

(2025) 04 DEL CK 1092

In the Delhi High Court

Case No : Bail Application NO. 1618 Of 2024

Ashish @ Deva

APPELLANT

Vs

State (Nct Of Delhi)

RESPONDENT

Date of Decision : 29-04-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439, 482
Indian Penal Code , 1860 — Section 34, 120B, 186, 279, 302, 307, 365, 392
Maharashtra Control of Organised Crime Act, 1999 — Section 2(1)(e), 3(1)(i), 3(2), 3(4), 18, 21, 23(1)(a)
Arms Act, 1959 — Section 25, 27, 54, 59

Citation : (2025) 04 DEL CK 1092

Hon'ble Judges : Amit Sharma, J.

Bench : Single Bench

Advocate : Maninder Singh, Ajay Kumar Pipaniya, Harjas Pratap Singh Anand, Turang Pandit, Sanjana Nair, Janvi Narang, Anurupita Kaur, Pallavi Pipaniya, Nikita Garg, Gopesh Jindal, Shubhi Gupta

Final Decision : Disposed Of

Judgement

Amit Sharma, J.

1. This is the second application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') and Section 21 of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as 'MCOCA') seeking regular bail in case FIR No. 0358/2020 under Sections 3(1)(i)/3(2)/3(4) of the MCOCA, registered at P.S. Kanjhawala, Delhi.

2. The first application on behalf of the applicant seeking bail before this Court was dismissed as withdrawn vide order dated 27.04.2022 in BAIL APPLN. 348/2022.

3. The aforesaid FIR was registered against the accused(s) Deepak Dabas @ Teetar and his associates namely, Pradeep, Surajpal @ Bhagta, Ajay Dabas, Pankaj @ Maharaj, Raj Kumar and the present applicant.

4. On 23.02.2022, after the investigation, chargesheet has been filed and the present applicant has been charged for the offences punishable under Sections 3(1)(i)/3(2)/3(4) of the MCOCA.

5. The case of the prosecution is that the present applicant alongwith the co-accused Deepak Dabas @ Teetar (the kingpin) and other associates had formed an interstate gang for gaining pecuniary benefits or undue economic alongwith other advantages for themselves and for their leader, i.e., Deepak Dabas @ Teetar. It is stated that the present applicant was involved in 5 cases of attempt to murder and robbery as per the list annexed with the status report filed for the purpose of the present application. The present applicant was arrested on 07.10.2021. As per the chargesheet, during the period from 2012-2020, the co-accused Deepak Dabas @ Teetar alongwith his associates including the present applicant were running an organised crime syndicate by indulging and committing various unlawful activities/offences by use of violence and/or threat of violence and/or intimidation and/or coercion and/or by other unlawful means with the objective of gaining pecuniary benefits or gaining undue economic or other advantages for themselves. As per the case of the prosecution, the aforementioned crime syndicate was involved in 13 FIRs and the involvement of the present applicant was reflected in 2 FIRs, namely, FIR No. 110/2012 under Sections 365/392/34 of the IPC, registered at P.S. Rohini (South) and FIR No. 217/2016 under Sections 186/353/307/34 of the IPC and Sections 25/27/54/59 of the Arms Act, registered at P.S. Begampur.

SUBMISSIONS ON BEHALF OF THE APPLICANT

6. Learned Senior Counsel appearing on behalf of the applicant has submitted that the entire case of the prosecution qua the present applicant does not satisfy the requisite ingredients for offences under the MCOCA. It is submitted that the prosecution has not been able to place on record any material to show any nexus or involvement of the present applicant with the alleged crime syndicate.

