: Circumstantial Evidence and Factual Similarity | Ranjitsing Brahmjeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 | 11, 12, 22, 23, 24, 25, 29, 31, 32, 38, 43, 44, 46, 51, 57, 62 and 64 |
| Confession of Co-Accused and the Need of Corroboration                                   | Mohd. Farooq Abdul Gafur v. State of Maharashtra, (2010) 14 SCC 641       | 84, 85, 86, 87, 88, 95 and 97                                         |
|                                                                                          | Jameel Ahmed v. State of Rajasthan, (2003) 9 SCC 673                      | 49                                                                    |
| Grant of Bail in a UAPA Offence Where There is a Confession                              | Yedala Subba Rao & Anr. v. Union of India, 2023 INSC 382                  | 6, 14, 17 and 21                                                      |
| Circumstantial Evidence                                                                  | Pradeep Kumar v. State of Chhattisgarh, (2023) 5 SCC 350                  | 27 and 29                                                             |
|                                                                                          | Neeraj Dutta v. State (NCT of Delhi), (2023) 4 SCC 731                    | 71 and 73                                                             |
| Disclosure                                                                               | Sukhvinder Singh v. State                                                 | 16                                                                    |



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|---------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|-------------------------------------------------------------------------------|
|                                                                                                                           | of Punjab, (1994) 5 SCC 152                                              |                                                                               |
|                                                                                                                           | Santosh alias Bhure v. State (G.N.C.T.) of Delhi, 2023 SCC OnLine SC 538 | 80 and 81                                                                     |
| Retracted Confession                                                                                                      | Manoharan v. State, (2020) 5 SCC 782                                     | 23, 27 and 29                                                                 |
|                                                                                                                           | CBI v. Mohd. Parvez Abdul Kayyum, (2019) 12 SCC 1                        | 156                                                                           |
| Meaning of What Amounts to a Confession, Evidentiary Value of a Retracted Confession and Effect of a Retracted Confession | Kanda Padayachi v. State of T.N., (1971) 2 SCC 641                       | 10 and 11                                                                     |
|                                                                                                                           | Devender Pal Singh v. State (NCT of Delhi), (2002) 5 SCC 234             | 32                                                                            |
|                                                                                                                           | Nazir Khan v. State of Delhi, (2003) 8 SCC 461                           | 23                                                                            |
|                                                                                                                           | Aloke Nath Dutta v. State of W.B., (2007) 12 SCC 230                     | 53, 87, 89, 95, 96, 99, 104, 105, 108, 109, 110, 114, 115, 116, 117, 125, 126 |
|                                                                                                                           | Yakub Abdul Razak Memon v. State of Maharashtra, (2013) 13 SCC 1         | 2883, 2885 and 2886                                                           |



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|                    | Adambhai Sulemanbhai<br>Ajmeri v. State of Gujarat,<br>(2014) 7 SCC 716      | 186, 16       |
|                    | Periyasami v. State, (2014)<br>6 SCC 59                                      | 29            |
|                    | Akshay Atmaram Rathod v.<br>State of Maharashtra, 2023<br>SCC OnLine Bom 418 | 18            |
|                    | Vivek Mahadev Yadav v.<br>State of Maharashtra, 2022<br>SCC OnLine Bom 11597 | 13            |
|                    | Sagar Laxman Sonawane v.<br>State of Maharashtra, 2021<br>SCC OnLine Bom 265 | 7 and 8       |
|                    | Rajendra v. State of<br>Maharashtra, 2020 SCC<br>OnLine Bom 9322             | 50, 51 and 55 |
|                    | Laxman v. State of<br>Maharashtra, 2019 SCC<br>OnLine Bom 11274              | 4             |
| Hearsay Evidence   | Neeraj Dutta v. State (NCT<br>of Delhi), (2023) 4 SCC<br>731                 | 57 and 58     |
| Delayed Retraction | Maulana Naseeruddin                                                          | 8             |



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|  | Mohd. Haneefuddin v. State of Gujarat, (2007) 12 SCC 545 |  |
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### **Submissions on behalf of the State**

**15.** Learned Senior Counsel appearing on behalf of the State submits that the scheme of MCOCA differs substantially from ordinary procedure prescribed in law. Attention of this Court was drawn to the following provisions of MCOCA:

Section 2(1)(e) - Definition of ‘Organised Crime’:

“(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.”

Section 2(1)(f) - Definition of ‘Organised Crime Syndicate’:

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

Section 2(1)(d) - Definition of ‘Continuing Unlawful Activity’:

“(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 ;”

### Section 3 - Punishment for Organised Crime:

“3. (1) Whoever commits an offence of organised crime shall,—

(i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees one lac;

(ii) in any other case, be punishable 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 a fine, subject to a minimum fine of rupees five lacs.

(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(3) Whoever harbours or conceals or attempts to harbour or conceal, any member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extent to imprisonment for life, and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(4) Any person who is a member of an organised crime syndicate shall be punishable 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 a fine, subejct to a minimum fine of rupees five lacs.

(5) Whoever holds any property derived or obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs.”

