(2006) 01 BOM CK 0023

In the Bombay High Court

Case No : Criminal Application No. 302 of 2005

Anil Murlidhar Deshmukh APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Bombay Police Act, 1951 — Section 124
Criminal Procedure Code, 1973 (CrPC) — Section 164, 299, 437
Maharashtra Control of Organised Crime Act, 1999 — Section 21(4), 24, 3, 3(2), 4
Penal Code, 1860 (IPC) — Section 120B, 192, 217, 218, 221

Citation : (2006) 108 BOMLR 402 : (2006) CriLJ 2024

Hon'ble Judges : S.C. Dharmadhikari, J

Bench : Single Bench

Advocate : A. Majid Memon and Parvez Memon, for the Appellant; P.D. Gharat, Special Public Prosecutor and K.V. Saste, Asstt. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Dharmadhikari, J.—The applicant is applying for bail in Central Bureau Investigation Case No.R.C.-6/2004/ E.O.U.-VII -New Delhi corresponding to Crime No.123/2000 registered at Satpur Police Station, Nashik for offences punishable under sections 349, 120B, 255 to 259, 420, 460, 468, 472 and 475 of Indian Penal Code as well as Sections 3, 4 and 24 of Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as "MCOC Act" for the sake of brevity). The applicant was arrested on 8th October 2004. He applied for bail vide Criminal Miscellaneous Application No.16 of 2004 which was rejected by Special Judge, MCOC, Pune order dated 29th November 2004. This is how the present application for bail is preferred.

2. The prosecution case, briefly stated, is that the complainant Head Constable D.P.Raje Bhosale of Crime Branch, Nashik along with Police Inspector Anil Deshmukh, PSI R.M.Pawar, ASI Gosavi, Head Constable Devkar, Police Constable Bidve, Police Constable Pangarkar and Police Constable Labhade of Nashik Crime

Branch while patrolling the city area on 10th October 2000, allegedly spotted a white Maruti Van parked near Mauli Petrol Pump, Nashik-Trimbak Road bearing No.BLL-3292 and found four persons in the vehicle namely Sachin Gotiram Zhaveri, Raju Tukaram Satpute, Ajay Shivaji Dhisale and Jitu Premchand Harvani. On suspicion, vehicle was searched. The search resulted in recovery of a plastic bag containing 20 sheets (each sheet containing 180 stamps) of Insurance Stamps of Rs.500/- denomination amounting to Rs.18.00 lakh. On interrogation of Ajay Dhisale it was revealed that he worked as a Driver for one Jaikishan Singh '' Bengali. This person kept a suitcase with Dhisale after telling him that it contains office papers. After interrogation of Dhisale, police team conducted search of residential premises of Bengali at 1916, Maharashtra Housing Colony, Satpur in the presence of Savita, his wife. At this search, about 40 sheets of Insurance Stamps of denomination of Rs.20/-and Rs.1,000/-(each sheet containing 180 Stamps) amounting to Rs.36.72 lakh were recovered. The Crime Branch, Nashik arrested all the abovementioned persons on 10th October 2000. Thereafter, they were produced before the Court of Judicial Magistrate, First Class, Nashik on 11th October 2000. Their police custody remand was sought. It is also alleged that permission to investigate the offence was sought u/s 124 of the Bombay Police Act as applicable at that time. The learned Court denied police custody remand of all the accused on 11th October 2000. The seized Insurance Stamps were sent to Indian Security Press, Nashik by Crime Branch for expert opinion. The expert opinion was received stating that these stamps were counterfeit. Therefore, the abovenamed crime was registered against the above persons. The case was entrusted to PSI Pawar for investigation. He filed charge sheet on 31st December 2000 (C.C.No.31/2000) in the Court of Judicial Magistrate, First Class, Nashik against the above persons arraying them as accused and also the said Bengali who was shown as absconding. Thereafter, the said Bengali was arrested on 25th January 2001 by Crime Branch, after getting him transferred from Tihar Jail, Delhi where he was lodged in Crime No.678/2000 of Kalkaji Police Station, New Delhi. PSI Pawar took police custody remand of Bengali. His statement was recorded wherein he disclosed that Hemant Dubey, Subhashbhai and Shivshankar were the persons responsible for printing of stamps, perforation and circulation of stamps in Nashik. PSI Pawar filed supplementary charge sheet on 8th May 2001 against said Bengali and the persons named by him. They were shown as untraceable at the relevant time. It appears that Hemant Dubey was arrested on 7th June 2001 from Thane and his police custody was obtained. However, subsequently an application was made in the Court of JMFC, Nashik for discharging Hemant Dubey. The ground of discharge was stated to be of no evidence as far as he is concerned. The Sessions Court passed an order of discharge on this basis on 9th August 2001.

