

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

+ BAIL APPLN. NO.2089/2020

Judgment reserved on : 22.12.2020

Date of decision: 26.07.2021

PARVEEN BAZARD @ LARA

..... Applicant

Through: Mr.Ujjwal Puri & Ms.Sonam Dixit,
Advocates.

Versus

STATE(NCT OF DELHI)

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP for
State with Insp. Rajesh Kumar,
Special Cell/NDR, Lodhi Colony.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner Parveen Bazard @ Lara seeks the grant of bail in relation to FIR No.252/18, PS Special Cell under Sections 3 & 4 of the MCOA Act, 1999 submitting to the effect that he has been falsely implicated and has nothing to do with the allegations in the said FIR;

that the investigation in the matter has already been completed and the charge sheet has been submitted;

that the sanction for prosecution of the petitioner has been given without application of mind;

that the petitioner is not involved in any organized crime;

and that in the charge sheet there is no witness cited who has deposed against the petitioner.

2. Though a submission had been made by the applicant through the application seeking the grant of interim bail for a period of three weeks in view of the ailment of his mother during the course of submissions made on 04.09.2020, it was urged that the learned counsel for the applicant sought that the matter be heard qua the bail application itself and thus the present application has been considered to the extent of the prayer made by the applicant seeking the grant of regular bail in relation to the FIR aforementioned.

3. Notice of the application was issued to the State and the status reports dated 28.08.2020, 03.09.2020, 21.09.2020, 21.10.2020, were submitted on behalf of the State.

4. Documents in the form of the copy of the order sheet dated 10.08.2018 of the Ld. ACMM-01, New Delhi in FIR No.252/2018, PS Alipur under Sections 3 & 4 of the MCOC Act, 1999 and the copies of the consent memos of the co-accused Yogesh and Dinesh were submitted on record by the State.

5. Written submissions were submitted on behalf of the State dated 24.11.2020 and 14.12.2020. Oral submissions were also made on behalf of either side during the course of hearing of the application.

6. The petitioner in the instant case is in custody since 02.09.2019 in FIR No.252/2018, PS Alipur (investigation with Special Cell, New Delhi) under Sections 3, 4 of the MCOC Act, 1999. It is alleged by the State against him that he is an active member of an organized

crime syndicate led by the accused Jitender @ Gogi which is a very desperate gang in nature and involved in several heinous cases like murders, extortion etc. with there being more than 30 cases against the gang leader Jitender @ Gogi. The State alleged that this gang has a history of escaping from police custody and that on 30.07.2016, members of this organized crime syndicate including the present applicant Praveen Bazard @ Lara got their gang leader Jitender @ Gogi forcefully released from the police custody, while he was being taken to a court in Haryana. The culprits are alleged to have used firearms and chili powder on the armed guard of the 3rd Bn. accompanying the accused Jitender @ Gogi for the escape and on absconding, this gang is alleged to have committed numerous murders apart from indulging in extortion.

7. It has been asserted through the status report dated 28.08.2020 submitted by the State under the signatures of Mr.Lalit Mohan Negi, ACP, Special Cell/NDR, New Delhi that this gang has spread a terror in the area and no one comes forward to make a complaint against this gang and that this gang also targets witnesses of the cases lodged against them and either makes them hostile or eliminates them. It has been alleged further by the State through the said status report that even after lodging of the present stringent case under the MCOC Act against this organized crime syndicate, the gang members are still indulging in nefarious activities. It has also been alleged by the State that in one such case, when a person refused to give enhanced extortion money, members of this organized crime syndicate opened fire on him.

8. The State further alleges through this status report that during investigation, it has come to notice that most of the members of this gang including the present petitioner and their families, have no source of income but they are living lavishly because this gang is used to taking protection money or extortion money from the innocent citizens and the statements of two neighbours of the present petitioner have been recorded in relation thereto whose names are stated to be Satpal and Jagdish as per the status report dated 21.09.2020 with it having been stated by the State through the status report dated 21.09.2020 that both Satpal and Jagdish through their statements under Section 161 of the Cr.P.C., 1973 stated that neither the accused Praveen nor any of his family members have any legitimate source of income, but despite the same, they are living lavishly

9. The State has further submitted that after a lot of efforts of Delhi, Haryana and other State police, 14 members of this gang could be arrested and in 2020, five members of this gang including the gang leader Jitender @ Gogi were arrested, the said Jitender @ Gogi being absconding since 2016.

10. The State has also submitted that there is a history of gang war with the rival Tillu gang which has resulted into lives of several innocent people being lost in the gang wars. The State further submits that the confessional statements of two accused persons namely Dinesh and Yogesh were recorded on 10.08.2018 under Section 18 of the MCOC Act, 1999 as duly vetted by the Ld. ACMM, Patiala House Courts which state categorically that both Dinesh and Yogesh have admitted that that Praveen Bazard @ Lara i.e. the present

applicant is a member of the Jitender @ Gogi gang. The State has further submitted that FIR No. 132/2018, PS Mahana, Sonipat (HR) under Section 120B/115 IPC read with 25 of the Arms Act dated 22/10/2018 has been registered when three members of this organized crime syndicate were apprehended with arms and ammunitions but one accused escaped from the spot.

11. As per the status report dated 21.09.2020 submitted by the State on the investigation being transferred to the Special Cell in relation to FIR No.252/2018, PS Alipur under Sections 3 & 4 of the MCOCA Act, 1999 which FIR was registered against the organized crime syndicate run by Jitender @ Gogi and his associates, four charge-sheets against 9 (nine) members of this syndicate were filed i.e. against Digvijay, Dinesh, Yogesh, Gulshan, Vijay, Deepak, the present accused/petitioner Praveen Bazard @ Lara, Suryaveer @ Sukhdeep @ Deep, and Kapil Mann @ Kallu. The State through this status report dated 21.09.2020 has submitted that the present accused/petitioner was arrested on 02.09.2019 when he confessed that he was an active member of the organized crime syndicate and that his role was to collect the extortion money on behalf of the gang leader and that he used to get his share regularly and that he also confessed that he and his family members have no source of income and run their livelihood from the extortion money.

12. *Inter alia* it was submitted by the State through this status report dated 21.09.2020 that as per the disclosure statement, the present applicant has stated that his role was to pass on the information

relating to their prospective targets to Gogi as also information relating to the movements of their rival gangs. The State through the said status report submits that during investigation it was found that the accused/petitioner Praveen @ Lara had played an active role in the forceful release of the gang leader of the organized crime syndicate Jitender @ Gogi from the police custody and FIR No. 380/2016, U/s. 186/353/395/397/120-B/34 IPC, PS: Bahadurgarh, Haryana had been registered.

13. The State through this status report dated 21.09.2020 has submitted that the petitioner has not joined the investigation of this case and had absconded after registration of the FIR and non-bailable warrants were issued against him apart from invocation of the process under Section 82 of the Cr.P.C., 1973.

14. The State has also submitted that the sanction U/s 23(2) of the MCOCA mentions that approval was granted vide order no. 1332/SO/Jt. CP/NR dated 25.05.2018 and then the FIR 252/18 was registered against Jitender @ Gogi and his associates and as the investigation proceeded, other members of the gang were arrested and the present accused/petitioner was also arrested on 02.09.2019 and all relevant material was placed before the Sanctioning Authority before granting sanction.

15. The FIR No.252/2018 dated 25.05.2018 registered at PS Alipur states *inter alia* to the effect that the accused Jitender @ Gogi S/o Sh.Mehar Singh has indulged in unlawful activities continuously and has formed his own organized crime syndicate to earn money. It has

inter alia been alleged through the said FIR that Jitender @ Gogi and his gang members resort to illegal and nefarious activities like robbery, dacoity, extortion, contract murders to earn money and always carry sophisticated weapons and never hesitate in using them and as Jitender @ Gogi lives a lavish lifestyle, well educated youth and good prospect athletes are inclined to join this syndicate and this syndicate runs in the State of Delhi and Haryana with the said Jitender @ Gogi being involved as per the FIR in at least 19 FIRs of which the Courts are stated to have taken cognizance.