### Section 4 - Punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate:



“4. If any person on behalf of a member of an organised crime syndicate is, or, at any time has been, in possession of movable or immovable property which he cannot satisfactorily account for, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine, subject to a minimum fine of rupees one lac and such property shall also be liable for attachment and forfeiture, as provided by section 20.”

**16.** Learned Senior Counsel submits that a direct nexus is not a *sine qua non* for a member of an organized crime syndicate. It is submitted that provisions of MCOCA may be invoked against any individual if he or she is acting singly or jointly and is found to be engaged/involved in any of the activities covered under Sections 2(1)(a), 2(1)(d), 2(1)(e), 3(2), 3(4) or 3(5) of MCOCA, as a member of an organized crime syndicate, comprising of a group of two or more persons, irrespective of whether the participation is active or passive, its frequency or intensity. It is submitted that these would be non-issues/irrelevant factors.

**17.** It was further submitted that the involvement of a person may not be direct and abetment as per Section 2(1)(a) with its grammatical variation and cognate expression would be sufficient. It was argued that the expression “abate” as understood in the present Act has a more extensive connotation covering larger range and manifestation of activities in comparison to the definition of abetment found in the penal code. Reliance was placed on Para 22 of **Ranjitsing Brahmjeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294.**

**18.** It is submitted that engagement/involvement/abetment would not only include actual commission of an act/activities covered under Sections 2(1)(a),



2(1)(d), 2(1)(e), 3(2), 3(4) or 3(5) of the MCOCA, but also an act of conspiracy in furtherance of such acts/activities, attempt(s) to commit such acts/activities, advocating, knowingly facilitating or abetting the commission of such acts / activities and advocating, knowingly facilitating or abetting any act preparatory to an organised crime. It is submitted that the pre-requisite is that the continuing unlawful activities must give rise to cognizable offences punishable with imprisonment of 3 years or more.

**19.** It is submitted that use of violence, threat of violence, intimidation and coercion in doing any of the acts are no doubt the determinative factors, however, the absence of the same would not make a difference in so far as it can be shown that the acts were carried out by any other type of unlawful means, that is to say that the means deployed to do such acts may or may not have the trappings of violence, threat, intimidation or coercion; but nonetheless, the same were carried out towards the attainment of such objectives, which are enlisted as determinative objectives for inclusion of an offence under MCOCA.

**20.** Learned Senior Counsel further submits that the objectives of the acts may not necessarily be to cause death or to cause harm to public health, safety, convenience, morals, decency or those affecting human body, property, property marks, valuable documents and security and / or to commit offences against the State, including insurgency, but the objective of such acts may be confined to the limited objective of personal gains such as gaining pecuniary benefit for oneself, or gaining undue economic advantage for oneself or any other person, whose pecuniary benefit or economic advantage, may be of interest for such person, i.e., the person engaged / involved / found



to be playing the role, direct or that of abetment, facilitation or preparatory in any of the acts summarised above.

**21.** Lastly, it is submitted that the requirement of more than one chargesheets, in respect of which cognizance has been taken by the Court of competent jurisdiction, where the maximum gap between the two chargesheets not being more than 10 years as provided in Section 2(1)(d) of the Act is not centric to every individual, who may be involved as a member of an Organised Crime Syndicate or who is acting on behalf of an Organised Crime Syndicate, but the same is primarily in relation to the continuing unlawful activities of that Organised Crime Syndicate. In other words, the requirement of more than one chargesheets is centric to the Organised Crime Syndicate and not to the individual members of the Syndicate, though in view of the requirement of the Syndicate being of two or more members and further requirement of continuing unlawful activity, inevitably at least two members of the Syndicate would be common. Reliance is placed on para 27 of **Kavitha Lankesh vs. State of Karnataka, (2022) 12 SCC 753** and paras 84 to 86 of **Zakir Abdul Mirajkar vs. State of Maharashtra, 2022 SCC Online SC 1092**.

**22.** In view of the above, it is pointed out that the present applicant knowingly facilitated the activities of crime syndicate during his tenure as Superintendent at Central Jail-10, Rohini, which is evident from the fact that the accused SCS was using his mobile phone without any interruption. The material collected by the prosecution is prima facie sufficient for the purpose of Section 21(4) of the MCOCA. It is submitted that the confessional statement of the co-accused persons, even though retracted, can be looked at



for the purpose of determination of the present bail application. It is further submitted that statements of various witnesses recorded during the course of the investigation apart from the CDR, shows use of mobile phone by accused SCS. Attention of this Court was drawn to the confessional statement of accused SCS, Deepak Ramnani, Dharam Singh Meena, Mahender Prasad Sundriyal, Laxmi Dutt recorded under Section 18 of the MCOCA. It is submitted that the said confessional statements clearly points out that to the involvement of the present applicant in terms of Section 3 of the MCOCA. It was further pointed out that from 07.07.2020 to 12.12.2020, while SCS was lodged at Rohini Jail during the tenure of the present applicant, a total amount of Rs. 96, 94, 25, 988/- was collected on behalf of the crime syndicate.