3. It appears that on 11th February 2003, investigation of this case was transferred to Shri N.B.Tambade, Deputy Commissioner of Police, DNT, Nashik by the order of Commissioner of Police, Nashik. Accused Shivshankar Singh and one

Sirajuddin Nasipudi were also arrested on 19th March 2003 and 28th March 2003 respectively. Thereupon, supplementary charge sheet was filed in the Court against these two persons. This charge sheet also included names of Abdul Karim Lad Saheb Telgi (for short hereinafter referred to as "AKL Telgi"), Mahiram, Bharti, Madhu and Umesh Nayak to be prosecuted u/s 299 of Criminal Procedure Code.

4. It is further revealed that investigation of the cases pertaining to seizure of counterfeit stamps and fake stamp papers came to be transferred to CBI by order passed by Hon''ble Supreme Court of India on 15th March 2004 in Writ Petition No.522 of 2003. Thereafter, the case was registered as above. During the course of investigation of this case, provisions of MCOC were invoked on 30th September 2004 by order of DIG, Economic Offences-III, CBI, New Delhi. The case was transferred to Shri R.K.Shukla, Deputy Superintendent of Police, CBI, POU-VII, New Delhi. Further investigation by CBI revealed that Crime Branch had made seizure of fake Insurance Stamps worth Rs.54.72 lakh from the accused Raju Satpute. This was on the night of 8th October 2000. Raju Satpute was found sitting in the Maruti Van at Mumbai-Nashik Highway near Sachin Hotel and it is not correct that a vehicle was spotted near Mauli Petrol Pump near Nashik-Trimbak Road. The accused Sachin was found driving the vehicle. The investigation further revealed that during October 2000 the applicant (P.I. Anil Deshmukh) was working as Police Inspector in-charge of Crime Branch, Nashik whereas, PSI Pawar was posted at Crime Branch, Nashik. Investigation of the case was entrusted to PSI Pawar after it''s registration on 12th October 2000. It is alleged that investigation by CBI revealed that stamps in question were one taken out by accused Dhisale Driver of Bengali, in a suit case which was kept in House No.1075, Maharashtra Housing Colony, Satpur by Bengali. The house is owned/possessed by Dhisale and Bengali handed over the suit case for safe custody. Subsequently, Dhisale gave the suit case to Raju Satpute for sale of stamps. Accused Raju Satpute with the help of Jitu Harwani arranged for sale of the Insurance Stamps at Nashik. On 8th October 2000 and during the course of this transaction the said accused were intercepted and arrested.

5. The investigation has further revealed that false panchanamas were prepared by the Crime Branch Police Officers including PSI R.M.Pawar to show the questioned seizure at a different place and of different date i.e. 10th October 2000. The accused police officers had also shown a false recovery from the house of Jai Kishan Singh '' Bengali at 1916, Maharashtra Hsg. Colony, Satpur, Nashik by way of creation of false records. Investigation has further revealed that when Savita Singh w/o Bengali was arrested and brought to Crime Branch, she had revealed in her statement to accused Anil Deshmukh and R.M.Pawar that her husband was doing the stamp business at Nashik on behalf of AKL Telgi, who was staying in Mumbai. During the search of office of M/s.Unique Enterprises, Bitco Point, Nashik Road, belonging to Jai Kishan Singh, conducted on 17th November 2000, PSI Pawar seized two receipt books and an office file containing details of the machineries purchased in auction from Indian Security Press, Nashik by

J.K.Singh. The diary also revealed about the business links of Jai Kishan Singh with AKL Telgi. On same day, when the statement of Rajaram Bhaguji Jadhav, the owner of the office premises of M/s.Unique Enterprises was recorded by accused R.M.Pawar, he had told him that the said office belonged to AKL Telgi and Jai Kishan Singh is looking after the business from this office. The Investigating Officer PSI R.M.Pawar under the supervision of PI Anil Deshmukh even after having known the fact that AKL Telgi is the main accused in the fake stamps business deliberately and in consideration of pecuniary advantages, ignored vital facts including the testimonies of important witnesses.