16. It is alleged further through the FIR that the activities of Jitender @ Gogi and the scrutiny of involvements clearly showed that Jitender @ Gogi and other members of this organized crime syndicate were covered under the definition of organized crime syndicate as defined under the MCOC Act, 1999 (extended to NCT, Delhi). It is further alleged through the FIR that Jitender @ Gogi and his associates are actively involved in cases where punishment of three (3) years or more is provided and the said offences are cognizable in nature and in the last 10 preceding years, the Courts of competent jurisdiction have taken cognizance in more than one case with it having been alleged through the FIR that the basic aim of these activities is to gain pecuniary benefits or other economic advantages.

17. The said FIR further states to the effect that the rampant activities of Jitender @ Gogi and his associates clearly fall within the definition of Section 2 as punishable under Section 3 of the MCOC Act, 1999 (extended to NCT, Delhi).

18. As per the charge sheet submitted under Section 173(8) of the Cr.P.C. dated 17.12.2020 under the signatures of Mr.P.S.Kushwaha, ACP, Special Cell, Delhi as per which charge sheet till the said date, three charge sheets against six members of the organized crime syndicate had been filed and that after the investigation had been transferred to the Special Cell, Section 4 of the MCOC Act, 1999 had also been added. As per the charge sheet, it was submitted that during the investigation it had come to notice that Parveen Bazard @ Lara i.e. the present applicant, Suryaveer @ Sukhdeep @ Deep, and Kapil Mann @ Kallu were active members of this organized crime syndicate led by the accused Jitender @ Gogi.

19. The State contended through the charge sheet that Yogesh @ Tunda and Dinesh S/o Bijender, the co-accused arrested in the case having given their voluntary statements under Section 18 of the MCOCA to the DCP, Crime as put forth through the status report adverted to hereinabove through which confessional statements, the said Yogesh @ Tunda and Dinesh S/o Bijender were stated to have made confessional statements in which they categorically stated that the co-accused Parveen Bazard @ Lara i.e. the present applicant and Suryaveer @ Sukhdeep @ Deep were members of their organized crime syndicate which statements were duly vetted by the Court. It has been alleged in this charge sheet that the co-accused Jitender @ Gogi and his associates either singly or jointly with his associates as members of an organized crime syndicate or on behalf of such syndicate are actively indulging in extorting money from bookies,

property dealers, businessmen etc. to meet their day to day expenses and live their lives lavishly. It is submitted by the State that it is so evident from the statements of public witnesses namely Ms. Nikita Dahiya D/o late shri Naresh Kumar R/o 142 Sector 20, Pocket 10, Rohini, Delhi; Mr. Ishwar S/o Shri Shim Singh R/o Village Bajana Khurd, PS Guhana, Sonipat (HR) and Mr. Sandeep S/o Shri Raj Singh R/o Village Bajana Khurd, PS Guhana, Sonipat (HR) and from the confessional statements of accused persons recorded under 18 MCOCA Act.

20. It was *inter alia* stated through this charge sheet that during further investigation it has also come to the notice that the applicant/accused Praveen has played an active role in forceful release of Jitender @ Gogi, gang leader of this organized crime syndicate from the police custody, while he was being taken to a Court in Haryana from Delhi and that a case FIR No. 380/2016 u/s 186/353/395/397/1208/34 IPC PS Bahadurgarh, Haryana was registered in this regard and that enquiries were also made from the neighbours of the accused Praveen and that in this regard two neighbours namely Satpal and Jagdish were examined and their statements were recorded u/s 161 Cr. P.C. It has been further stated in the said charge sheet that both the witnesses have deposed that neither the accused Praveen nor any of his family members have any legitimate source of income, but inspite of this, they are living lavishly. The said charge sheet further stated to the effect:-

“Accused Praveen Bazard @ Lara S/o Late Shri Mahabir Singh R/o Village Panchi Jatan, Tehsil & PS Gannaur

District Sonipat (HR) was apprehended on 02/09/2019 from his village Panchi Jatan and was arrested in this case. On interrogation he confessed, that he is an active member of the 'Organized Crime Syndicate' led by Jitender @ Gogr. His role is to collect extortion money as directed by the gang leader and is regularly getting his share. He further confessed that he and his family has no legitimate source of income and his as well his family livelihood is running from his share of extortion money. On this, accused was arrested."

21. *Inter alia* the said charge sheet stated further to the effect:-

"Enquiries were also made from the neighbors of accused Yogesh, Dinesh and Digvijay regarding source of these accused and their family's income. In this regard Shri Jitender and Satbir were examined in respect of accused Yogesh, Shri Pradeep and Shri Manoj were examined in respect of accused Dinesh and Shri Parveen and Bijender were examined in respect of accused Digvijay. Statements of these witnesses were also recorded. As per these witnesses, these accused persons and their families have no legitimate source of income but are living lavishly."

22. Through this charge sheet, it was further submitted that efforts were being made to trace the remaining members of this organized crime syndicate and also to find out movable and immovable assets of gang members including all the arrested accused persons. The said charge sheet further alleges to the effect:-

"Accused Jitender @ Gogi and his associates either singly or jointly with his associates as a member of an organized crime syndicate or on behalf of such syndicate are actively involved in threatening witnesses and forcing them not to depose against this syndicate. This is proved from the fact that in case FIR No. 61/10 dated 06.03.2010 U/s 341/323/427/506/34 IPC PS Alipur, Delhi, the complainant Shri Sandeep Kumar Garg, his father Shri

Subhash Chander Garg and brother settled the case with Jitender @ Gogi out of fear. Shri Sandeep and Shri Subhash were examined in this case and they stated that they have settled the case with Jitender @ Gogi due to fear for their lives. Their statements were recorded u/s 161 Cr. P.C" Acquittal report of this case , already on record.

Despite several criminal cases against accused Jitender @ Gogi and his associates and present stringent case registered under MCOC Act, the crime syndicate led by Jitender @ Gogi is still committing unlawful criminal activities which are not only creating fear in the society but also done with the object of pecuniary gains or other advantages to himself and members of this organized crime syndicate. This is evident from the facts mentioned above as well as from the statements of Nikita Dahiya, Ishwar Singh and Sandeep and also from the confessional statements recorded under 18 MCOC Act.

.....

From the investigation conducted so far, the pecuniary benefits and other criminal objectives of the gang for which this criminal syndicate was formed have been established by direct and circumstantial evidences placed on file. It has also been established that this organized crime syndicate has been surviving through continued unlawful activities committed with the sole objective of furthering the pecuniary interests for self as well as other members of the syndicate using criminal force, intimidation and establishing supremacy of gang in this area.

From the investigation conducted so far in this case and the above mentioned facts, it is evident that accused Praveen, Suryaveer and Kapil are the key and active members of the Organized Crime Syndicate led by accused Jitender @ Gogi. Members of this organized crime syndicate are continuously committing organized crime either singly or jointly with other associates as members of this organized crime syndicate or on behalf of such syndicate. Hence there

is sufficient evidence to Prosecute accused Praveen, Suryaveer and Kapil u/s 3/4 MCOC Act.

In view of above, it is clear that there is sufficient evidence against accused Praveen, Suryaveer @ Sukhdeep @ Deep and Kapil Maan @ Kallu to prosecute u/s 3/4 MCOC Act. Hence the present charge-sheet is being filed against these accused persons u/s 3/4 MCOC Act. However, further investigation is going on against the gang members of Jitender @ Gogi gang including these accused persons. Final/Supplementary charge-sheets will be filed in this case after completion of the investigation.”