**23.** In support of his contentions, learned Senior Counsel for the State further placed reliance on the following judgments:

| Proposition                                                                             | Case Law                                                                   | Relevant Paragraphs |
|-----------------------------------------------------------------------------------------|----------------------------------------------------------------------------|---------------------|
| Approval under Section 23(1)(a) of MCOCA is <i>qua</i> the offence and not the offender | Kavitha Lankesh v. State of Maharashtra, 2021 SCC OnLine SC 956            | 21 and 22           |
|                                                                                         | Vinod G. Asrani v. State of Maharashtra, (2007) 3 SCC 633                  | 9                   |
| Confessional Statement under Section 18 of MCOCA                                        | Praveen Venkatesh Takalki v. National Investigation Agency, (2013) SCC Bom | 17                  |



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|---------------------------------------------------------------------|------------------------------------------------------------------------------------|-----------|
|                                                                     | 2088                                                                               |           |
|                                                                     | Mohd. Farooq Abdul Gafur<br>v. State of Maharashtra,<br>(2010) 14 SCC 641          | 84        |
|                                                                     | State of Maharashtra v.<br>Kamal Ahmed Vakil<br>Ansari, (2013) 12 SCC 17           | 71        |
| Nexus with a Syndicate                                              | Sachin Bansilal Ghaiwal v.<br>State of Maharashtra, 2014<br>SCC OnLine Bom 725     | 38        |
|                                                                     | Ranjitsing Brahmjeetsing<br>Sharma v. State of<br>Maharashtra, (2005) 5 SCC<br>294 | 22        |
|                                                                     | Prasad Shrikant Purohit v.<br>State of Maharashtra,<br>(2015) 7 SCC 440            | 85        |
| Twin Conditions under<br>Section 21(4) of<br>MCOCA are<br>Mandatory | State of Maharashtra v.<br>Vishwanath Maranna<br>Shetty, (2012) 10 SCC 561         | -         |
|                                                                     | Gokul Bhagaji Patil v. State<br>of Maharashtra and Anr.,<br>(2007) 2 SCC 475       | -         |
| Application of Mind by                                              | Farman Imran Shah v. State                                                         | 17 and 19 |



|                                                                                                     |                                                                                                                                                                                                   |           |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| the<br>Approving/Sanctioning<br>Authority for Sections<br>23(1)(a) and 23(2) of<br>MCOCA            | of Maharashtra, 2014 SCC<br>OnLine Bom 408                                                                                                                                                        |           |
|                                                                                                     | Parveen Bazard v. State<br>(NCT of Delhi), 2021 SCC<br>OnLine Del 3831                                                                                                                            | 47        |
| Retracted Confession                                                                                | Ganesh Nivrutti Marne v.<br>State of Maharashtra, 2010<br>SCC OnLine Bom 716                                                                                                                      | 15        |
|                                                                                                     | Digvijay Saroha v. State,<br>2019 SCC OnLine Del<br>10324                                                                                                                                         | 14        |
| Requirement of Two<br>Chargesheets                                                                  | Govind Sakharam Ubhe v.<br>State of Maharashtra, 2009<br>SCC OnLine Bom 770                                                                                                                       | 36 and 37 |
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| No Requirement to be<br>Charged Jointly with<br>other Co-Accused in<br>the Previous<br>Involvements | Prem s/o Chunnilal Yadav<br>(Gwalwanshi) v. The State<br>of Maharashtra, Judgment<br>dated 09.12.2021 passed by<br>the Hon'ble High Court of<br>Judicature at Bombay,<br>Nagpur Bench in Criminal | 347       |



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|  | Kamlesh Kothari v. State NCT of Delhi, 2023 SCC OnLine Del 3984       | - |

### **Rejoinder on behalf of the Applicant/Sunil Kumar**

24. In rejoinder, learned counsel for the applicant placed reliance on paragraphs 42, 43, 44 of **Ranjitsing Brahmjeetsing Sharma** (*supra*) and reiterated that the case of abetment of the prosecution also relies on the uncorroborated and retracted confessional statement and no evidence is placed on record to demonstrate that the present applicant had actually any knowledge or reason to believe that SCS was engaged in the commission of the organised crime. Apart from the inference raised by the prosecution, there is no material on record to establish that the applicant had knowledge or reason to believe the commission of the organised crime. The aforesaid is further reinforced from the fact that no pecuniary benefit has been attributed to the present applicant. Attention of this Court was drawn to an affidavit filed by the prison headquarters in a writ petition filed before the High Court by



SCS to show that he was being kept in a high security ward in the interest and security of prison.

**25.** It is further stated that the confessional statements of the co-accused persons are also not admissible in evidence on account of the fact that Section 18(6) of the MCOCA has not been complied with. Section 18 of the said Act provides as under:

**“18. Certain confessions made to police officer to be taken into consideration. –**

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator : Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him.

(3) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is being made voluntarily. The concerned police officer shall , after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and time of the same.

(4) Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.

(5) The person from whom a confession has been recorded under subsection (1) shall also be produced before the Chief Metropolitan



Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under sub-section (4) alongwith the original statement of confession, written or recorded on mechanical device without unreasonable delay.