6. Investigation has further revealed that Jai Kishan Singh '' Bengali was arrested and interrogated in police remand by PSI R.M.Pawar. He revealed about the perforation of stamps at Nashik by him in association with Shiv Shankar Singh. The disclosure statements recorded by the accused police officers focused on implicating rival stamp vendors of Telgi and other lesser known persons namely Hemant Dubey, Shiv Shankar Singh and Subhash Bhai in this case knowingly and wilfully in order to divert the line of investigation from the organized crime syndicate of AKL Telgi and also for monetary consideration. The investigation has further revealed that the accused Bengali, during the custody, was taken at G-74, MIDC Ambad, Nashik (Rajni Industries) where perforating machines were installed till April 2000 and he identified this place from where the perforation work on stamps was being done. Accused R.M.Pawar, deliberately omitted to bring on record the vital fact relating to AKL Telgi being the big boss of Jai Kishan Singh and Shiv Shankar Singh as was revealed by the Chaukidar and local tea vendor of Rajni Industries, MIDC Ambad, Nashik. The investigation has further revealed that subsequently, accused Hemant Dubey was arrested by PSI R.M.Pawar on 7th June 2001 and was taken on police remand. On 8th August 2001 PSI R.M.Pawar with the knowledge of PI Anil Deshmukh filed a discharge application in the Court of JMFC-III at Nashik on the ground that there was no evidence against Dubey and he was discharged by the Court on 9th August 2001. The investigation has revealed that PSI R.M.Pawar received pecuniary advantage of Rs.9.5 lakh on different occasions from the family of Hemant Dubey for himself and for his staff including PI Anil Deshmukh in order to ensure comfort to Hemant Dubey during his custody and finally to secure his discharge from this case.

7. The investigation has further revealed that accused R.M.Pawar during investigation at Mumbai on 11th June 2001 caught hold of Sirajuddin Nasipudi and examined him there. Even though the examination of Sirajuddin Nasipudi by PSI Pawar revealed that he was looking after the work of transport of AKL Telgi at Mumbai and Nashik, he was brought to Nashik and then let off. Thereby accused police officers knowingly and dishonestly allowed a close member of organised crime syndicate, Sirajuddin to go scot free for monetary consideration. By this they ensured that activities of organised crime syndicate of AKL Telgi would go on unaffected. The investigation has further revealed that the stamps were printed by accused AKL Telgi at Mumbai and were further transported to

Nashik, initially in the car of Jai Kishan Singh and later on through transport managed by Sirajuddin Nasipudi, for doing perforation work. The perforating machines were installed at G-74, MIDC Ambad, Nashik (Rajni Industries) where Shiv Shankar Singh along with Madhu, Lakhi, Mahiram and Umesh Nayak had done perforation work on the instructions of Jai Kishan Singh. The investigation has further revealed that after the registration of crime No.123/2000 of PS Satpur, Jai Kishan Singh '' Bengali negotiated about the settlement of case against him and AKL Telgi with PI Anil Deshmukh and PSI R.M.Pawar, IO of the case and paid Rs.10.00 lakh. The said amount was paid to both the police officers for ensuring that AKL Telgi and Jai Kishan Singh do not figure in the instant case. However, Jai Kishan Singh was arrested while AKL Telgi did not figure as accused any where in the investigation conducted by Crime Branch, Nashik. The investigation has further revealed that Sirajuddin Nasipudi was intercepted by PSI Pawar and his team at Mumbai on 11th June 2001 and was brought to Nashik for interrogation. Even though, Sirajuddin disclosed about his affiliation with AKL Telgi, he was let off by the Crime Branch, Nashik for which a sum of Rs.7.00 lakh was paid by AKL Telgi to PSI Pawar. Thereby a close aide of AKL Telgi was freed in order to see that activities of organised crime syndicate of Fake Stamps of AKL Telgi continue. The investigation further revealed that the interest of organised crime syndicate run by AKL Telgi was protected by the accused Police Officials by way of manipulation in case records like disclosure statements of Jai Kishan Singh '' Bengali and the corresponding CDs wherein the name of AKL Telgi was deliberately omitted and others who were not directly connected with the crime were implicated. The investigation has further revealed that the conduct of accused police officials during investigation of the said crime was apparently not to go for the original source of printing of the stamps but to undertake superficial searches and to extort money in the process and ultimately confer benefit on the organised crime syndicate of fake stamps run by AKL Telgi, which continued unabatedly, even after this crime was registered.

8. It is in the above facts and circumstances that it is alleged that offences punishable under the aforesaid provisions have been committed. Now, charges are leveled against AKL Telgi and the Applicant amongst others. As far as applicant is concerned it is alleged that allegations disclose, prima facie, commission of substantive offences punishable under sections 193, 217, 218 and 221 IPC as well as section 24 of MCOC Act.