23. The petitioner through the present petition submits that at the time when sanction for prosecution was accorded against the present petitioner under the MCOC Act, 1999 there were two cases pending against him i.e. FIR No.327/16, U/s 379 IPC, PS- Gannaur and FIR No. 380/16, under Sections 186,353,224,225,297,120B of the IPC and Sections 25, 54, 59 of the Arms Act, PS: Bahadurgarh, with it having been submitted by the petitioner that in FIR No.327/16, U/s 379 IPC, PS- Gannaur there were total three accused persons and that none of them were part of Jitender @ Gogi's gang and that the applicant has also since been acquitted in the said case.

24. As regards the FIR No. 380/ 16, under Sections 186,353,224,225,297,120B IPC and 25,54,59 of Arms Act, PS: Bahadurgarh, the applicant submits that he was granted bail vide order dated 03.08.2017 of the Hon'ble High Court of Punjab & Haryana in CRM.M No.17691/2017. The petitioner places reliance on the observations in the said order dated 03.08.2017 of the Hon'ble High Court of Punjab & Haryana wherein it was observed to the effect:-

“Perusal of the case diary indicates that the basic incriminating material against the petitioner is his own confessional statement in Police Custody, which undoubtedly is inadmissible.

Ld. Counsel for the State has been unable to draw attention of this Court to any other evidence collected against the petitioner, but submits that the petitioner is a veteran criminal and is wanted in connection with various other cases.

Be that as it may, there is little justification to detain the Petitioner any further in connection with the present case. He may therefore be released on bail to the satisfaction of the Ld. Area Magistrate with a further condition that he shall report at Bahadurgarh Police Station once every week, during the pendency or the trial.”

25. *Inter alia* the petitioner submits that his name has not been mentioned in the FIR i.e. initially when the provisions of the MCOCA were invoked against Jitender @ Gogi gang and submits that the provisions of MCOCA cannot be invoked, if a person is not a part of an organized crime. The applicant has further submitted that the registration of the two aforementioned FIRs against him does not constitute an organized crime. The petitioner further states that there were three public witnesses who have deposed and have stated that they used to give the protection money to the Gogi gang but they have not named the petitioner in their statement U/s 161 Cr.P.C. i.e. the said witnesses being Ms.Nikita Dhaiya, Ishwar Singh and Sh. Sandeep.

26. The petitioner further submits that his making a disclosure statement is not enough for invoking the provisions of the MCOCA but that further parameters are also required to be taken into

consideration. *Inter alia* the petitioner submits that the Section 2(d) "continuing unlawful activity", Section 2(e) "organized crime" and Section 2(f) "organized crime syndicate" of the MCOCA be read separately as there are specific conditions that have been laid down before invoking the charges of MCOCA.

27. *Inter alia* the petitioner submits that the Ld. ASJ failed to appreciate the fact that there is not even a single piece of evidence in the charge sheet that can link the petitioner with the organized crime syndicate except the disclosure statement. It was further submitted by the petitioner that Section 18 of the MCOCA which relates to the "confessional statement" which though is admissible but there are other circumstances also that have to be seen as the disclosure also needs the corroboration of either facts of the case or other circumstances on the basis of which the Applicant is charged with the provisions of the MCOC Act. It was further submitted by the petitioner that due to invocation of the provisions of the MCOCA, the approval has to be sent but for the petitioner no approval has been sent and the sanction was given directly on 12.02.2020 without specifying the role of the petitioner as to how the petitioner had been connected with the Jitender @ Gogi gang.

28. During the course of the submissions made on behalf of the petitioner, reliance was sought to be placed on the order sheet dated 30.09.2020, which reads to the effect:-

"Reliance is sought to be placed on the verdict of the Hon'ble Supreme Court in **"State (NCT of Delhi) Vs. Brijesh Singh @ Arun Kumar"** in **CRL.A.1750/2017**, a

verdict dated 09.10.2017, arising out of the SLP (Criminal) No.5497/2015, wherein the said appeal was disposed of with an observation inter alia to the effect:-

“

.....

(b) There cannot be a prosecution under MCOCA without an organised crime being committed within Delhi;

..... ”,

to thus submit that as the two FIRs registered against the applicant i.e. FIR No.327/2016, PS Gannaur Haryana and FIR No.380/2016, PS Bahardurgarh, Haryana, even if the applicant be stated to be connected in any manner with the alleged gang, in terms of the verdict of the Hon'ble Supreme Court in “**State (NCT of Delhi) Vs. Brijesh Singh @ Arun Kumar**” (supra) in the absence of there being an organised crime having been committed by the applicant within Delhi, the provisions of MCOCA, 1999 cannot be applied to the applicant.”

29. The proceedings dated 25.11.2020 in the course of hearing of the present application observed to the effect:-

“Apparently, the State relies upon the disclosure statements under Section 18 of the MCOCA of the co-accused persons namely Dinesh and Yogesh Dahiya which are stated to have been vetted by the learned CMM. The copy of the order of the learned CMM to that effect be placed on the record by the State.

It is essential to observe that the documents that were produced during the course of the hearing on behalf of the State include two consent memos (Farz Razamandis) i.e. the consent memos which are stated to be those of the co-accused persons namely Dinesh Mathur and Yogesh Dahiya whereby, wherein they have affirmed that their disclosure statements made to the DCP, Crime Head Quarters in relation to FIR No.252/2018, PS Alipur may be read against them.

In as much as, the State seeks to rely upon the said disclosure statements made by the co-accused persons in terms of Section 18 of the MCOCA, which reads to the effect:-

“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 sub-section (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 (1) along with 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.”

the aspect that the said consent memos of the two co-accused i.e. Yogesh Dahiya and Dinesh Mathur state to the effect that the said disclosure statements made by them may be read against them without it being stated in the said consent memos to the effect that the same may be read qua the co-accused persons, in view of the factum that the provisions of MCOCA are stringent, time is granted to the State to explain the ambit of the said consent memos against the petitioner herein qua whom the accused persons namely Yogesh Dahiya and Dinesh Mathur stated allegedly to be the members of Gogi Gang and stated to be the members of an organised syndicate have not stated that their disclosure statements made under Section 18 of the MCOCA Act may be read against any other co-accused inclusive of the petitioner herein.

Time is sought on behalf of the State to make submissions in relation thereto.

The matter be thus re-notified for 14.12.2020.”

30. On behalf of the State, in relation to the aspect considered vide proceedings dated 25.11.2020, reliance was placed on the provisions of Section 18 of the MCOA Act, 1999 which read to the effect:-

“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 sub-section (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 (1) 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.”

It has thus been submitted on behalf of the State placing reliance on the verdict of the Hon'ble Supreme Court in a case titled as **“State of Maharashtra Vs. Kamal Ahmed Mohammed Vakil Ansari & Ors.” MANU/SC/0235/2013** with specific reference to observations in paragraph 40 of the said verdict which reads to the effect:-

“40. Section 18 of the MCOCA through a non-obstante clause, overrides the mandate contained in Sections 25 & 26 of the Evidence Act, by rendering a confession as

admissible, even if it is made to a police officer (not below the rank of Deputy Commissioner of Police). Therefore, even though Sections 25 and 26 of the Evidence Act render inadmissible confessional statements made to a police officer, or while in police custody, Section 18 of the MCOCA overrides the said provisions and bestows admissibility to such confessional statements, as would fall within the purview of Section 18 of the MCOCA. It is however relevant to mention, that Section 18 of the MCOCA makes such confessional statements admissible, only for the trial of such person, or co-accused, abettor or conspirator.” Since Section 18 of the MCOCA is an exception to the rule laid down in Sections 25 and 26 of the Evidence Act, the same will have to be interpreted strictly, and for the limited purpose contemplated thereunder. The admissibility of a confessional statement would clearly be taken as overriding Sections 25 and 26 of the Evidence Act for purposes of admissibility, but must mandatorily be limited to the accused-confessor himself, and to a co-accused (abettor or conspirator).”