7. Learned Senior Counsel submitted that the learned Trial Court has erred in framing the charge under Section 3(1)(i) of the MCOCA. Section 3(1)(i) of the MCOCA, reads as under:

"Punishment for organised crime- (1) Whoever commits an offence of organised crime shall,-

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

8. It is submitted that it is not the case of the prosecution that death of any person has been caused and therefore the aforesaid provision is not applicable to the present applicant in the facts of the present case. It is submitted that the prosecution has not been able to show any material regarding any financial gain or otherwise, accruing to the present applicant. It is submitted that all the bank

records of the applicant are already in possession of the prosecution and no transaction has been shown for any alleged criminal activity of the so-called crime syndicate. It is further submitted that there is no statement of any public witness to establish the allegation made qua the present applicant with respect to him being a member of the alleged crime syndicate or indicating anything done by him in furtherance of the activities of such crime syndicate.

9. Learned Senior Counsel further submitted that mens rea is a necessary ingredient for the offence of "organised crime" and the prosecution has not been able to establish the existence of the requisite mens rea. It is pointed out that in absence of any recovery of illegal wealth or seizure of any kind of property alleged to have been acquired by commission of such organised crime, the requisite mens rea for acting as a member on behalf of the alleged crime syndicate cannot be attributed to the present applicant. It is further pointed out that no specific role has been attributed to the applicant to establish that he was a member of the alleged crime syndicate or had acted in furtherance of the activities of such crime syndicate. It is further submitted that the prosecution has not placed on record any Call Detail Records (hereinafter referred to as 'CDR') showing any connectivity between the present applicant and the co-accused persons. There is no evidence on record to show that the applicant was in connection with the aforesaid co-accused persons with respect to operating a crime syndicate. It is further submitted that the confessional statements of all other co-accused persons have disclosed the name of the principal accused, i.e., Deepak Dabas @ Teetar and they have not stated anything about the present applicant. It is submitted that even the alleged confessional statement of the present applicant is also to the effect that he knew the aforesaid co-accused Deepak Dabas @ Teetar, however he has not admitted in any manner the fact of him being a part of the alleged crime syndicate. Another issue raised by learned Senior Counsel appearing on behalf of the applicant was that the present applicant was arrested on 07.10.2021 and the statement under Section 18 of the MCOCA of the co-accused Deepak Dabas @ Teetar was recorded on 02.12.2021. It is also submitted that the applicant had cooperated during the investigation and was arrested on 07.10.2021 at P.S. Kanjhawala itself when he voluntarily appeared before the Investigating Officer for investigation. It is submitted that this shows the bona fide of the applicant and the fact that he was not associated with the co-accused Deepak Dabas @ Teetar. It is also pointed out that chargesheet also corroborates this fact. It is further submitted that as per the prosecution, in the police records, the applicant is not dangerous and does not operate with his accomplices and is not likely to jump bail which is mentioned in Court apprehension memo filed along with the chargesheet. It is further submitted that in one of FIRs, i.e. FIR No. 110/2012 under Sections 365/392/34 of the IPC, registered at PS Rohini (South), the present applicant has been acquitted.

10. Learned Senior Counsel further submitted that the present applicant has been in custody since 07.10.2021. The chargesheet in the present case was filed

on 23.02.2022 and the charges were framed on 22.02.2024 after a delay of 2 years. Further, out of the 57 witnesses cited by the prosecution, only 1 has been examined till date and thus, the trial is not likely to be completed soon.

11. Reliance has been placed on the following judgments:

- i. Sunil Kumar vs. State of NCT of Delhi 2024 SCC OnLine Del 2316
- ii. Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and Others 2005 SCC OnLine SC 696
- iii. Avtar Singh Kochar vs. The State of NCT of Delhi 2023 SCC OnLine Del 7517
- iv. Javed Gulam Navi Shaikh vs. State of Maharashtra and Another 2024 SCC OnLine SC 1693
- v. State vs. Brijesh Singh @ Arun Kumar and Another 2015 SCC OnLine Del 8776
- vi. Manish Sisodia vs. Directorate of Enforcement 2024 SCC OnLine SC 3721
- vii. Pinki Irani vs. Govt. of NCT of Delhi 2023 SCC OnLine Del 6722
- viii. Chenna Boyanna Krishna Yadav vs. State of Maharashtra and Another 2006 SCC OnLine SC 1359
- ix. Mohd. Tahir vs. State 2022 SCC OnLine Del 154
- x. Jalaluddin Khan vs. Union of India 2024 SCC OnLine SC 1945