9. Shri Memon submits that Section 21(4) of MCOC Act cannot be held to be attracted with its full rigour and force as far as present applicant is concerned. He submits that merits of the case may be examined despite embargo u/s 21(4). It is his case that the allegations made against the applicant, without anything more and taken as they are, would at the most reveal applicability of Section 24 of the MCOC Act. That is the only section which is referred to in the sanction order in the case of applicant. The punishment for public servants is three years'' imprisonment with fine. The nature of offences at the most would attract this provision. There is no question of refusal of bail when such is the situation. He

refers to page 19 of the charge sheet and the compilation handed in. He submits that the whole case is of dereliction of duty. A Departmental Inquiry is being conducted for the same. The trial is also pending. He submits that it is incorrect to allege that no steps were taken against AKL Telgi because applicant Ramesh Pawar applied for warrant of transfer of Telgi from Karnataka Police. Before anything further could be done, investigations were taken over by CBI.. It is nothing but Re-inquiry, after looking into the investigation papers collected by the applicant, till 15th March 2004.

10. Shri Memon then contends that the statements of witnesses which were recorded u/s 164 of the Code of Criminal Procedure are before Shri S.N.Deshmukh, Special Judicial Magistrate, First Class, Nashik. He submits that this authority has no power to record statements. He submits that the statements of Prakash Kale, Surendra Wavre recorded by this Special JMFC allege that applicant Anil Deshmukh took Rs.10.00 lakh to spare one Savita Singh w/o Bengali from being made an accused. It is alleged that the money is paid by Bengali. He submits that the money is allegedly paid for not arresting Savita Singh. Interestingly, according to Shri Memon, Ms.Savita Singh was made an accused by the applicant. However, CBI has discharged Savita Singh. In view of this, the allegation is not at all sustainable and is devoid of any merits. He submits that both, Kale and Wavre, are accomplice/accused. Their version cannot be relied upon. Moreso, in the absence of details as to how the money was paid and where the same was paid. The statement is made after four years of allegedly handing over the sums. This being the position, no prima facie case is made out against the applicant.

11. Shri Memon then contends that CBI was entrusted with the investigation because it is believed that it is a responsible and authentic high powered agency. However, that agency also discharges persons who have not been made accused by the applicant. This fact cannot be brushed aside. According to Shri Memon, the entire investigation made by the applicant in the special case is now before the Court and charges have been framed. Whether the said investigation is enough to bring home the charge against the accused, is an aspect which the Criminal Court will decide after adjudication. It will also decide the issue of fairness of investigations and truth of the allegations leveled in the charge sheet. Thus, once the case is before the Court, then it is not open for the CBI to comment upon the investigations carried out by the applicant till the date the same were entrusted to CBI.. If such an approach is not adopted, then CBI would really be sitting in judgement over the investigations carried on by State Police. In any event, he submits, that if some of the persons who are shown as accused have been set free by CBI and there is no case that the applicant is otherwise a part of the organised crime syndicate, then provisions of MCOC Act cannot be applied.

12. Shri Memon also invites my attention to the statement of Hemant Dubey which is referred to in the charge sheet. He submits that the statement is

recorded by the Metropolitan Magistrate, 7th Court, Mumbai. The same is not sighed by the maker. It has no evidentiary value at all. He then invites my attention to the statement of Rupali Hemant Dubey and submits that the same shows that money was allegedly paid for discharge of Hemant Dubey. It is inconceivable that any monies were received because Hemant Dubey has been discharged during the course of investigation by the applicant and his discharge is confirmed by the CBI.. If discharge was consequent upon payment, then the CBI would not have confirmed the action of discharging Hemant Dubey. Shri Memon submits that the applicant was not the authority who could have taken a decision insofar as discharging any accused. He placed papers before higher authorities and it is they who decided upon the discharge. The said Dubey was arrested in an identical case at Thane and there also he was discharged. Therefore, by placing reliance on such versions, it cannot be alleged that the applicant is guilty of assisting or abetting the organised crime syndicate in their unlawful and illegal activities for any pecuniary advantage or benefit to him.

13. Shri Memon was at pains to point out that tainted monies have been recovered. There is no favour shown to anybody against gratification. He submits that after four years of the incident, on the version of doubtful characters, it is inconceivable that the charge under MCOC Act could be brought home. He submits that the provisions of a stringent enactment like MCOC Act cannot be applied at the instance of some police officials, and in any event, not to the Applicant. Shri Memon makes this submission because according to him the applicant has been faulted for not applying MCOC Act in this case. He submits that once it is noticed by the applicant that the persons are not having any direct nexus with the activities of AKL Telgi or some remote connection with him, then it was not for him to apply MCOC Act. This is not a case of a wilful and deliberate inaction with a view to assist the organised crime syndicate, but at the most may be a lapse and such lapse resulting in some leniency is not enough to apply MCOC Act to the applicant.

