CASE NO.:
Appeal (crl.) 411 of 2007

PETITIONER:
Shridhar Sumant Vagal

RESPONDENT:
State of Maharashtra & Anr

DATE OF JUDGMENT: 22/03/2007

BENCH:
K G Balakrishnan & R V Raveendran

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No.5190/2006)

RAVEENDRAN, J.

Leave granted.
The appellant herein challenges the order dated 21.7.2006 passed by the Bombay High Court in Crl. Application No.5350 of 2005, rejecting his application for bail.

2. An FIR relating to counterfeit stamps and stamp papers (known as Telgi case) was registered as C.R. No.135 of 2002 at Bund Garden Police Station, Pune. A charge-sheet was filed on 3.9.2002 followed by a supplementary chargesheet dated 25.11.2002. On 22.12.2002, approval was granted for applying Sections 3(2), 3(5) and 24 of the Maharashtra Control of Organised Crime Act, 1999 ('MCOC Act' for short) in regard to the said case. The Special Investigation Team ('SIT' for short) created by the State Government to investigate into the said counterfeit stamps case, filed a charge-sheet under the MCOC Act, numbered as Special Case No.2 on 27.3.2003. Supplementary chargesheets were filed on 15.9.2003 and 3.2.2004. The investigation of the case with several connected cases, was transferred to the CBI by order of this Court dated 15.3.2004.

3. The appellant was working as a Joint Commissioner of Police, (Crime), Mumbai, from 21.3.2002 to 17.3.2003. The investigation disclosed involvement of the appellant in the counterfeit stamp case, he was arrested on 7.11.2003. He was arrayed as accused No.59 in the supplementary chargesheet filed on 3.2.2004 and was charged with offences under Sections 120B, 216, 218, 221 IPC read with Sections 3(2), 3(5) and 24 of MCOC Act, and Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988. Ever since then he has been in custody, initially in Police custody for some time and later in judicial custody, except for a short period when he was on medical bail.

4. According to the case of the prosecution, the principal accused Abdul Karim Telgi was involved in printing and distribution of counterfeit stamps/stamp papers on a very large scale, and his organized crime syndicate included printers, computer operators and even Police officials and public servants; and R.S. Sharma (Commissioner of Police), the appellant (Joint Commissioner of Police - Crime), Pradeep B. Sawant (Deputy Commissioner of Police - Crime Detection), Dattatray Y. Dal (Inspector in Charge of the Crime Branch Unit V) and Dilip Kamat (API, attached to Crime Branch Unit-V) who are accused no. 60, 59, 65, 50 and 44 respectively, became part of such crime syndicate.

5. The allegations against the appellant, in brief, are : that when the Commissioner requested him to verify certain addresses in Mumbai where counterfeit stamps were reportedly stored, the appellant fabricated an anti-

dated letter dated 10.6.2002 depicting that action was taken; that when large quantity of counterfeit stamps and stamp papers were seized between 8.6.2002 and 15.6.2002 by Pune Police, senior Police Officers at Mumbai including the appellant, with the intention of saving Telgi and his associates, did not take immediate follow up action; that Dilip Kamat (A-44) in connivance with the Appellant, Pradeep B. Sawant and Dattatray Y. Dal hatched a criminal conspiracy to extract money from Telgi by agreeing to facilitate his unlawful activities; that in pursuance of such scheme, the appellant transferred the Christopher Murder case (Sahunagar Police Station C.R. No.123/2001) involving Telgi and his accomplices to Crime Branch Unit-V, to ensure that no other Police Station got custody of Telgi; that when Crime Branch Unit-V obtained the custody of Telgi on 28.10.2002, he was provided with all comforts and was allowed to carry on his unlawful activities and take steps to dispose of his ill-gotten properties acquired from out of the funds of the organized crime syndicate; that just before the Police custody remand period of Telgi in Christopher Murder case was to expire on 28.11.2002, the appellant deliberately issued an order dated 22.11.2002 transferring several other cases against Telgi registered at other Police Stations to Crime Branch Unit-V, so as to ensure that the custody of Telgi remained with Crime Branch Unit-V, in particular with Dilip Kamat and Dattatreya Dal so that Telgi could continue his illegal businesses unhindered; that while in Police custody, Telgi was lodged in luxurious hotels and even at his residence and permitted to visit his native place and were provided access to telephone, mobile phone etc.; that even though the cases relating to Telgi, having regard to the nature of offences involved, had to be entrusted to the Economic Offences Wing, appellant transferred them to Crime Branch Unit-V without the approval of the Police Commissioner; that the appellant's action was aimed at ensuring that the investigation was done only by Crime Branch Unit-V, where Dilip Kamat was working, to ensure deficiency in investigation to sabotage the case and permit Telgi and his gang to wriggle out; that in view of the poor and perfunctory investigation, in the cases transferred to Crime Branch Unit-V, Telgi was granted bail in several cases; that the appellant as a member of the Special Task Force formed by the Government had directed Police Inspector Bhat of MCOC Cell to scrutinize the case papers of Telgi and submit a report, but showed undue haste in transferring the cases to Crime Branch Unit-V, without waiting for the reports which were submitted by Inspector Bhat on 28.11.2002 and 6.12.2002; that when Police Inspector Zahid of Cyber Cell, Mumbai Crime Branch had submitted a good and sound report, instead of correlating the report with other cases and motivating the officers, the appellant expressed his displeasure with the inquiry by Zahid and suppressed the findings/evidence; that the appellant with a view to help Telgi, gave approval to fabricate the panchnama dated 12.1.2003 relating to the recovery of huge quantity of counterfeit stamps/stamp papers at Bhiwandi at the instance of accused Shabir Ahmed Shaikh, by describing him as an associate of Ram Ratan Soni though he was a member of Telgi's crime syndicate; and that the Appellant received a huge sum (Rs.15 lakhs) from Telgi for various favours shown.