SUBMISSIONS ON BEHALF OF THE STATE

12. Per contra, learned APP for the State submits that the prosecution case against the present applicant is based on the confessional statement given by the co-accused Deepak Dabas @ Teetar and the present applicant under Section 18 of the MCOCA. It is submitted that in his statement given by the co-accused Deepak Dabas @ Teetar, he stated that he had met the present applicant in 2012 and he alongwith him and two other associates had tried to kidnap one businessman, however, their car got struck and they were all caught and an FIR bearing no. 110/2012 under Sections 365/392/34 of the IPC was registered against them at P.S. South Rohini. He further stated that he, alongwith the present applicant and other co-accused persons was running a gang in the name of Ajay Dabas. Similarly, in the statement made by the present applicant under Section 18 of the MCOCA, he stated that he had met Deepak Dabas @ Teetar in 2012 and in the same year he alongwith Deepak Dabas @ Teetar had tried to kidnap one person on account of which, an FIR was registered at PS South Rohini. He further stated that he alongwith Deepak Dabas @ Teetar and other co-accused persons committed various offences and money earned out of these offences were used towards fulfilling his habits. He further stated that in 2016, he alongwith Deepak Dabas @ Teetar, Pradeep Jaglam and Sunil had an encounter with the police, in which he was shot and they were all caught. He further stated that in that encounter, arms were also recovered from him, for

which a case was registered at PS Begumpur, i.e., FIR no. 217/2016 under Sections 186/353/307/34 of the IPC and Sections 25/27/54/59 of the Arms Act. He further admitted in his statement that since 2012 to 2016, he was involved in a world of crimes and his source of income was the money earned from the crimes he committed. He further stated that thereafter Deepak Dabas @ Teetar did some wrong act with his friend and for 3 to 4 years he was not in talking terms with Deepak Dabas @ Teetar. He further stated that he was working in a hotel in Nainital and that all the money he had earned out of crime has been spent.

13. Learned APP for the State further submitted that the bar under Section 21(4) of the MCOCA is applicable to the facts of the present case and therefore, the present applicant is not entitled for grant of bail. It is further submitted that the prosecution need not show any pecuniary advantage to the applicant from the proceeds of the organised crime inasmuch as the applicant has been charged for the offence under Section 3(4) of MCOCA for being a member of an organised crime syndicate. The organised crime has been defined under Section 2(1)(e) of the MCOCA which reads as under:

“2(1)(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;”

14. It is submitted that the continuing nature of unlawful activities of the organised crime syndicate can be an object for obtaining advantage and thus pecuniary benefit is not an essential ingredient for commission of an organised crime. It is further submitted that acquittal of the present applicant in one of the cases would not be relevant for the purpose of deciding the present application. Reliance was placed on the decision of the Co-ordinate Bench of this Court in BAIL APPLN. 593/2024 dated 30.05.2024 in Dheerpal alias Kana vs. State Govt. of NCT of Delhi 2024:DHC:4461.

15. Reliance is placed on the following judgments:

- i. Dheerpal alias Kana vs. State Govt. of NCT of Delhi 2024:DHC:4461
- ii. Kavitha Lankesh vs. State of Karnataka and Others (2022) 12 SCC 753
- iii. State of Maharashtra vs. Jagan Gagansingh Nepali @ Jagya and Another 2011 SCC OnLine Bom 1049
- iv. Abhishek vs. State of Maharashtra and Others (2022) 8 SCC 282

ANALYSIS AND FINDINGS

16. The present applicant has been charged for the offences punishable under Sections 3(1)(i)/3(2)/3(4) of the MCOCA, which read as under:

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

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

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

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(4) Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs."