14. In support of the above submissions Shri Memon places strong reliance upon the decision of Hon''ble Supreme Court in Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and Another, and more particularly paras 25, 27, 29, 32 and 36 thereof. He also places reliance upon a judgement of Supreme Court which follows Ranjitsingh Sharma''s case. He submits that applicant Deshmukh is recipient of President''s Medal. He submits that the applicant is suffering in custody. The trial may not conclude early. There is no apprehension that the applicant would commit any crime if enlarged on bail. In any event, he is willing to abide by all such conditions as may be imposed by this Court. For all these reasons, he submits that the applicant be enlarged on bail.

15. On the other hand, Shri Gharat appearing for the CBI opposes this bail application and strenuously submits that it is a case of illegalities and irregularities committed by police officers like the applicant while investigating serious crimes involving counterfeit stamp papers and stamps. Once

investigation was directed to be handed over to CBI means that previous investigation has no meaning and it is a fresh probe. More so, when earlier probe is an eye wash. He submits that the stage at which all materials collected till date would be scrutinised for their evidentiary value, is not the present one. That stage is at the trial. He submits that the provisions of MCOC Act having been applied to the case and more particularly to the applicant, it is not for this Court to decide as to whether the said provisions would apply the material relied upon is sufficient or not. Once such is the basis and provisions of MCOC Act having been upheld by this Court, the conditions for bail stipulated thereunder have to be strictly followed. So applied and followed, this is not a case where it can be said that the applicant is not guilty of offences punishable under MCOC Act. On the other hand, voluminous documents which have been collected during the course of investigation as also statements of various persons connected with the crime recorded till date, demonstrate clear complicity of the applicant in the crime. His involvement is apparent because unless police officials colluded and actively associated themselves with the activities of the organised crime syndicate, it was not possible for them to print, transport, circulate and sell counterfeit stamps and stamp papers. He submits that the statements would have to be taken at their face value. He relies upon the statement of one Babugir Motigir Gosavi, Assistant Sub Inspector of Police, Satpur Police Station. He submits that this officer was working under the applicant. From his statement, it is clear that applicant has not carried out his duties as Investigating Officer by bringing the culprits to book in accordance with law. On the other hand, persons like Savita Singh was used by the applicant to extort monies. He submits that this is not a case where no prima facie offence is disclosed as far as applicant is concerned. He submits that the acts of omission or commission attributed to the applicant make out not just a case of the applicant being guilty as a public servant but even provisions of Section 3(2) of MCOC Act are attracted. He submits that there is clear possibility of conviction. This is not a case where the applicant can be discharged.

16. Shri Gharat submits that it is false to contend that the statements recorded by Special JMFC are straight way inadmissible in law. He submits that this aspect will have to be gone into by the Trial Court and cannot be decided by this Court. In any event, he submits that there is a Notification issued by this Court and this Court has appointed persons for local areas of some districts in the State to act as Special Judicial Magistrates for specified periods by empowering them to record confessions, dying declarations and statements of witnesses u/s 164 of the Code of Criminal Procedure. He submits that such notification, as far as Nashik District is concerned, can also be placed on record. It is for the Trial Court to decide as to whether in the absence of conferment of powers by appropriate authority on the concerned Special Judicial Magistrate, his act of recording the statements of witnesses is a mere irregularity or an illegality, which goes to the root of the matter. He submits that this aspect should not be and cannot be decided at the stage of bail application by this Court. Moreso, when the

statements of Shri Kale, Vavre and Rupali Dubey recorded during the course of investigation clearly show that the applicant was aware of the unlawful activities of the organised crime syndicate for a considerable length of time. He omitted to take any action as per law intentionally and deliberately so that the activities can go on unhampered. He submits that perforation machine was kept at the premises of Rajni Industries, G-74, Satpur MIDC, Nashik. Procurement of this machine was to the knowledge of the officers investigating the crime. Since such steps were not taken, the CBI had to take over the investigation. As far as procurement of this machine is concerned, the entire correspondence is seized. Wife of Bengali has been interrogated and office premises raided. During the course of this raid several documents and receipts came to light. From this nexus and relationship between AKL Telgi and Jai Kishan Singh '' Bengali is clearly established. Once a huge seizure of stamps worth Rs.54.72 lakh is effected and at the time of such seizure MCOC Act was in force, then it was plain duty of the applicant to have proceeded on these lines and applied the said enactment. He submits that this is not a solitary instance and there are instances of several police officials acting like the applicant and cases have been registered against Police Officers at various police stations. He submits that sufficient material is available. Payment of money is accepted. He submits that the participation of the applicant and police officials is active. This is with an intention of getting pecuniary benefits for themselves in lieu of showing favours to persons forming part of organised crime syndicate by over looking and ignoring their unlawful activities. He submits that the crime is serious in nature. This is a case where the applicant has facilitated and actively assisted concerned persons and thus became part of the organised crime syndicate. The statements recorded are proof of the said unlawful activities. In this view of the matter, the judgement of Hon''ble Supreme Court in Ranjitsingh Sharma''s case would not be applicable. Each case must be decided on it''s own facts and the Supreme Court itself makes this aspect clear in this decision. He invites my attention to paragraphs 30, 35, 49, 54, 57 and 59 of this decision to support his submissions. For all these reasons, he submits that the application be dismissed.