**(6) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon.”**

*(emphasis supplied)*

### **Analysis and Findings**

**26.** The present application for bail has to be determined in terms of Section 21(4) of MCOCA, which provides as under:

**“21.Modified application of certain provisions of the Code.-**

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(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless—

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release ; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

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While interpreting the aforesaid provision, the Hon’ble Supreme Court, in **Ranjitsingh Brahmjeetsingh Sharma (supra)**, observed and held as under:

**“38.** We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all



probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Penal Code, 1860 may debar the court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.

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**43.** Section 21(4) of MCOCA does not make any distinction between an offence which entails punishment of life imprisonment and an imprisonment for a year or two. It does not provide that even in case a person remains behind the bars for a period exceeding three years, although his involvement may be in terms of Section 24 of the Act, the court is prohibited to enlarge him on bail. Each case, therefore, must be considered on its own facts. The question as to whether he is involved in the commission of organised crime or abetment thereof must be judged objectively. Only because some allegations have been made against a high-ranking officer, which cannot be brushed aside, may not by itself be sufficient to continue to keep him behind the bars although on an objective consideration the court may come to the conclusion that the evidences against him are not such as would lead to his conviction. In case of circumstantial evidence like the present one, not only culpability or mens rea of the accused should be prima facie established, the court must also consider the question as to whether the circumstantial evidence is such whereby all the links in the chain are complete.



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

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

The case of the prosecution in **Ranjitsingh Brahmjeetsingh Sharma** (*supra*) was that the appellant therein was a former commissioner of police and his role was alleged to be of providing help and support to an organised crime syndicate by certain acts of omission and commission through co-accused persons, who were subordinate to him in the Maharashtra Police. It



was alleged that when the appellant therein was posted as Commissioner of Police, he was well aware of various cases of scam which were pending in Mumbai. The following facts are recorded in Para 11 of the said judgment:

“11. Before the High Court, the role of the appellant was said to be rendition of help and support to organised crime syndicate by certain acts of omission and commission i.e. by rendering help or support to Mulani, a co-accused when he was Commissioner of Police, Pune and through API Dilip Kamat, co-accused while he was the Commissioner of Police, Mumbai.”

In the said case, the Hon’ble Supreme Court also noted that the prosecution was relying on brain-mapping of co-accused Telgi, to show that the appellant had accepted illegal gratification from him. Noting the aforesaid allegations and the material on record against the appellant therein, the Hon’ble Supreme Court, observed and held as under:

“21. MCOCA was enacted to make special provisions for prevention and control of, and for coping with, criminal activity by organised crime syndicate or gang, and for matters connected therewith or incidental thereto. The Statement of Objects and Reasons for enacting the said Act is as under:

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



been operating in the State and, thus, there was immediate need to curb their activities.

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

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

It is the purpose of this Act to achieve these objects.”

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**22.** The interpretation clause as regards the expression “abet” does not refer to the definition of abetment as contained in Section 107 IPC. It refers to such meaning which can be attributed to it in the general sense with grammatical variations and cognate expressions. However, having regard to the cognate meaning, the term may be read in the light of the definition of these words under Sections 107 and 108 of the Penal Code, 1860. The inclusive definition although expansive in nature, “communication” or “association” must be read to mean such communication or association which is in aid of or renders assistance in the commission of organised crime. In our considered opinion, any communication or association which has no nexus with the commission of organised crime would not come within the purview thereof. It must mean assistance to organised crime or organised crime syndicate or to a person involved in either of them. It, however, includes (a) communication, or (b) association with any person with the actual knowledge, or (c) having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate. Communication to, or association with, any person by itself, as was contended by Mr Sharan, would not, in our considered opinion, come within the meaning of the aforementioned provision. The communication or association must



relate to a person. Such communication or association to the person must be with the actual knowledge or having reason to believe that he is engaged in assisting in any manner an organised crime syndicate. Thus, the offence under Section 3(2) of MCOCA must have a direct nexus with the offence committed by an organised crime syndicate. Such abetment of commission of offence must be by way of accessories before the commission of an offence. An offence may be committed by a public servant by reason of acts of omission and commission which would amount to tampering with the investigation or to help an accused. Such an act would make him an accessory after the commission of the offence. It is interesting to note that whereas Section 3(2) having regard to the definition of the term “abet” refers directly to commission of an offence or assisting in any manner an organised crime syndicate, Section 24 postulates a situation where a public servant renders any help or support both before or after the commission of an offence by a member of an organised crime syndicate or abstains from taking lawful measures under this Act.

**23.** Interpretation clauses contained in Sections 2(d), 2(e) and 2(f) are interrelated. An “organised crime syndicate” refers to an “organised crime” which in turn refers to “continuing unlawful activity”. As at present advised, it may not be necessary for us to consider as to whether the words “or other unlawful means” contained in Section 2(e) should be read “ejusdem generis”/ “noscitur a sociis” with the words (i) violence, (ii) threat of violence, (iii) intimidation, or (iv) coercion. We may, however, notice that the word “violence” has been used only in Sections 146 and 153-A of the Penal Code, 1860. The word “intimidation” alone has not been used therein but only Section 506 occurring in Chapter XXII thereof refers to “criminal intimidation”. The word “coercion” finds place only in the Contract Act. If the words “unlawful means” are to be widely construed as including any or other unlawful means, having regard to the provisions contained in Sections 400, 401 and 413 IPC relating to commission of offences of cheating or criminal breach of trust, the provisions of the said Act can be applied, which prima facie, does not appear to have been intended by Parliament.