17. In support of the aforesaid charges, the prosecution primarily relies upon the following material qua the present applicant:

- a) Confessional statement of co-accused Deepak Dabas @ Teetar under Section of MCOCA;
- b) Confessional statement of the present applicant under Section 18 of MCOCA; and
- c) Involvement of the present applicant in 2 FIRs alongwith the main accused Deepak @ Teetar.

18. Admittedly, it is the part of the chargesheet that the prosecution has not placed on record any material to show pecuniary benefit being accrued to the present applicant from the alleged unlawful activities committed by the alleged crime syndicate. No public witness has been cited by the prosecution with respect to the present applicant to show his nexus with the alleged crime syndicate. It is pertinent to note that the applicant had joined the interrogation in the present case voluntarily.

19. The present FIR was registered on 02.10.2020 on the basis of a proposal dated 29.09.2020 moved by Sh. Atul Kumar Verma, Assistant Commissioner of Police seeking approval under Section 23 (1) (a) of the MCOCA for registration of the said FIR under Sections 2, 3 and 4 of the MCOCA. The highlighted portion in the chargesheet as pointed out hereinbelow, reflects that 3 FIRs bearing nos. i) 69/2019 dated 01.03.2019 under Sections 302/120B of the IPC and 25/27 of the Arms Act registered at PS Begumpur, ii) 09/2020 dated 08.01.2020 under Sections 302/34/120B of the IPC and 25/27 of the Arms Act registered at PS Kanjhawala, iii) 67/2020 dated 20.02.2020 under Sections 302/120B of the IPC

and 25/27 of the Arms Act, registered at PS Kanjhawala; were registered against the co-accused Deepak Dabas @ Teetar while he was in custody. The registration of the aforesaid FIRs seems to be the most proximate cause for registration of the present FIR under the MCOCA. Even in the chargesheet, it is alleged that the aforesaid the accused Deepak Dabas @ Teetar along with his associates are continuously indulging in unlawful activities after forming an organised crime syndicate, and operating from inside Tihar. The relevant portions of the chargesheet read as under:

"31. That during course of investigation, complainants of cases and victims of criminal acts done by accused Deepak Dabas@ Teetar and his organized crime syndicate were examined and their statements were recorded U/S 161 Cr PC. From the statement of witnesses recorded so far reveals that accused Deepak Dabas@ Teetar and his associates and members of his crime syndicate are very dangerous criminals. They extort money by threatening of dire consequences to the public persons. There is a terror of accused used Deepak Dabas@ Teetar and his gang in the area and no one dares to give any evidence against them. In almost all the cases, accused Deepak Dabas @ Teetar and his associates, compelled the witnesses by threatening to become hostile in court or settle down the matter in or outside the court by any means. It is further submitted that in some of cases, witnesses refused to identify the accused Deepak Dabas@ Teetar and his gang members during trial before the Courts or in judicial TIP proceedings in jail which lead to acquittal/release of the accused persons. Accused Deepak Dabas @ Teetar is continuing doing conspiracy unlawful activities on large level in organized manner and there is terror of his name among common people. Details of cases in which Charge Sheets have been filed before the Hon'ble Courts against accused Deepak Dabas@ Teetar and his associates namely Pradeep Jaglan, Ajay Dabas, Suraj pal@ Bhagta and Ashish@ Deva in past years, brief details of cases, number of accused, mode of commission of crime, final outcome of case :-

Accused Deepak Dabas@ Teetar was previously found involved in total number of 24 cases like Murder, Attempt to Murder, Robbery, Extortion, Arms Act etc. Out of these, a total number of 13 cases are registered against him as well as members of his associates named in the present case. All 24 cases are registered in Delhi and National Capital Region of Delhi. Certified copies of FIRs, Charge-sheets, and orders for framing of Charge, Cognizance & Conviction/Acquittal have been obtained from the concerned courts of Delhi and attached with present final report.