17. With the assistance of Shri Memon and Shri Gharat I have perused the relevant portion of the charge sheet and statements on which reliance has been placed by both sides as well as some of the documents. In my view, there is considerable substance in the contention of Shri Gharat that the application will have to be scrutinised on the touchstone of Section 21(4) of MCOC Act and it is not for this Court, at this stage, to decide as to whether the materials produced would completely rule out applicability of MCOC Act insofar as applicant is concerned. Moreso, when Shri Memon also proceeds on the basis that Section 24 of this enactment may be attracted, it is not a case where the applicant can be said to be only guilty of offences punishable under Indian Penal Code. The submissions of Shri Memon proceed on the basis that the lapses on the part of the applicant in not applying stringent provisions of MCOC Act to those arrested during the course of investigation, by itself, cannot be the basis of applying

MCOC Act to the applicant. In other words, the applicant stands as an accused in a case which he has himself investigated as a police official. The applicant stands as an accused because the applicant failed to apply MCOC Act, according to the prosecution. In my view, it is not only because the applicant is guilty of lapses during the course of investigation that he has been arrayed as an accused in the very case which he was investigating and a decision taken to apply MCOC Act to him. On the other hand, from a perusal of the charge sheet and the statements relied upon therein, shows prima facie that the applicant is involved in the case and arrested as well as prosecuted not only under IPC but also MCOC Act because the prosecution''s allegations that by the acts of commission and omission he actively assisted the organised crime syndicate in their unlawful activities. He is, therefore, guilty not just u/s 24 of MCOC Act but a case is made out u/s 3(2) of the said enactment as well. Once such is the nature of charge, then, in my view, whether the provisions of MCOC Act have been applied erroneously or not need not be gone into. I have to proceed on the basis that provisions of MCOC Act are attracted to this case and therefore, bail application will have to be decided in the light of the conditions imposed by this statute. It cannot be decided only on the touchstone of Section 437 of the Code of Criminal Procedure as contended by Shri Memon. Section 21(4) of MCOC Act reads thus:-

21. Modified application of certain provisions of the Code :

1...

2...

3...

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."

18. A perusal of Section 21(4) would show that there is no basis for the apprehension expressed by Shri Memon that because of the rigour and force of Section 21(4) of MCOC Act it is impossible for the applicant to be enlarged or released on bail. That apprehension and fear is completely ruled out after the Supreme Court rendered its decision in Ranjitsingh Sharma''s case. I am applying the tests laid down by the Hon''ble Supreme Court while considering the instant application.

19. So considered, the present application does not deserve to be granted. The Supreme Court in the aforesaid decision has very clearly observed that the

wording of Section 21(4) 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. According to the Hon''ble Supreme Court, if such construction is placed, the Court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In that event, according to the Supreme Court, it would be impossible for the prosecution to obtain a judgement of conviction of the applicant. According to the Supreme Court, the intention of the Legislature cannot be such and therefore, Section 21(4) must be construed reasonably. The balance have to be maintained, according to Supreme Court, between a judgement of acquittal and conviction, and an order granting bail much before commencement of trial. All that the Hon''ble Supreme Court observes is that decision to either grant or deny bail must demonstrate application of mind by the Court. It is true that the Supreme Court observes that the duty of the Court at the stage of bail is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. But in case like MCOC Act, a little deeper probe so as to arrive at a tentative finding would be necessary, according to the Supreme Court. The Supreme Court was aware that some allegations being made against a high ranking officer, by itself, is not sufficient to continue to keep him behind the bars. At the same time, the Supreme Court observes that if such allegations are serious and cannot be brushed aside and if an opinion can be formed that the person is prima facie guilty, then the application for bail can be rejected. This view of the Hon''ble Supreme Court is followed by it in a decision reported in 2005 SCC (Cri) 1007.