31. The State further placed reliance on the verdict of the Hon’ble Supreme Court in **“Mohd. Farooq Abdul Gafur & Ors. Vs. State of Maharashtra” MANU/SC/1469/2009** with specific reference on observations in paragraph 92 of the said verdict, which reads to the effect:-

“92. So far as conviction 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.....”

32. The State further placed reliance on the verdict of this Court in ***“Kamaljeet Singh Vs. State” 148 (2008) DLT 170*** with specific observations in paragraph 57 thereof which reads to the effect:-

“57. A bare glance at the provisions of Section 18 of the MCOCA reproduced above, makes it abundantly clear that confession made by a person before the police officer not below the rank of Superintendent of Police and recorded by such officer in the manner provided in the said section, shall be admissible in the trial of such person or his co-accused, abettor or conspirator.”

as well as on the verdict of this Court in Bail Application No.1638/2019 of the co-accused namely Digvijay Saroha, of this very case i.e. in relation to FIR No.252/2018, PS Alipur to which the present bail application under consideration relates, vide which order dated 23.09.2019, whilst declining the bail application of the co-accused namely Digvijay Saroha under Section 439 of the Cr.P.C., 1973 r/w Section 12 and 21 (4) of the MCOCA Act, 1999 in relation to registration of the FIR No.252/2018, PS Alipur under Section 3 & 4 of the MCOCA, 1999, it has been observed vide paragraph 19 to the effect:-

“19. Let us examine the present bail application in view of the above law laid down by the Hon’ble Supreme Court. Perusal of the material brought on record reveals involvement of petitioner Digvijay Saroha to the effect that he has been a part of organized crime syndicate and has knowingly facilitated the alleged organized crime syndicate. The MCOCA does not contemplate that the petitioner should have direct role to play as regards the commission of an organised crime. If there is a nexus of the petitioner who is a member of an “organised crime syndicate”, or nexus with the offence in the nature of an

“organised crime” is established, the petitioner will prima facie satisfy the ingredients of Section 3(2) of MCOCA. In the present case, the petitioner Digvijay Saroha is alleged to be a member of an organized crime syndicate run by Jitender @ Gogi. There are approximately 27 cases filed against this organized crime syndicate. As per reply filed by the prosecution, there is confessional statement of co-accused Yogesh, which reveals that petitioner Digvijay Saroha is the member of an organized crime syndicate being run by Jitender @ Gogi. It has also come on record that during interrogation petitioner/ accused Digvijay Saroha has disclosed that he is an active member of Jitender @ Gogi Gang and used to collect information regarding members of opposite gang as well suspected targets from whom money can be extorted. During the investigation one witness namely Ms. Nikita Dahiya has deposed that this 'Organised Crime Syndicate' used to collect extortion money from her and accused Digvijay Saroha is one of the associates of this gang, who used to collect protection money from her. Thus, Prima facie, the prosecution has established petitioner’s role in conspiring, assisting and managing the crime syndicate. There are no reasonable grounds to believe that petitioner is not guilty of the offences, he has been charged with. On the contrary, the material brought on record, points to his role in the abetment of the offences committed by the crime syndicate.”

to submit to the effect that it has been categorically observed therein that the MCOCA does not contemplate that the petitioner should have a direct role to play as regards the commission of an organised crime and if there is a nexus of the petitioner who is a member of an “organised crime syndicate”, or nexus with the offence in the nature of an “organised crime” is established, the petitioner would prima facie fall within the satisfaction of the ingredients of Section 3(2) of

MCOCA. The said verdict also takes into account the confessional statement of the co-accused Yogesh Dahiya as per which it had been revealed that the petitioner of Bail Appl.No.1638/2019 namely Digvijay Saroha is the member of an organized crime. Digvijay Saroha was alleged to be a member of an “Organised Crime Syndicate” run by Jitender @ Gogi with it having been observed vide the said verdict that there are approximately 27 cases filed against this organized crime syndicate and that the confessional statement of the co-accused Yogesh revealed that the accused Digvijay Saroha was the member of an organized crime syndicate being run by Jitender @ Gogi and that the accused/Digvijay Saroha had also disclosed that he was an active member of Jitender @ Gogi Gang and used to collect information regarding members of the opposite gang as well suspected targets from whom money can be extorted and that there were statements of witnesses also recorded to indicate that that accused Digvijay Saroha was one of the associates of this gang, who used to collect protection money from her and it was thus held in that case i.e. in Bail Appl.No.1638/2019 that *prima facie* the prosecution has established the role of that accused in conspiring, assisting and managing the crime syndicate and that there were no reasonable grounds to believe that the petitioner was not guilty of the offences with which he had been charged with and rather the material on record, pointed to his role in the abetment of the offences committed by the crime syndicate. It was thus sought to be urged on behalf of the State that the allegations levelled against the present petitioner are virtually identical, in as much as, two neighbours of the present

applicant/accused Parveen Bazard @ Lara namely Satpal and Jagdish have stated through their statements recorded under Section 161 of the Cr.P.C., 1973 that neither the accused Parveen Bazard @ Lara i.e. the present applicant nor any of his family members had any legitimate source of income but despite the same, they lived lavishly and that the applicant herein is the member of the Jitender @ Gogi gang which is a very desperate gang in nature and involved in several heinous cases like murders, extortion etc. with there being more than 30 cases against the gang leader Jitender @ Gogi and that there was also history of the said Jitender @ Gogi escaping from police custody and on 30.07.2016, members of this organized crime syndicate including the present applicant Praveen Bazard @ Lara got their gang leader Jitender @ Gogi forcefully released from the police custody, while he was being taken to a Court in Haryana.

33. The State has reiterated that the statements of the two accused persons named Dinesh and Yogesh were recorded on 10.08.2018 under Section 18 of the MCOCA Act, 1999 as duly vetted by the Ld. ACMM, Patiala House Courts and both these accused persons in their statements had admitted and stated that Parveen Bazard @ Lara i.e. the present applicant is the member of Jitender @ Gogi gang. It was thus, submitted by the State placing reliance on the verdicts of the Hon'ble Supreme Court and this Court adverted to hereinabove that the disclosure statements made by the co-accused Dinesh and Yogesh under Section 18 of the MCOCA Act, 1999 which were too duly vetted by the learned ACMM, the two consent memos (Farz Razamandis) i.e. the consent memos stated to be those of the co-

accused persons namely Dinesh Mathur and Yogesh Dahiya which were produced by the State on 25.11.2020 vide which they had also affirmed having made their disclosure statements to the DCP, Crime Head Quarters in relation to FIR No.252/2018, PS Alipur that they may be read against them, which it was submitted that in terms of Section 18(1) of the MCOCA Act, 1999 itself, it was categorically legislated that 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:** subject to the proviso that, the co-accused, abettor or conspirator was charged and tried in the same case together with that accused.

34. Undoubtedly, the trial in the instant case is yet to take place, however, even presently at the stage of consideration of the bail application of the applicant, it is essential to observe that the co-accused in the instant case namely Dinesh and Yogesh had made their disclosure statements, wherein, they stated to the effect:-

“Disclosure statement of Yogesh Dahiya under Section 18 of the MCOC Act.

In continuation of my yesterday direction, today at 10:40 am, ACP/IO Sh. Govind Sharma has produced before me two persons namely Dinesh Mathur, Age 29 Yrs S/o Shri Bijender Singh R/o H.No. ON-843 VPO Karala, Delhi and Yogesh Dahiya @ Tunda, ge 28 Yrs S/o Shri Rajender Singh Dahiya R/o H.No. 1585, Dullya Colony, Alipur, Delhi accused in above mention case at my office i.e 2ND Floor,

Police Station- Kamla Market, confessional statement of accused Dinesh has already been recorded separately.