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EVIDENCES AGAINST MAIN KINGPIN DEEPAK DABAS @ TEETAR:-

It is established facts that accused Deepak Dab as @ Teetar has long criminal history since year-2012 and he is involved in 24 cases like Murder, Attempt to Murder. Robberies, Extortion, Thefts, Arms Act etc. which is self explanatory. His

criminal record proves that he is committing crime in organized manners. That on perusal of criminal record, it is established that accused Deepak Dabas@Teetar along with members of his present crime syndicate has committed a total number of 13 cases like Murder, Attempt to Murder, Robberies, Extortion, Thefts Arms Act etc. and 11 cases with other associates. It is established facts that the members of this crime syndicate were found committing organized crime with the objective of gaining pecuniary benefits and other advantages between societies, businessmen, as well as gang supremacy with other crime syndicates which is proved by their modus operandi which is evident to indicate that he was taken pecuniary gain or advantage during lodged in jail. That on perusal of criminal record mentioned above, it is established that the accused Deepak Dabas @ Teetar is a hard core criminal as well as good executive of plan settled by his gang members as mostly incidents of robbery & murders committed on the broad day light when victim/complainant were present in their shops as well as their work place which is evident to indicate that he was taken pecuniary gain or advantage. That accused is good manipulator & manager which is proved by his long criminal history as well as his modus operandi.

From his criminal record, it is established that he is operating his crime syndicate from inside the jail and got murdered of several persons as he was found as conspirator vide case FIR No. 69/2019 dated 01.03.2019 u/s 302 IPC & 25/27 Arms Act & added 120-B IPC, PS Begumpur, FIR No. 09/2020, dated 08.01.2020, U/s 302/34 IPC & 25/27 Arms Act & added 120-B IPC, PS Kanjhawala and FIR No. 67/2020, dated 20 .02.2020, u/ s 302 IPC & 25/27 Arms Act & added 120-B IPC, PS Kanjhawala.

From the perusal of case it is also established facts that he and his associates do not hesitate to commit crime in broad day light to achieve their selected aims. That he is demanding as protection money from inside the jail as two cases of extortion were registered against him vide FIR No. 415/2019 dated 15. 10 .2019 u /s 387 /506 IPC PS Kanjhawala and FIR No. 76/2020 dated 31.01.2020 u/s 387/506 IPC PS Aman Vihar. That he and his 03 associates were arrested after a brief encounter vide FIR No 217/2016 dated 29.02.2016 u/s 186/353/307/34 IPC & 25/27/54/59 Arms Act, PS Begumpur, Rohini District and recovered a total number of 10 fire arms along with live & empty cartridges recovered from their possession. Apart from the above, another recovery of arms and ammunitions i.e. 03 pistols, 01 revolver, 03 Deshi Katte, 01 magazine and 93 live cartridge was affected from him in case FIR No. 1197/2015, dated 27.09.2015, u/s 25 Arms Act, PS Janakpuri, West District..

That he along with associates murdered a local cable operator Devender Rathi. Accordingly, a case vide FIR No. 102/16 dated 29.01.2016 u/s 302/34 IPC & 25/27/54/59 Arms Act, PS Begumpur was registered which is pending trial. From the analysis of facts of case, it is established that he and his associates committed murder of Devender Rathi to establish terror/supremacy between cable operators and businessmen to extort protection money from them. It is

established fact that he has spent ill earned money to purchase arms and ammunitions to strengthen his gang, to fulfill their daily needs and expenditures of their family and other members of their organized crime syndicate. He was convicted as undergone vide FIR No. 55/2016 dated 06.02.2016, U/s 379-A IPC, PS Kharkhoda. That he is non co-operative as he and his family members didn't provide mandatory documents i.e. PAN card, Aadhar card and bank account numbers. However, the details of assets in respect of him and his family members is being obtained from concerned department to know about his illegal means of money/assets.