20. Applying these tests, what is revealed in this case is that investigations carried on by the applicant while seizing counterfeit stamps and arresting some persons demonstrate that the said Bengali was doing the work of perforation of counterfeit stamps. These premises are at MIDC, Ambad. The work of perforation was carried out by said Bengali on the stamps printed and supplied to him by AKL Telgi from Mumbai. It is alleged that the investigations also disclose that accused Bengali entered into criminal conspiracy with the applicant to save himself and Telgi from punishment and in furtherance of the said criminal conspiracy he paid Rs.10.00 lakh as pecuniary benefit to Anil Deshmukh and R.M.Pawar. This was to ensure that the names of Telgi and Bengali were kept away from the crime. It is alleged that the applicant diverted the line of investigation from accused Telgi to Hemant Dubey who was later on arrested in the same crime without there being any evidence to show his involvement. It is also revealed that applicant Deshmukh obtained pecuniary benefits of Rs.10.00 lakh from Dubey and got him discharged. Similar was the modus operandi as far as Sirajuddin Nasipudi. All this was to prevent AKL Telgi from being arrested in the said case. A very serious charge of fabrication of investigation right from the registration of the case is made against the applicant and it is alleged that this was done so that the source of stamps could not be established.

21. In this behalf, it would be appropriate to refer to the statement of Prakash Ramdas Kale. He has in his statement before the Special Judicial Magistrate,

Nashik stated that he knows Bengali. According to him, Bengali is a scrap dealer and also dealing in Burnt Furnace Oil. He also knows Suresh Vavre. He states that on the date of the incident he had been to a religious place called "Shani Shingnapur" and returned at about 10.00 clock to Nashik. Thereafter he received a phone call from Vavre, who informed him that Bengali''s wife has been arrested in the case of counterfeit stamps. Therefore, said Kale told Vavre that both Kale and Vavre must meet the applicant and sort out the matter. When the said Kale agreed, Vavre came to his residence and in Vavre''s car both went to Crime Branch office. There they met the applicant and the applicant informed them that it is a big case and if nothing has to be done, they will have to spend Rs.15.00 lakh. Thereafter Vavre called up Bengali and informed Bengali that Rs.15.00 lakh will have to be paid to the applicant and to Shri Ramesh Pawar. Thereupon, Bengali said that the sum is too much and the whole matter should be settled at Rs.10.00 lakh. It appears that the applicant agreed to accept Rs.10.00 lakh. Thereafter this fact was informed to Bengali by Kale and Vavre, who summoned them to Mumbai to collect the amount. These persons then went to Mumbai and met Bengali and at their meeting one Karimbhai was also present. The said Karimbhai handed over a sum of Rs.5.00 lakh contained in a plastic bag to Bengali and that sum was handed over by Bengali to Kale in the presence of Vavre. Bengali assured Kale and Vavre that the balance sum of Rs.5.00 lakh would be paid after 4/5 days. It is stated by Kale that after receipt of this sum of Rs.5.00 lakh he visited the office of Crime Branch. The applicant Deshmukh was not present there but Ramesh Pawar was present there and he received a sum of Rs.5.00 lakh. It appears that there is another payment as stated by said Kale of Rs.8.00 lakh pertaining to some other stamp case. From a reading of the statement of Kale it is clear that applicant and Ramesh Pawar were being paid monies at the instance of said Bengali and Karimbhai for not taking action in accordance with law against persons involved like Nasipudi etc..

22. The statement of Vavre also corroborates the above fact. It need not be referred to in details save and except pointing out that it contains the same names namely Bengali and the applicant as well as Karimbhai. In fact Karimbhai and Bengali in turn refer to their Boss (Seth) and it appears that he is none other than the prime accused Telgi. That they all are working for Telgi is clear from the statement of Rupali Hemant Dubey which is referred to by Shri Gharat. In her statement it is clearly stated that Sirajuddin is the man of Telgi. The statement of Hemant Dubey refers to his being booked in the case of fake stamp of Telgi. He also refers to the payment made by wife of Hemant Dubey (Rupali) to PSI Pawar. The statement of Raju Satpute is also referred to by Shri Gharat. That shows as to how investigations were carried by the applicant and the lapses committed deliberately in the same.

23. A reference by Shri Gharat to the statement of subordinate of the applicant namely Gosavi is also relevant. He had been directed to accompany the police patrolling party consisting of applicant and other officials, on the relevant date and he states that the Maruti Van in question was not spotted near Mauli Petrol