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Mera naam Yogesh Dahiya hai. Log mujhe tunda bhi kehte hai. Mai 28 saal ka hu. Mere papa ka naam Sh.Rajinder Singh Dahiya hai. Meri do badi behne hai, jo shaadi shuda hai or mai house no.1585, Duliya Colony, Alipur, Delhi me rehta hu or mera paitrik gaavn Sonipat me hai. Meri padhai Alipur me hui hai. Meri dosti bachpan se hi gaavn or paas rehne wale and Jitender @ Gogi, Kuldeep @ Fazza, Monu Maan, Gulshan Bhardwaj, Jainail @ Jelly, Deepak Bajania, Mohit Panchi, Rohit Moi ho gai thi.

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Gogi hamara gang leader hai. Hamare sathi Kuldeep Fazza, Deepak Boxer, Deepak Chota Bajana, Parveen Lara, Sanjay Falla, Gulshan Bhardwaj, Mohit Panchi, Rohit Moi, Vijay Maan, Suryaveer, Ashok Pradhan vagarha bahar hai. Hamara gang jabran vasooli karta hai. Bahri Delhi or Haryana border area me hamare gang ka sikka chalta hai hum log sattebazo or property dealers vagarha se paise ki vasooli karte hai. Property dealers k bhi hum niptare vagarha kara dete hai. Is paise se hamare gang ka kharcha chalta hai. Paise kum padne hum vayapariyon or toll walo se bhi ugaahi karte hai. Gogi mujhe or mere parivaar ko lagataar paise deta hai jisse mera or parivaar ka kharch chalta hai. Mere parivaar ki or koi aamdani nahi hai. Agar gang ka aadmi jail chala jata hai to hamara gang use bahar nikalne ki har tarah se koshish karta hai yaha tak ki use chahe police custody ya Court se hi kyu na bhagna pade.

Hamare gang me Jitender @ Gogi ko bhi isi tarah planning karke Haryana Police ki custody se chuda liya tha.

Kuldeep Fazza ko parole dilane k baad use bhi parole jump kara di thi. July 2015 me pakde jaane k band mai jail me hi hu. Mai apni life se tang aa gaya hu or bahar aa kar normal jindagi jeena chahta hu. Bahut jyada sochne k baad mai aapke saamne apna byan de raha hu. Maine apna byan padh liya, thik hai.

.....

Now, ACP Shri Govind Sharma is called back and the custody of accused Yogesh has also been handed over to him. He is directed to get both the accused medically examined and produced before the CMM Court for further proceedings.”

“Disclosure statement of Dinesh Mathur under Section 18 of the MCOC Act.

In continuation of my yesterday's direction, today at 10.40 AM, ACP/IO Sh. Govind Sharma has produced before me two persons namely Dinesh Mathur, Age 29 Yrs S/o Shri Bijender Singh R/o H.No.CN 843 VPO Karala, Delhi and Yogesh Dahiya @Tunda, Age 28 Yrs S/o Shri Rajinder Singh Dahiya R/o H. No. 1585, Duliya Colony, Alipur, Delhi accused in above mention case at my office i.e. 2nd Floor, Police Station -Kamla Market. Sh. Govind Sharma has been directed to leave accused Dinesh in my office chamber and to wait on the ground floor with his stiff and other accused Yogesh. Now only three persons are present in my office chamber i.e. accused Dinesh Mathur, my computer typist, Ct. Rajiv Kumar Ranot, No.995/Crime, PIS No.28103632 and myself. Both Ct. Rajiv Kumar Ranot and I are in plain clothes and all three of us are sitting around my office desk. I again asked accused Dinesh Mathur, whether he is willing to get his confessional statement recorded by me. I again explained him that whatever statement he gives before me, would be used against him as evidence in court. Accused Dinesh Mathur consented to get his confessional statement recorded by me. I asked him whether he was under any kind of

pressure, threat or any undue influence to giving his consent; He was further asked whether any kind of violence has been used on him for this. He replied that he is under no pressure, threat or undue influence of any kind including drugs and is willing to voluntarily give his confessional statement before me. He further replied, that no violence has been used on him. I offered him a glass of water. I asked him whether he would like to have some tea. He replied in the negative.

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Ab hamare gang ka leader Jitender @ Gogi hai or hamare sathi Kuldeep Fazza, Deepak Boxer, Deepak Bajana, Parveen Lara, Sanjay Falla, Gulshan Bhardwaj, Mohit Panchi, Rohit Moi, Vijay Maan, Suryaveer, Ashok Pradhan vagarha bahar hai jo hamara gang, darakar or dhamka kar paiso ki jabran vasooli karta hai or bahari Delhi or Haryana border area k sansiyo, sattebazo, property dealers va toll operator se paise vasoolte hai. Hamara gang jhagde wali property ki settlement ka kaam bhi karta hai isse bhi hamare gang ko ache paise mil jaate hai or hamara gang in ilaako k bade businessmen or politician type logo se bhi darakar or dhamaka kar paise vasoolta hai. Isi paise se hamare gang ka kharcha chalta hai. Jo gang members bahar hote hai unka kaan targets ko darakar va dhamka kar paise vasoolne ka hota hai. Or jo log jail me hote hai unka va unke parivaar k kharche ka jimma bhi bahar waalo ka hota hai. Gogi mujhe or mere parivaar ko 2015 se lagatar paise de raha hai jisse mera jail va kapdo vagarha ka or parivaar ka kharch chalta hai. Mere parivaar ki or koi aamdani nahi hai. Na hi gang me kisi k parivaar ka koi or aamdani ka sadhan hai. Agar gang k main members me se koi jail chala jata hai to

hamara gang pehle koshish karta hai k kisi tarah unko parole mil jaye taki baad me veh parole jump kar sake or agar parole nahi milti hai to jo gang k members bahar hote hai unka kaan yeh hota hai ki Court me jaate ya Court se aate waqt unhe police ki custody se bhagane ki koshish kare. April 2016 me Gogi Panipat se pakda gaya tha. Hamare gang ne Jitender @ Gogi ko Haryana Police ki custody se jabran faraar karwa liya tha or tabhi se Gogi bahar hi hai. Hamare gang Delhi or Haryana me itna naam chalta hai or itna dar hai ki agar hum ek phone kar de to party turant paise le kar pahuchti hai. Ab mai apni jindagi ko sudharna chahta hu. Mera ladka bada ho raha hai mai chahta hu ki uske sath shanti se jindagi jiyu. Ye baate soch kar mai apke saamne apna byan de raha hu. Maine apne byan padh liya, thik hai. ”

35. The State placed reliance on the disclosure statement made by the present applicant Parveen Bazard @ Lara itself dated 02.09.2019, which reads to the effect:-

“Disclosure statement of Parveen Bazard @ Lara under Section 18 of the MCOC Act.