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EVIDENCES AGAINST ACCUSED ASHISH@ DEVA:-

It is established fact that accused Ashish @ Deva has criminal history since year-2012 and he is involved in 05 cases like Attempt to Kidnapping, Robberies, Extortion, Arms Act etc. which is self explanatory about his criminal record to prove that he committing crime in organized manners. That on perusal of criminal record it is established that accused Ashish @ Deva along with members of his present crime syndicate has committed a total number of 02 cases and 03 cases with other associates. It is established fact that the members of this crime syndicate were found committing organized crime with the objective of gaining pecuniary benefits and other advantages between societies, businessmen, as well as to gain gang supremacy in the locality which is proved by their modus operandi which is evident to indicate that he is taking pecuniary gain or advantage.

That on perusal of criminal record mentioned above, it is also established that the accused Ashish @ Deva is a hard core criminal as well as good executive of plan settled by the gang as mostly incidents of robbery & murder committed on the broad day light when victim/complainant were present in their shops as well as their work place which is evident to indicate that he was taking pecuniary gain or advantage.

That accused is good manipulator & manager which proved by his long criminal history and modus operandi.

From the perusal of case it is also established fact that he and his associates do not hesitate to commit crime in broad day light to achieve their selected aims. That he had demanded Rs. 20 lacs as protection money from one Ram Prashad and a case vide FIR No. 226/2015, dated 18.02.2015, U/s 387 IPC, PS Shalimar Bagh was registered against him and his associates.

That he and his 03 associates were arrested after a brief encounter vide FIR No 217/2016 dated 29.02.2016 u/s 186/353/307/34 IPC & 25/27/54/59 Arms Act, PS Begumpur, District Rohini and recovered a total number of 10 fire arms along with live & empty cartridges from his and his associates possession. It is established fact that he had spent this ill earned money to purchase• arms &

ammunition and to fulfill their daily needs and expenditures of his other associates. That the details of assets in respect of accused Ashish @ Deva and his family members is being obtained from concerned department to know about his illegal means of money/assets.

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Thus, from the investigation conducted so far reveals that accused 1) Deepak Dabas@ Teetar, 2) Surajpal @ Bhagta, 3) Ashish@ Deva, 4) Pradeep Jaglan 5) Ajay Dabas mentioned at Sr. No. 11 of present charge sheet along with their other associates were working as an organized crime syndicate as defined in section 2(1)(f) of MCOC Act 1999 extended to GNCT Delhi. Further, the syndicate was engaged in continuing unlawful activities as defined in section 2 (1) (d) of MCOC Act 1999 as extended to GNCT Delhi. The objective of the MCOC Act, 1999 provides that the existing legal framework i.e. the penal and procedural laws and the adjudatory system, are found to be rather inadequate to curb or control the menace of organized crime. Government has therefore, decided to enact a special law with stringent and deterrent provisions. Gangster Deepak Dabas@ Teetar and his gang members have been arrested time and again but their activities could not be stopped by invoking provisions of IPC. They remained continuously engaged in criminal activities of Murder, Extortion, Satta/gambling and land grabbing. Hence, it is necessary to invoke MCOC Act against them. Section 2 (i) (e) of the Act defines the expression "Organized Crime" to mean any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized 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. All the essentials of the definitions of expression "Organized Crime" as per section 2 (i) (e) are fulfilled by the activities of gangster Deepak Dabas @ Teetar and his associates. Gangster Deepak Dabas@ Teetar and his associates are involved in extortion, Satta, land-grabbing and committing even number of murders to fulfil their objectives. Clause (f) of the section 2 (i) defines "Organized Crime Syndicate" to mean a group of two or more persons who acting either singly, collectively, as a syndicate or gang indulge in activities of Organized crime.