**24.** The Statement of Objects and Reasons clearly states as to why the said Act had to be enacted. Thus, it will be safe to presume that the expression “any unlawful means” must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control. In other words, an offence falling within the definition of organised crime and committed by an organised crime



syndicate is the offence contemplated by the Statement of Objects and Reasons. There are offences and offences under the Penal Code, 1860 and other penal statutes providing for punishment of three years or more and in relation to such offences more than one charge-sheet may be filed. As we have indicated hereinbefore, only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA. Furthermore, mens rea is a necessary ingredient for commission of a crime under MCOCA.

**25.** In *Shri Ram v. State of U.P.* [(1975) 3 SCC 495 : 1975 SCC (Cri) 87 : AIR 1975 SC 175] it was stated : (SCC p. 498, para 6)

“6. ... Thus, in order to constitute abetment, the abettor must be shown to have ‘intentionally’ aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107.”

**26.** Sub-section (2) of Section 3 inter alia provides for facilitating conspiracy or abetting or commission of a crime by a person knowingly or any act preparatory to organised crime.

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**29.** In *P.K. Narayanan* [(1995) 1 SCC 142 : 1995 SCC (Cri) 215] it is stated : (SCC pp. 148-49, para 10)

“10. The ingredients of this offence are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means an act which by itself may not be illegal. Therefore the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore the circumstances proved before, during and after the



occurrence have to be considered to decide about the complicity of the accused. But if those circumstances are compatible also with the innocence of the accused persons then it cannot be held that the prosecution has successfully established its case. Even if some acts are proved to have been committed it must be clear that they were so committed in pursuance of an agreement made between the accused who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. From the above discussion it can be seen that some of the circumstances relied upon by the prosecution are not established by cogent and reliable evidence. Even otherwise it cannot be said that those circumstances are incapable of any other reasonable interpretation.”

27. Relevance of the observations made by Hon’ble Supreme Court hereinabove is that *mens rea* is a necessary ingredient for bringing the case of a person under the relevant provisions of MCOCA. Evidence against the present applicant as per status report dated 19.05.2023, authored by Mr. Virender Kadyan, Assistant Commissioner of Police, Economic Offences Wing, Mandir Marg, New Delhi, are as under:

- “Confessional Statement of Dharam Singh Meena, Mahender Prasad Sunderiyal, Laxmi Dutt, Deepak Ramnani and Sukash Chander Shekar U / s 18 (1) MCOCA also established that accused Sunil Kumar, Suptd. Jail, with the connivance of other jail officials, fixed the terms and condition for providing illegal facilities to accused Sukash Chander Shekar for committing various crimes from inside the Prison premises and for this he was getting handsome cut from the crime proceeds regularly.
- The mobile phone which was used by accused Sukash Chandershekar for extorting the complainant while he was in Rohini Jail, was the same phone which was also found used by accused Sukash during his custody parole period. The recovered phone (I-Phone Pro 12) which was purchased by accused Sukash during his custody parole from Chennai, was also found used



after custody parole inside the Rohini Jail by the accused Sukash for extortion purpose.

- He provided separate Barrack exclusively to accused Sukash even during corona period while the other wards of the jail were made over crowded.
- Sukash had covered the field of view of CCTV cameras in order to avoid the creation of any evidence against him regarding usage of mobile phones and other illegal facilities in connivance with Jail staff.
- As per CDRs, IPDRs and WhatsApp & Telegram records, accused Sukash had been continuously using two mobile phones uninterrupted, despite being in judicial custody inside a secure prison facility.
- Continuous deployment of Dharam Singh Meena (Asst. Suptd.), 02 Head Warders namely Vakeel (214 times) & Vinay (148 times) and one Warder Ajay (150 times) to continuously facilitate Sukash to maintain the secrecy regarding the activities of Sukash in commission of crime.”

28. So far as the confessional statements of the co-accused persons under MCOCA are concerned, the same have been heavily relied upon by the prosecution and it has been submitted that at the stage of consideration on bail, the said statements can be looked into. It is pertinent to note that the said statements of the co-accused persons primarily are being used to demonstrate that the applicant was receiving illegal gratification in order to give SCS necessary support and aid in continuing with his unlawful activities. The Hon’ble Supreme Court, in **Mohd. Farooq (supra)**, while dealing with a confessional statement under Section 18 of the MCOCA, observed and 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 co-accused which could be used and relied upon for the purpose of conviction.

**85.** In *State v. Nalini* [(1999) 5 SCC 253 : 1999 SCC (Cri) 691] it was held by this Court in the context of Section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (now repealed), which is *pari materia* with Section 18 of MCOCA that the evidence of a co-accused is admissible as a piece of substantive evidence and in view of the non obstante clause, CrPC will not apply.