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Hamare gang ka extortion ka area Outer Delhi or Haryana hai. Jaha ke bootleggers, sattebaaz, property dealers va toll operator hamare dar se hame monthly paise dete hai. Iske alawa hum log in illako ke bade bade businessmen se bhi extortion kar ke ache paisa le lete hai. Jo is tarah ugaathe gaye paise se hamare gang ka kaam chalta hai. Is samay hamare gang k Gogi, Kuldeep Fazza. Roshit Moi, Sanjay Falla, Deepak Boxer etc. jail se bahar hai jo hamara gang, extortion kar kar paisa ikatha karta hai. Gang members jo bahar hote hai unka kaam targets ko dara kar paise collect karna hota hai. Or jo log jail me hote hai unka jail ka va unke parivaar k kharch ka jimma bhi bahar walo ka hota hai. Jo gang k liy mai opposite gang ki movement ke khabar rakhta hu or prospective

target jinse meri gang ko extortion karna hot hai unki information collect kar kar Gogi ko pass karta hu. Gogi kai saal se mere parivaar ko paise de raha hai. Is extortion ke paise se hi mera va mere parivaar ka kharch chalta hai. Mere parivaar ka koi or source of income nahi hai. Mai Gogi va anya sathiyo k Haryana va Punjab k kai thikane janta hu, jaha se unko pakadwa sakta hu.”,

and thus, it was submitted on behalf of the State that in terms of Section 18(1) of the MCOCA Act, 1999 and the verdicts relied upon on behalf of the State, the disclosure statements made by the co-accused Dinesh Mathur and Yogesh Dahiya which are admissible against the present applicant as well as the disclosure statement made by the present applicant itself dated 02.09.2019 suffice to bring forth *prima facie* the allegations against the applicant herein to bring forth that there was no ground for grant of any bail to the present applicant.

36. The other contention raised on behalf of the applicant was that he was not involved in an organized crime and there is no witness who has deposed against him as per the charge sheet, coupled with the contention raised on behalf of the applicant/petitioner that at the time when sanction for prosecution was taken against the petitioner, there were only two cases pending against him i.e. FIR No.327/16, under Section 379 of the IPC, PS- Gannaur in which all the three accused, none of whom were part of the Jitender @ Gogi gang had since been acquitted and the other FIR i.e. FIR No. 380/16, under Sections 186,353,224,225,297,120B of the IPC and 25,54 ,59 of Arms Act, PS Bahadurgarh, in which the applicant had been granted bail by the Hon'ble High Court of Punjab & Haryana submitting to the effect that

apart from the disclosure statement of the applicant herein, there was no other evidence that had been collected by the Investigating Agency and it is thus submitted by the applicant that the provisions of the MCOCA, 1999 could not have been invoked against the applicant as he is not the part of an “organized crime syndicate” and the two FIRs registered against him do not constitute an organized crime.

37. In relation to this aspect, it is essential to observe that the verdicts of the Co-ordinate Benches of this Court in “**DIGVIJAY SAROHA VS. STATE**” in **Bail Appl. No.1638/2019** in relation to this very FIR in which the applicant is charge sheeted, i.e. FIR No.252/2018, PS Alipur under Sections 3 & 4 of the MCOCA Act, 1999 as well as the verdict dated 18.12.2020 in “**Vijay Mann @ Kapil Vs. State (NCT of Delhi)**” in **CRL.M.C.1625/2020** by which the applicant thereof, the co-accused in this very FIR i.e. FIR No.252/2018, PS Alipur under Sections 3 & 4 of the MCOCA Act, 1999 had sought the quashing thereof, specifically spell forth that the requirement of more than one charge sheet having been filed on the date when the sanction was granted to proceed against an accused under the MCOCA Act, 1999 is to be tested against the syndicate as a whole and not against an individual.

38. The verdict of the Hon’ble Division Bench of High Court of Bombay in “**Govind Sakharam Ubhe vs. State of Maharashtra**”, **2009 SCC OnLine Bom 770**, vide paragraph 44 too has held to the effect:-

“44...In the light of this, we are of the opinion that the words ‘more than one charge-sheet’ contained in Section

2(1)(d) refer to unlawful activities of the organized crime syndicate. Requirement of more than one charge-sheet is qua the unlawful activities of the organized crime syndicate and not qua individual member thereof.”

39. The State too placed reliance on this verdict i.e. “***Govind Sakharam Ubhe vs. State of Maharashtra***” (*supra*) with specific reference on observations in paragraphs 37, 38 & 39 of the said verdict, which read to the effect:-

*“37. A person may be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situations, the MCOCA can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOCA. This is evident from section 3(4) of the MCOCA which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum of fine of Rs.5 lakhs. The charge under the MCOCA ropes in a person who as a member of the organized crime syndicate commits organized crime i.e. acts of extortion by giving threats, etc. to gain economic advantage or supremacy, as a member of the crime syndicate singly or jointly. **Charge is in respect of unlawful activities of the organized crime syndicate.***

38. In order to substantiate our construction of Section 2(1)(d) of the MCOCA, we will take hypothetical example of accused 1(A), accused 2(B), accused 3(C) and accused 4(D), who are members of the organized crime syndicate and who have committed crimes within preceding ten years. Insofar as accused A is concerned, it is alleged that he has committed an offence resulting in the death of any person which is punishable with death or imprisonment for

life as described in Section 3(1) of the MCOCA. Accordingly, one charge-sheet is filed against him. Insofar as accused B is concerned, it is alleged that he has committed an offence resulting in the death of any person which is punishable with death or imprisonment for life as described in Section 3(2) of the MCOCA. Accordingly, one charge-sheet is filed against him. Likewise, insofar as accused C is concerned, it is alleged that he has committed an offence resulting in the death of any person which is punishable with death or imprisonment for life as described in Section 3(3) of the MCOCA. Accordingly, one chargesheet is filed against him. Finally, it is alleged that accused D is a member of organized crime syndicate as described in Section 3(4) of the MCOCA and as such has indulged in organized crime and against whom also one charge-sheet is filed.

39. The submission on behalf of the appellant is that even though all the four accused namely, A, B, C and D may be members of the organized crime syndicate since against each of the accused not more than one charge sheet is filed, it cannot be held that they are engaged in continuing unlawful activity as contemplated under Section 2(1)(d) of the MCOCA. Apart from the reasons which we have given hereinabove as to why such a construction is not possible, having regard to the object with which the MCOCA was enacted, namely to make special provisions for prevention and control of organized crime syndicate and for coping with criminal activity by organized crime syndicate, in our opinion, Section 2(1)(d) cannot be so construed. Such a construction will defeat the object of the MCOCA. What is contemplated under Section 2(1)(d) of the MCOCA is that activities prohibited by law for the time being in force which are punishable as described therein have been undertaken either singly or jointly as a member of organized crime syndicate and in respect of which more than one charge-sheets have been filed. Stress is on the unlawful activities committed by the organized crime

syndicate. Requirement of one or more chargesheet is qua the unlawful activities of the organized crime syndicate.”

(Emphasis supplied)

40. The verdict of the Honb'le High Court of Bombay in “**Sachin Bansilal Ghaiwal v. State of Maharashtra**” 2014 SCC OnLine Bom 725 in CRL.A.25/2014 a verdict dated 16.07.2014, vide paragraphs 31 & 32 observed to the effect:-

*“31. We hereby further respectfully while agreeing with the propositions and interpretation made by the Division Bench of this Court in the cases of (i) **Bharat Shantilal Shah v. State of Maharashtra**, reported in 2003 ALL M R (Cri.) 1061 (ii) **Appa alias Prakash Haribhau Londhe v. State of Maharashtra and another** reported in 2007 CRI L.J. 165; (iii) **Asif Khan Bashir Khan v. The State of Maharashtra in Criminal Appeal No.749 of 2007** and **Govind Sakharam Ubhe v. State of Maharashtra** reported in 2009 ALL M.R. (Cri.) 1903 hold that the said four judgments have binding effect. And the ratio laid down by the Division Bench in the case of **Govind Sakharam Ubhe v. State of Maharashtra** reported in 2009 ALL M.R. (Cri.) 1903 is the correct position of law as far as the interpretation with reference to the expression 'continuing unlawful activity' as has been defined in Section 2(1)(d) of the MCOC Act.*

32. A restrictive interpretation which would have the effect of nullifying Section 2(1)(d) of the MCOC Act cannot be given at all.