6. The Special Judge, Pune, rejected Appellant's bail application by order dated 22.2.2005. The High Court rejected his application for bail by order dated 21.7.2006. The High Court held that CBI had made out prima facie the involvement of the appellant with Telgi's crime syndicate and therefore, it could not be said that the appellant was not guilty of offences punishable under the MCOC Act.

7. Sri Shekhar Naphade, learned senior counsel for the appellant submitted that the appellant has been falsely implicated in the Telgi case; and that he was neither a member of Telgi's crime syndicate nor had he, in any way, helped Telgi or his associates. Learned counsel for the appellant also took us through the material in support of his contention that there were no reasonable grounds for believing that the appellant was guilty of any offence. He also submitted that R.S. Sharma, Pradeep Sawant, and Dattatray Dal against whom similar allegations have been made, have already been released on bail. It was also submitted that the maximum sentence for an

offence under Section 24 of MCOC Act for rendering any help or support, in the commission of an organised crime by a member of an organized crime syndicate, or for abstaining from taking lawful measures under the Act, was three years and that the appellant has already been in custody for three years and four months.

8. Sri Sushil Kumar, learned senior counsel appearing for the CBI, also took us through the relevant material in support of his contention that the appellant conspired, abetted and facilitated the commission of an organized crime in the Telgi case, for which the punishment can extend upto life imprisonment under Section 3(2) of MCOC Act and therefore, he should not be enlarged on bail.

9. We find that R.S. Sharma, Commissioner of Police, Pradeep B. Sawant, Dy. Commissioner of Police and Dattatray Dal, Police Inspector, against whom somewhat similar allegations are made, have already been released on bail. The High Court has found that the material disclosed an intention on the part of the appellant to help or support the commission of organized crime by Telgi and his associates by ensuring that the custody of Telgi remained with Crime Branch Unit-V and Telgi got all comforts and facilities while in custody; that the appellant permitted, and even directed deficient investigation to sabotage the case against Telgi and his associates; and that a sum of Rupees fifteen lakhs might have been received by the appellant (and not Rs.72 lacs, as stated in the remand application) from the agents of Telgi; and that the appellant might have played a role in preparing of a panchnama dated 12.1.2003, to cover up Telgi, by showing Shabir Ahmed Shaikh as an associate of Ram Ratan Soni. On the basis of the above, the High Court has held that it cannot be said that the appellant is not guilty of an offence punishable under the MCOC Act. But the High Court has not held that the material prima facie disclose that the appellant conspired or abetted or knowingly facilitated commission of an organized crime, punishable under section 3(2) of the MCOC Act.

10. The appellant has already been in jail for more than three years which is the maximum period of punishment that could be imposed under Section 24 of the MCOC Act. Whether the involvement of Appellant goes beyond the scope of section 24 of the Act, to fall under section 3(2) of the Act, is an issue yet to be decided. It is not in dispute that several hundred witnesses have been cited and have to be examined and the trial is likely to take several years. Having regard to the nature of involvement alleged and the role attributed to the appellant, even with section 21(4) of MCOC Act in view, this is a fit case for grant of bail to the appellant. Though both counsel have taken us through material to support of their respective stand, it is not necessary to record any specific finding thereon.

11. We accordingly allow this appeal, set aside the order of the High Court and direct the Special Court, Pune, to enlarge the appellant on bail on his furnishing security to its satisfaction in a sum of Rupees Two Lakhs with two solvent sureties for like sum. The appellant shall comply with the conditions enumerated in Section 438(2) Cr.P.C. and also surrender his passport, before the Special Court.