**87.** Reiterating the aforesaid position of law, this Court in *Devender Pal Singh v. State (NCT of Delhi)* [(2002) 5 SCC 234 : 2002 SCC (Cri) 978] , observed as follows: (SCC pp. 261-62, para 33)

“33. As was noted in *Gurdeep Singh case* [*Gurdeep Singh v. State (Delhi Admn.)*, (2000) 1 SCC 498 : 2000 SCC (Cri) 449] whenever an accused challenges that his confessional statement is not voluntary, the initial burden is on the prosecution for it has to prove that all requirements under Section 15 of TADA and Rule 15 of the Terrorist and Disruptive Activities (Prevention) Rules, 1987 (hereinafter referred to as ‘the Rules’) have been complied with. Once this is done the prosecution discharges its burden and then it is for the accused to show and satisfy the court that the confessional statement was not made voluntarily. The confessional statement of the accused can be relied upon for the purpose of conviction, and no further corroboration is necessary if it relates to the accused himself. It has to be noted that in *Nalini case* [(1999) 5 SCC 253 : 1999 SCC (Cri) 691] by majority it was held that as a matter of prudence the court may look for some corroboration if confession is to be used against a co-accused though that will be again within the sphere of appraisal of evidence. It is relevant to note that in *Nalini case* [(1999) 5 SCC 253 : 1999 SCC (Cri) 691] the Court was considering the permissibility of conviction of a co-accused on the confessional statement made by another accused. In this case, we are concerned with the question as to whether the accused making the confessional statement can be convicted on the basis of



that alone without any corroboration. The following observations in *Jayawant Dattatraya case* [*Jayawant Dattatraya Suryarao v. State of Maharashtra*, (2001) 10 SCC 109 : 2002 SCC (Cri) 897] are relevant: (SCC p. 146, para 60)

‘60. (2) Confessional statement made before the police officer under Section 15 of the TADA is substantive evidence and it can be relied upon in the trial of such person or co-accused, abettor or conspirator for an offence punishable under the Act or the Rules. The police officer before recording the confession has to observe the requirement of sub-section (2) of Section 15. *Irregularities here and there would not make such confessional statement inadmissible in evidence. If the legislature in its wisdom has provided after considering the situation prevailing in the society that such confessional statement can be used as evidence, it would not be just, reasonable and prudent to water down the scheme of the Act on the assumption that the said statement was recorded under duress or was not recorded truly by the officer concerned in whom faith is reposed. It is true that there may be some cases where the power is misused by the authority concerned. But such contention can be raised in almost all cases and it would be for the court to decide to what extent the said statement is to be used.* Ideal goal may be: confessional statement is made by the accused as repentance for his crime but for achieving such ideal goal, there must be altogether different atmosphere in the society. Hence, unless a foolproof method is evolved by the society or such atmosphere is created, there is no alternative, but to implement the law as it is.”

(emphasis in original)

**88.** In *Jameel Ahmed v. State of Rajasthan* [(2003) 9 SCC 673 : 2003 SCC (Cri) 1853] this Court summarised the aforesaid legal position as follows: (SCC pp. 689-90, para 35)

“35. To sum up our findings in regard to the legal arguments addressed in these appeals, we find:



(i) If the confessional statement is properly recorded, satisfying the mandatory provision of Section 15 of the TADA Act and the Rules made thereunder, and if the same is found by the court as having been made voluntarily and truthfully then the said confession is sufficient to base a conviction on the maker of the confession.

(ii) Whether such confession requires corroboration or not, is a matter for the court considering such confession on facts of each case.

(iii) In regard to the use of such confession as against a co-accused, it has to be held that as a matter of caution, a general corroboration should be sought for but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base a conviction on the basis of such confession of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.

(iv) The nature of corroboration required both in regard to the use of confession against the maker as also in regard to the use of the same against a co-accused is of a general nature, unless the court comes to the conclusion that such corroboration should be on material facts also because of the facts of a particular case. The degree of corroboration so required is that which is necessary for a prudent man to believe in the existence of facts mentioned in the confessional statement.

(v) The requirement of sub-rule (5) of Rule 15 of the TADA Rules which contemplates a confessional statement being sent to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate who, in turn, will have to send the same to the Designated Court is not mandatory and is only directory. However, the court considering the case of direct transmission of the confessional statement to the Designated Court should satisfy itself on facts of each case whether such direct transmission of the confessional statement in the facts of the case creates any



doubt as to the genuineness of the said confessional statement.”

**29.** It is important to mention herein that no corroborative evidence, apart from the aforesaid confession, has been brought on record by the prosecution with regard to any pecuniary advantage received by the applicant during his tenure as Superintendent of Jail, Jail No. 10, Rohini, for the period it has been alleged that he supported SCS in the organized crime. It is also not the case of prosecution that any such evidence has come on record to demonstrate that any pecuniary advantage was received by the present applicant before or after the aforesaid tenure from co-accused SCS or any other co-accused persons. In fact, the prosecution relies upon a document retrieved from phone of a co-accused, wherein names of prison officials are mentioned and against their names, corresponding amounts are written. It is alleged that the list was maintained by the said co-accused for recording calculations of money distributed amongst the jail officials. It is a matter of record that the name of the present applicant finds mention in the said list, however, there is no amount mentioned against his name. It is also a matter of record that the co-accused from whom the said list was recovered, has in his supplementary statement dated 09.10.2021 stated that this list does not relate to the Superintendent/present applicant. The explanation is that since the amount given to the present applicant was on his tips; therefore, there was no need to record the same.