*Apparently, the matter in the case of **State of Maharashtra vs. Rahul Ramchandra Taru** reported in (2011) 6 AIR Bom R 177, proceeds without taking into consideration the aforesaid three judgments which were in the field and by giving a restrictive interpretation of Section 2(1)(d) of the MCOC Act.*

It is further apparent that the consideration of the said expression "continuing unlawful activity" was strictly with reference to the facts of the said case rather than interpreting the provision under Section 2(1)(d) of the MCOC Act after taking into consideration the intention of the legislature and the other judgments which were in force at the relevant time. Such a ruling cannot be said to lay down a binding precedent."

whereby thus, the verdict in "**Govind Sakharam Ubhe vs. State of Maharashtra**" (*supra*) was reiterated.

41. The verdict of this Court in "**Narender Kumar v. State of Delhi**" in *Bail Appl. No.1440/2011*, a verdict dated 01.11.2011 with observations therein vide paragraph 2, which reads to the effect:-

"2. Learned counsel for the Petitioner contends that the Petitioner was only involved in one case in the year 2003 wherein he was acquitted in the year 2004. Further, after the alleged association in the sole FIR registered against the Petitioner in the year 2003, the Petitioner has had no association with the main accused Amit@ Babloo. Even as per the FIR No. 68/2003 under Section 302/201/120B IPC and 25 Arms Act the Petitioner had no direct association with Amit @ Babloo. Since there is no illegal activity committed by the Petitioner after 2003 it cannot be said that he was involved in continuing illegal activity. Further, no cognizance of any offence qua the Petitioner has been taken after 2003. In view of the fact that the Petitioner was only involved in one case wherein also he has been acquitted, the essential ingredients of Section 3 MCOCA that there should be more than one charge-sheet filed against the person in the preceding 10 years is not made out. Since the necessary ingredients of Section 3 MCOCA are not fulfilled, the anticipatory bail application is maintainable and the Petitioner is entitled to anticipatory bail."

and deals with the issue under consideration as detailed in paragraph 9 of the said verdict and taking the same into account observed vide paragraph 10 thereof to the effect:-

“10. Since the necessary ingredients of an offence under Section 3 of MCOCA are made out against the Petitioner in view of the bar under Section 21(3) of MCOCA, the present application for anticipatory bail is not maintainable.”,

is equally relied upon on behalf of the State in the instant case to submit to the effect that the acquittal of the petitioner in FIR No.327/16, under Section 379 of the IPC, PS- Gannaur and the release of the applicant on bail in another FIR *per se* do not suffice to indicate that the applicant does not belong to the Jitender @ Gogi gang and does not indicate that the applicant is not involved in the commission of any continuing unlawful activity in terms of Section 2(d) of the MCOCA, 1999 which reads to the effect:-

S.2(d) “continuing unlawful activity” means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such, syndicate in respect of which more than one charge-sheets have been field before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence”,

nor does it indicate that the applicant is not committing organized crime in terms of Section 2(e) of the MCOC Act, 1999 which reads to the effect:-

“(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.”

either singly or jointly as a member of an “organized crime syndicate” in terms of Section 2(f) which reads to the effect:-

“(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.”

the commission of the offence spelt out therein, nor does it bring forth that the applicant is not a member of an “organized crime syndicate”.

42. The observations of the Hon’ble Supreme Court in ***“Prasad Shrikant Purohit v. State of Maharashtra” 2015 Supreme Court Cases 440*** vide paragraph 66 reads to the effect:-

“In this respect, we will have to bear in mind that the implication of MCOCA would come into play only after the third occurrence takes place and only after that it will have to be seen whether on the earlier two such occasions involvement of someone jointly or singly, either as a member of an 'organized crime syndicate' or on its behalf indulged in a crime in respect of which a charge-sheet has already been filed before the Competent Court which Court had taken cognizance of such offence.”

and the verdict of the Hon’ble Supreme Court in ***“State (NCT of Delhi) Vs Brijesh Singh @ Arun Kumar And Anr., (2017) 10 Supreme Court Cases 779*** with specific reference on observations in paragraph 25 reads to the effect:-

“25. Organised crime which is an offence punishable under Section 3 of MCOCA means a continuing unlawful activity committed by the use of force or violence for economic gain. One relevant pre-condition which has to be satisfied before any activity can be considered as a continuing unlawful activity is that there should be at least two charge sheets filed against the members of an organised crime syndicate within the previous 10 years and a competent Court has taken cognizance of such charge sheets”,

were referred to by this Court in Bail Appl. No.1638/2019, with it having been observed vide paragraphs 17, 18 & 19 thereof to the effect:-

“17. Perusal of the above judgments reveal that the requirement of one or more charge sheet relates to unlawful activities of the organized crime syndicate and does not pertain to a particular member of the crime syndicate accused. The contention of Ld. Counsel for the petitioner that in the absence of two charge sheet against the petitioner, he could not have been charged with MCOCA and he be released on bail is, therefore, not in consonance with law.

18. Section 21(4) of the MCOC Act contemplates the factors on the basis of which accused is entitled to bail and the same runs as follows;

"(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."

19. The Hon'ble Supreme Court has interpreted the above provisions in 'State of Maharashtra v. Vishwanath Maranna Shetty, (2013) 1 SCC (Cri) 105' in Para 29 has held as follows:-

"Since the respondent has been charged with the offence under MCOCA, while dealing with his application for grant of bail, in addition to the broad principles to be applied in prosecution for the offences under IPC, the relevant provision in the said statute, namely, sub-section (4) of Section 21 has to be kept in mind. It is also further made clear that a bare reading of the non obstante clause in subsection (4) of Section 21 of MCOCA that the power to grant bail to a person accused of having committed offence under the said Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 but also subject to the restrictions placed by clauses (a) and (b) of sub-section (4) of Section 21. Apart from giving an opportunity to the prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. The satisfaction contemplated in clauses (a) and (b) of sub-section (4) of Section 21 regarding the accused being not guilty, has to be based on "reasonable grounds". Though the expression "reasonable grounds" has not been defined in the Act, it is presumed that it is something more than prima facie grounds. We reiterate that recording of satisfaction on both the aspects mentioned in clauses (a) and (b) of sub-section (4) of Section 21 is sine qua non for granting bail under MCOCA."

43. The observations of the Co-ordinate Bench of this Court in “**Vijay Mann @ Kapil Vs. State (NCT of Delhi)**” in **CRL.M.C.1625/2020** whilst referring to the findings in “**Digvijay Saroha**” (supra) vide paragraph 34 observed to the effect:-

“34. The findings in Digvijay Saroha (supra), though in a bail application strengthen the case of the Respondent in the present case. The legal proposition that more than one charge sheet ought to have been filed on the date when the sanction is granted is to be tested against a syndicate as a whole and not against the individual. As observed in Digvijay Saroha (supra), more than 27 cases are pending against the syndicate of which the Petitioner is stated to be a part. In any event, approximately 19 cases have already been mentioned in the proposal which forms the basis of the sanction challenged in the present case. In the opinion of this Court, the said 19 cases pending against the syndicate coupled with the fact that there was sufficient material for the Special Cell authorities to grant sanction in the form of statements which have been recorded, clearly shows that the ingredients to proceed under the Act were satisfied.”

44. As observed elsewhere hereinabove, the verdict in **Vijay Mann @ Kapil** (supra) and in “**Digvijay Saroha**” (supra) are in relation to a bail application and a petition seeking the quashing of the FIR No.252/2018, PS Alipur under Sections 3 & 4 of the MCOCA, 1999 in which the present applicant is a co-accused.

45. In the circumstances of the instant case thus, as observed hereinabove, the disclosure statements made by the co-accused Dinesh Mathur and Yogesh Dahiya under Section 18 of the MCOCA, 1999, are presently admissible against the accused/applicant herein, in as

much as, he has been put forth for trial in the same case and as per the disclosure statements of two co-accused, is a member of the Jitender @ Gogi gang involved in organized crime.