Pump but it was found parked near Sachin Hotel on the Mumbai-Nashik highway. The police party brought Satpute who was driving the van for inquiry to the Crime Branch, Nashik. However, Shri Gosavi points out that no Panchanama was made on the spot or in his presence of the seizure of the stamps. He points out mistakes in Panchanama and he also confirms presence of only two persons namely Satpute and Sachin Zhaveri. He points out that he was associated in the investigation of the case for limited period. However, he points out that he was entrusted duty of surveillance and transfer of Bengali from Delhi. He was also entrusted the job of seizing a truck belonging to Telgi. He has stated that he learnt that money has changed hands in his case but he does not think it fit to give any details. The statement of Gosavi was recorded after investigations were taken over by CBI.. Similarly, statement of Rupali Dubey was also recorded by the officials of CBI.. The statement of Hemant Dubey recorded on 3rd July 2004 clearly alleges that he was arrested with regard to fake stamp cases. Although, he was in custody of Thane Police, the team of Nashik Police came seeking his custody on transfer warrant. He new that there was a case pending against him at Nashik, that Nashik case was being investigated by PSI Pawar and that monies were sought by Pawar from Rupali. He states that he was taken to Mumbai to Telgi''s office. PSI Pawar asked him whether he knows Telgi and Hemant Dubey states that, at Mumbai, PSI Pawar informed him that Telgi''s wife also tried to bribe him.

24. These statements recorded would go to show that the persons concerned including the applicant were aware of the activities of the organised crime syndicate and that stamps are being perforated and transported from Nashik. They were aware of the activities at the premises belonging to Bengali and Telgi. They were aware that the stamps and stamp papers are not genuine. Bengali and others are part of a crime syndicate led by Telgi. The statement of one Shambahadur Singh which is recorded by CBI very clearly states that Shiv Shankar Singh (one of the accused) started residing at Rajani Industries. He had informed said Shambahadur Singh that his big boss is Karim Seth in Mumbai. Shiv Shankar Singh and Bengali were known to each other. Shivshankar Singh and Bengali used to go to Mumbai in Bengali''s car for meeting the boss and carried bundles of material. These materials were brought from the premises of Rajani Industries and placed in the car for being transported to Mumbai. This work was being done by Shiv Shankar Singh and others. From the statement it is clear that Karim Seth (Telgi) for whom Bengali and Shiv Shankar Singh were working, was carrying on perforation activities from Nashik. It is not necessary to refer to other materials.

25. From the above, it is prima facie clear that applicant as a police official has been charged with serious offences of not just over looking and ignoring unlawful activities and illegal acts of the organised crime syndicate but actively assisting and abetting them for pecuniary benefits. From the charge sheet, it is clear that stamps worth lakhs of rupees were seized but the seizure and recovery was not honestly and faithfully recorded. The allegations referred to above by me in

details are prima facie supported by the aforesaid statements. It is not as if the applicant was unaware of the business links of Bengali and Telgi but the charge is that even after knowing all these unlawful and illegal activities of Telgi, the applicant protected him as also his associates and allowed them to escape from the clutches of law.

26. There are similar officers like applicant who have been charged in fake stamp case and their applications for bail have been rejected by this Court.

27. After considering the role of the persons involved, who are also accused in this case, police officers have been denied bail by this Court. This Court has time and again emphasised the fact that offences of printing and circulating fake, bogus and counterfeit stamps and stamp papers are serious, grave and affect National Economy as well. Transactions on stamp papers have certain credibility. Faith and trust in financial and property transactions is shattered when it comes to light that the stamp papers were not genuine. Once this aspect is placed in the forefront, then it will not be proper for this Court to let off police officers as suggested by Shri Memon. Although he places reliance upon the judgement of Supreme Court in Ranjitsingh Sharma''s case, it is clear that Supreme Court observes that a connection or association demonstrating nexus with the organised crime syndicate would come within the purview of the expression "abet". It also means "assistance" to organised crime syndicate or organised crime or a person involved or either of them. However, it includes connection or association with a person with the actual knowledge or having reason to believe that such person is engaged in or part of a organised crime syndicate. A connection to or association with any person by itself would not come within the meaning of the provisions which have been construed by the Supreme Court [Section 3(2)].

28. Once there is a direct nexus with the offence committed by the organised crime syndicate inasmuch as persons investigating the said offence knew that the activities of the organised crime syndicate were unlawful and have over looked and ignored them intentionally, as alleged, then it is not possible to accept the contention that the abatement in this case was not before the commission of the offence. Section 21(4)(b) reproduced above mandates that there should be reasonable ground for believing that the applicant is not guilty of an offence punishable under MCOC Act. It is not necessary to find out at this stage as to whether the offence alleged is punishable u/s 3(2) or u/s 24 of MCOC Act. In any event, in this case, Shri Memon proceeds on the basis that an offence u/s 24 could be made out. If that is the basis on which he is proceeding, then it is not necessary to go into any further details. In the light of my prima facie conclusion that there are reasonable grounds for believing that the applicant is guilty of offences under the above provisions of Maharashtra Control of Organised Crime Act, 1999, the present bail application is rejected.