From the above-mentioned facts, it has been conspicuously proved that accused Deepak Dabas@ Teetar has formed an organized crime syndicate and he along-with the members of this crime syndicate are involved in the commission of a series of heinous crimes with the objective of gaining pecuniary benefits or gaining undue economic or other advantages for them or other persons. The scrutiny of the criminal involvements of the accused person Deepak Dabas@ Teetar and the members of his organized crime syndicate stands covered under the definition of continuing unlawful activities, organized crime and organized crime syndicate as defined an~ described under sections 2 (d) (e) and (f) in

MCOC Act-1999, as extended to the GNCT of Delhi. The accused Deepak Dabas@ Teetar along with his associates are continuously indulging in unlawful activities after forming organized crime syndicate and more than one dozen charge-sheets have been filed against accused Deepak Dabas@ Teetar and his associates in the competent courts in Delhi within the preceding period of Eight years, in cases punishable with imprisonment of three years or more and the Hon'ble court has taken cognizance against them in the cases mentioned as above, as defined and described in section 2 (1) (d) of MCOC Act, 1999 (Extended to GNCT of Delhi)."

(emphasis supplied)

20. That the prosecution along with the chargesheet has also placed on record arrest cum Court apprehension memo of the present applicant and the relevant portion of the same for the purpose of the present application is being reproduced as under:

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12. Whether the arrested person, as per observation and known police records:

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(a)Is dangerous (?????? ??): NO

(b)Previously jumped any bail (????? ??? ????? ?????? ?? ?? ????? ??):

NO

(c) Is generally armed (?? ??? ?? ??????? ????? ??): NO

(d) Operates with accomplices(?????????? ????? ??????????? ??):NO

(e)Is known/listed criminal(???? ?????????? ?????? ??): NO

(f) is recidivist (????? ?????? ??) NO

(g)Is likely to jump bail (????? ?? ?????? ?? ??????? ?? ????????? ??) NO

(h)If released on bail, likely to commit crime or threaten victims/witnesses:

????? ?? ????? ????? ?? ??? ?????? ????? ?? ????????? /??????? ?? ?????? ?? ????????? ???

NO

(i)Is wanted in any other case (???? ?????? ?????? ??? ?????? ??): NO

(If Yes against item (b), (e) or (i), give case reference/Sections.)

??? (b), (e) ????? (i) ?? ?????? ??? ?? ?? ?????? ????????? ??????? ?? ??????? ???.

21. As per the material relied upon by the prosecution, the applicant was last associated with co-accused Deepak Dabas @ Teetar in 2016. This Court has gone through the confessional statement of the applicant. In his alleged confessional statement the applicant admits to his previous involvement with co-accused Deepak Dabas @ Teetar but also claims that he was not in contact with the

aforesaid co-accused since 2016. The aforesaid co-accused Deepak @ Teetar in his confessional statement has also stated that he has been in judicial custody since 2016. From reading of the aforesaid, it seems that the present FIR was registered on account of the series of FIRs registered for murder in which the co-accused Deepak Dabas @ Teetar has been made an accused. The said FIRs were of the year 2019 and 2020 and the present applicant is not a co-accused in the said FIRs. This Court is conscious that the necessary ingredient under MCOCA is existence of more than 1 FIR, where 2 chargesheets have been filed in the preceding period of 10 years against the alleged crime syndicate and not against each and every member of the same. However, where a person is able to demonstrate that there is no live nexus between the recent alleged activities of such a crime syndicate and himself for a period preceding the registration of FIR for nearly 5 years, the same cannot be ignored for the purposes of present application seeking bail, which has to be determined in terms of Section 21(4) of the MOCOCA which provides as under:

"Modified application of certain provisions of the Code-

(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."

22. Hon'ble Supreme Court in Ranjitsing Brahmajeetsing Sharma (supra) observed and held as under:

"38. We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Penal Code, 1860 may debar the court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having

culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.