46. As regards the contention raised on behalf of the applicant that there was no appropriate material placed for grant of sanction to the Sanctioning Authority, it is essential to observe that the aspect as to whether there was an appropriate sanction given in accordance with law or not, is an aspect that would be determined on trial.

47. Presently, in as much as, there at least 12 FIRs registered at Delhi against the Jitender @ Gogi gang as mentioned in the written submissions dated 24.11.2020 of the State which are to the effect:-

“1. FIR No. 61/10 dated 06.03.2010 U/S 341/323/427/506/34 IPC PS Alipur, Delhi

2. FIR No 295/10 date 02.09.10 u/s 307/34 & 25/27/54/59 Arm Act P.S. Alipur.

3. FIR No 123/12 date 04.05.12 u/s 25/54/59 Arm Act P.S Crime & Railway

4. FIR no 401/14 date 27.04.14 u/s 307/34 IPC and 27/54/59 Arm Act PS Alipur, Delhi

5. FIR no 60/15 date 20.01.15 U/S 302/34 PO & 25/27/54/59 Arm Act PS Mahindra Park, Delhi

6. FIR No 838/15 dated 14.09.15 u/s 307/34 IPC PS Alipur, Delhi

7. FIR no 897/15 date 14.10.15 U/S 302/34 IPC&25/27/54/59 Arms Act PS Alipur Delhi

8. FIR no 1124/15 date 14.12 15 U/S 392/397/34 IPC P.S Alipur

9. FIR no 173/16 date 25.02.16 U/S 392/397/411/34 IPC PS Alipur

10.FIR No 62/17 date 19.q2. 17 u/s 307 IPC & 25/27 Arm Act, PS Alipur, Delhi

11. FIR No 340/17 date 20.11.17 u/s 302/34 IPC & 25/27/54/59 Arm Act PS Sawroop Nagar Delhi

12. FIR No 38/18 dated 15.01.18 u/s 302/307/34 IPC & 25/27/54/59 Arm Act P.S Parshant Vihar, Distt Rohini, Delhi.”,

coupled with the factum that the FIRs relate to the alleged organized crime committed within Delhi as indicated also through the supplementary charge sheet, coupled with the factum that as regards the contention raised by the applicant/petitioner placing reliance on the verdict of the Hon'ble Supreme Court in **“State (NCT of Delhi) Vs. Brijesh Singh @ Arun Kumar”** in CRL.A.1750/2017, a verdict dated 09.10.2017 that there cannot be a prosecution under MCOCA, 1999 without an organized crime being committed within Delhi, the submission put forth on behalf of the State as adverted to hereinabove in relation to alleged involvement of Jitender @ Gogi gang of which the applicant is contended to be a member of the “organized crime syndicate”, relates to commission of organized crime in Delhi and thus, reliance is placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in **“State (NCT of Delhi) Vs. Brijesh Singh @ Arun Kumar”** (supra) is misplaced.

48. As regards the reliance placed by the petitioner on the verdict of the Hon'ble Supreme Court in **“State of Maharashtra Vs. Shiva @ Shivaji Ramaji Sonawane & Ors. etc.”** Criminal Appeal nos.461-464/2009, a verdict dated 24.07.2015, the reliance placed thereof is likewise wholly misplaced, in as much as, in that case, the MCOCA had been invoked on the basis of previous charge sheets and it was held to the effect:-

“9. In the case at hand, the offence which the respondents are alleged to have committed after the promulgation of MCOCA were not proved against them. The acquittal of the respondents in Crimes No.37 and 38 of 2001 signified that they were not involved in the commission of the offences with which they were charged. Not only that the respondents were acquitted of the charge under the Arms Act even in Crimes Case No.1 and 2 of 2002. No appeal against that acquittal had been filed by the State. This implied that the prosecution had failed to prove the second ingredient required for completion of an offence under MCOCA. The High Court was, therefore, right in holding that Section 3 of the MCOCA could not be invoked only on the basis of the previous charge sheets for Section 3 would come into play only if the respondents were proved to have committed an offence for gain or any pecuniary benefit or up due economic or other advantage after the promulgation of MCOCA. Such being the case, the High Court was, in our opinion, justified in allowing the appeal and setting aside the order passed by the Trial Court.”

49. Reliance placed on behalf of the applicant/petitioner on the verdict of the Hon'ble High Court of Bombay in ***“The State Of Maharashtra vs Rahul Ramchandra Taru”*** in Criminal Appeal No.239/2011 with specific reference to observations in paragraphs 15 & 16 which read to the effect:-

“15. We propose to clarify that to address the question , which is posed in this appeal, interpretation of expressions "or other advantage" and "or other unlawful means", occurring under section 2(1)(e) of MCOCA, is not strictly necessary. Even if both the terms are given wider meaning, the prosecution is not absolved of its duty to prove that within the preceding period of 10 years more than one chargesheets alleging commission of cognizable offence punishable with imprisonment of three years or more have been filed and further to prove that in such

chargesheets, it has been alleged that the accused either singly or jointly and as a member of organised crime syndicate or on behalf of such syndicate committed the unlawful activity. This follows that merely alleging that more than one chargesheets in respect of cognizable offence punishable with imprisonment of three' years or more have been filed, is not sufficient. This does not satisfy requirements of law. This is what precisely held by the Supreme Court in the case of Ranjeetsingh Brahmajeetsing Sharma (supra). The unlawful activity alleged in the previous chargesheets should have nexus with the commission of the crime which MCOCA seeks to prevent or control. An offence falling within the definition of organized crime and committed by organized crime syndicate is the offence contemplated by the Statement of Objects and Reasons under the MCOCA.

16. On careful examination of one of the chargesheets which exercise was also undertaken by the learned Special Judge, we have reached to the conclusion that the act constituting offence was not alleged to have been committed by the accused as a member of organized crime syndicate or on behalf of such syndicate.”,

is equally misplaced in view of the observations of the Hon'ble Supreme Court in *“Prasad Shrikant Purohit v. State of Maharashtra” 2015 Supreme Court Cases 440* vide paragraph 66 and in view of the observation in *“Brijesh Singh @ Arun Kumar And Anr., (2017) 10 Supreme Court Cases 779* with specific reference on observations in paragraph 25 as already adverted to elsewhere hereinabove, as also the observations in Sachin Bansilal Ghaiwal (supra) in para 32 thereof as observed by the Hon'ble High Court of Bombay.

50. Reliance placed on behalf of the petitioner likewise on the verdict of the Hon'ble Supreme Court in "***Ranjeetsingh Brahmajeetsing Sharma Vs. State of Maharashtra & Anr.***", a verdict dated 07.04.2005, is equally misplaced in the facts and circumstances of the instant case, in as much as, the facts in the instant case alleged against the petitioner relate to the involvement of Jitender @ Gogi gang of which the petitioner is as per his own alleged disclosure statement, which is admissible in terms of Section 18 of the MCOCA, 1999, a part of the organized crime syndicate as also disclosed by other co-accused persons namely Dinesh and Yogesh. Reliance placed on behalf of the petitioner on the verdict of the Hon'ble High Court of Bombay in "***The State of Maharashtra Vs. Jagan Gagansingh Nepali @ Jagya & Anr.***" is equally misplaced in the facts and circumstances of the instant case.

51. Thus, presently, there is nothing on the record to indicate that there are any grounds for believing that the applicant is not guilty of any offence punishable under Sections 3 & 4 of the MCOCA, 1999 or that he is not likely to commit any offence whilst on bail and thus, in terms of Section 21(4)(b) of the MCOC Act, 1999, the present bail application of the applicant is declined.

52. Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the case.

ANU MALHOTRA, J.

JULY 26, 2021

'नेहा चौधरी'