**30.** As observed hereinabove, the case of the prosecution is that the co-accused SCS was constantly using his mobile phone during the tenure of the present applicant as Superintendent, Jail No. 10. The defence put forth by the



learned counsel for the applicant is that the said mobile phone, even as per the case of the prosecution, was obtained by him while he was on custody parole. It was argued that the entry of the applicant in the jail is monitored by a battalion of Tamil Special Police over which the present applicant has no control.

**31.** At this stage, it is important to note that apart from the circumstances showing that the co-accused SCS was allegedly using his mobile phone inside the jail, the other material relied upon by the prosecution was again the statements made by co-accused persons. Another witness of the prosecution, namely Neeraj Mann in his statement under Section 161 of the Cr.P.C. has stated that the CCTV vision in front of SCS's cell was covered in order to avoid detection while using the mobile phone.

**32.** A perusal of the said statement reflects that the said witness has stated that he used to inform the other accused namely Sunder Bora, who came in after the present applicant's tenure ended in December, 2020. The statement of the said witness does not relate to the tenure of present applicant.

**33.** The next submission on behalf of the State is that co-accused SCS was transferred to Rohini Jail under the supervision of the present applicant, *vide* order dated 07.07.2020, wherein it was stated that the applicant was to be kept in close surveillance.

**34.** The learned counsel for the applicant submitted that the one of the ways to keep SCS in close surveillance is to keep him in a single barrack. Reliance was placed on a reply received from the office of Superintendent, Rohini Jail in response to a notice under Section 91 of the Cr.P.C., wherein it has been stated as under:



“As per Section 29 of Delhi Prison Act, 2000, criminal prisoners may be confined either in association or individually in cells or partly in one way or partly in the other subject to the requirement of the forgoing Section of the Act. As per practice the prisoners are lodged individually in a cell considering the safety and security of the prisoner as well as to keep strong surveillance of the concerned inmate.”

**35.** Similarly, it is pointed out that the case of the prosecution that SCS was the only one who was kept in a single barrack is incorrect and reliance was placed on RTI reply dated 18.03.2023 wherein it has been stated as under:

“As per Available record during the period 31.12.2019 to 10.12.2020 while the applicant was posted as Superintendent in Cj-10, Rohini there were 4 wards in a barrack or in a cell where prisons are lodged single i.e. ward no. 01,02,03 and 05 respectively.”

**36.** It was further submitted that in the additional status report filed in a writ petition filed by SCS, the stand of the prison authorities was that by keeping SCS in high security ward /special security ward, it is easier to keep surveillance on him rather than by keeping him in general ward.

**37.** Reliance was also placed on a RTI reply dated 01.04.2022 received from the Superintendent, Central Jail No. 1, Tihar, New Delhi, wherein it has been stated that co-accused SCS was lodged in a single cell, i.e., to submit that even after the tenure of the applicant, SCS has been kept in a single cell.

**38.** On the basis of the aforesaid, learned counsel for the applicant had submitted that the factum of usage of the mobile phone during the period of applicant's duty in jail cannot be taken as a presumption in law against him as per Section 17 and 22 of the Act. It was submitted that none of the conditions mentioned in the aforesaid sections exist in the present case, which would raise a presumption against the present applicant. It may be noted here that



the case of the prosecution is not of presumption *qua* the present applicant in terms of Section 17 and 22 of the Act. The inference sought to be drawn by the prosecution with respect to the guilt of the present applicant is by way of confessional statement of the co-accused persons, as discussed hereinabove, as well as the circumstances in which SCS allegedly continued to use his phone while being in custody. The meeting of mind is sought to be established by the prosecution by way of the said confessional statements, which otherwise are not corroborated in the material particulars regarding receipt by the present applicant of any pecuniary advantage for his alleged abetment of activities of SCS.

**39.** The veracity of the said retracted confessional statement, as noted hereinabove, is a matter of trial, which would be determined by the learned Special Court. Reliance placed by the prosecution on **Praveen** (*supra*), **Mohd. Farooq** (*supra*) and **Kamal Ahmed** (*supra*), in relation to admissibility of statements under Section 18 of the Act, will not be applicable in the facts of the present case. In **Praveen** (*supra*), the matter related to prosecution case, where apart from the applicant's own confessional statement, there were statements of other witnesses, who corroborated the facts stated in the said confessional statement. In **Mohd. Farooq** (*supra*), the Hon'ble Supreme Court was dealing with cases of cross-appeal by co-accused as well as State in a judgment passed by the Hon'ble High Court of Bombay, convicting some of the accused and acquitting some. In the facts of the said case, the confessional statement were said to have been corroborated by material on record, which was during the course of trial. Similarly in **Kamal**



**Ahmed (*supra*)**, the veracity of statements were looked into after completion of trial.

**40.** A gross failure or negligence cannot replace the requirement of *mens rea*. In absence of any presumption as envisaged in Sections 17 and 22 of MCOCA, the basic principles of benefit of doubt, at this stage of bail, should go to the applicant in the present case. Further, the following observation of the Hon'ble Supreme Court in **Ranjitsing Bhramjeetsing Sharma (*supra*)**, in Para 38, is relevant for the present application:

“**38....**The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.”

**41.** At this stage, it is apposite to refer to judgments of a learned coordinate bench of this Court in **Pinky Irani v. Govt of NCT of Delhi, 2023:DHC:7743** and **Avtar Singh Kocchar @ Dolly v. The State of NCT of Delhi, 2023:DHC:8502**, whereby the co-accused persons in the present FIR have been granted bail. In **Pinki Irani (*supra*)**, while granting bail to the said co-accused, the learned coordinate bench observed and held as under:

“**53.** It is an admitted case that the petitioner was not directly involved in the foundational crime. However, taking into account the fact that the mens rea is a necessary ingredient, this court even at the stage of bail has to examine and evaluate whether the petitioner was a member of the organized crime syndicate or had required mens rea. It is pertinent to mention here that the act alleged to have been committed by the alleged



accused should not only be prohibited by law but should also be a cognizable offence punishable with imprisonment for three years or more and must have been done singly or jointly as a member of an organized crime syndicate or on behalf of such organized crime syndicate. It is also pertinent to mention that the alleged offence should be relatable to the statement of objects and reasons and the ingredients of “continuing unlawful activity” and “organized crime”. This Court considers that the allegations are required to be tested during the trial to meet the requisite of MCOCA. It is also a matter of trial that whether money received by the petitioner was for gaining undue economic advantage, as the case of defence is that this money was transferred for distributing gift to the celebrities.

**54.** It is a settled proposition that the court at the stage of bail has only to see the prima facie case. Even in the case of MCOCA, the court is not required to arrive at a positive finding that the applicant has not committed such an offence because in such a case it will be impossible for the prosecution to obtain a judgment of conviction of the applicant in case the bail is granted.

**55.** The court is only required to evaluate and examine the case on the basis of broad probabilities. In regard to the offence to be committed in the future, the antecedents of the offender have to be seen. It is a settled proposition that at the stage of bail, the Court cannot meticulously examine the evidence and conduct a mini trial. The findings at this stage are tentative in nature and do not affect the merits of the case. The case at this stage has to be seen from the angle of prima-facie view. Even the rigors of section 21(4) of MCOCA does not completely oust the jurisdiction to grant bail, if the broad probability is in favor of petitioner.”

Similarly, in **Avtar Singh (supra)**, the learned coordinate bench observed and held as under:

“**40.** In the present case, the role of the present petitioner is confined to the extent that he has allegedly facilitated the transfer of extorted money through Hawala. It is a matter of record that there is no evidence of direct interaction between the accused and Sukash Chandrashekhar. The evidence against the petitioner are confessional statement which though can be seen at this stage but the evidentiary value of the same has to be seen during the trial. It is also a settled proposition that at this stage it is



not necessary or desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the petitioner has committed an offence under Section 3(2) as well as Section 24 of MCOCA Act. At this BAIL APPLN. 1811/2023 Page 26 of 29 stage, the court is only required to see if there is a reasonable ground for believing the petitioner is not guilty of the offence he has been charged with and he is not likely to commit an offence under MCOCA.”

It is pertinent to note that the aforesaid applicants had also given their confessional statements, unlike the present applicant.

**42.** As pointed out hereinabove, the present applicant was arrested in the present case on 09.11.2021 and has undergone more than 2 years and 4 months. The trial is still at the stage of Section 207 of the Cr.P.C. and charges have not yet been framed. As per the record, there are total 21 accused and the prosecution has cited 371 prosecution witnesses and in these circumstances the trial is not likely to be completed in near future. Apart from the fact that the applicant has been able to satisfy the requirement under Section 24(1) of the Act, the aforesaid circumstances are additional factors for consideration of the present bail application.

**43.** The applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 5,00,000/- alongwith two sureties of like amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

- i. The memo of parties shows that the applicant is residing at AL Block, House no. 69, Shalimar Bagh, Delhi. In case of any change of address, the applicant is directed to inform the same to the learned Trial Court and the Investigating Officer.



- ii. The applicant shall not leave India without the prior permission of the learned Trial Court.
  - iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
  - iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner.
  - v. The applicant shall join the investigation, as and when required by the Investigating Officer.
  - vi. In case it is established that the applicant tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled *forthwith*.
44. The application stands disposed of along with all the pending application(s), if any.
45. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present application.
46. Let a copy of this judgment be communicated to the concerned Jail Superintendent.
47. Judgment be uploaded on the website of this Court, *forthwith*.

**AMIT SHARMA**  
**JUDGE**

**APRIL 02, 2024/bsr/nk**