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

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

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46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while

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

23. In the aforesaid judgment, the Hon'ble Supreme Court has held that the Court while considering the application of bail for the purpose of Section 21(4) of the MCOCA need not arrive at a positive finding that the applicant has not committed the offence under the act. The evidence relied upon by the prosecution against the present applicant is his involvement in the 2 FIRs alongwith the accused Deepak Dabas @ Teetar and the last involvement had been in 2016. The prosecution has to establish the charge during the course of the trial beyond reasonable doubt. As already pointed hereinabove, the evidence against the present applicant are also the confessional statements of the co-accused Deepak Dabas @ Teetar and himself. The alleged confessional statements of the present applicant is exculpatory to the extent that he clearly denies any involvement with the co-accused Deepak Dabas @ Teetar since year 2016. Even in the alleged confessional statement of the aforesaid Deepak Dabas @ Teetar, it is recorded that in 2019 he joined one 'Jitender Gogi gang' and was working on behalf of the same. It is also a matter of record that in the confessional statements of the other co-accused persons namely Pradeep, Surajpal @ Bhakta, Ajay Dabas, Pankaj @ Maharaj, Raj Kumar, name of the present applicant does not find any mention. It is also pertinent to note that the present applicant was released on bail in 2018 and was arrested in this case on 08.10.2021. No material by way of any ocular or other evidence to show that the applicant was in any manner in contact with the main accused Deepak Dabas @ Teetar who was admittedly in judicial custody since 2016. Apart from the applicant's involvement in the two FIRs mentioned in the chargesheet, i.e., FIR No. 110/2012 under Sections 365/392/34 of the IPC, registered at P.S. South Rohini and FIR no. 217/2016 under Sections 186/353/307/34 of the IPC and 25/27/54/59 of the Arms Act, registered at PS Beahumpur; there is no other evidence of any public witness or otherwise to show that the appellant was involved in the illegal activities of the alleged crime syndicate headed by the co-accused Deepak Dabas @ Teetar post 2016.

24. The apprehension memo placed on record by the prosecution further demonstrates that the applicant is neither shown to be dangerous nor he is generally armed or operates with his accomplices. It is also stated that he has not jumped bail and is also not likely to jump the conditions and if released on bail. Similarly, it is recorded that he is not likely to commit or threaten victims/witnesses. The applicant had himself voluntarily appeared before the

Investigating Officer on coming to know that there is a FIR registered against him.

25. The judgments relied upon by the learned APP are distinguishable from the present case in facts. In Dheerajpal alias Kana (supra), a Coordinate Bench of this Court observed that the applicant therein had jumped the interim bail granted to him and was apprehended with an illegal pistol and live cartridges for which a separate FIR was registered against the said applicant. It is further noted therein that a public witness examined during the trial in the aforesaid case had turned hostile and had refused to identify the applicant therein. In the said case, it is also noted that the applicant's house was searched and a recovery of Rs. 70 lakhs in cash was found alongwith multiple SUVs and other cars, which showed that the wealth of the said applicant was inconsistent with his normal source of income.

26. In Kavitha Lankesh (supra), the issue before the Hon'ble Supreme Court was the validity of the approval granted for prosecution, which is not the issue here.

27. In State of Maharashtra vs. Jagan (Supra), Hon'ble full Bench of the Bombay High Court was dealing with interpretation of the term "other advantage" under Section 2(1)(e) of MCOCA and in Abshishek (supra), the issue was again with respect to challenging the sanction order passed by the Competent Authority.

28. In view of the aforesaid discussion, this Court is of the considered opinion that the applicant has satisfied the requirement of Section 21 (4) of MCOCA. The chargesheet in the present case stands filed and the prosecution has cited 58 witnesses out of which 2 have been examined so far and the charges were framed on 16.01.2024. The applicant has been in custody since 07.10.2021.

29. In totality of facts and circumstances of the case, the applicant is granted bail on furnishing personal bond of Rs. 50,000/- with two sureties of the like amount to the satisfaction of the learned Trial Court/Link Court on the following conditions:

- i. The memo of parties shows that the applicant is residing at H.No. 152, VPO, Nangal Thakran, Bawana, Delhi. In case of any change of address, the applicant is directed to inform the same to the learned Trial Court and the Investigating Officer.
- ii. The applicant shall not leave India without the prior permission of the learned Trial Court.
- iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner.
- v. The applicant shall join the investigation, as and when required by the Investigating Officer.

vi. In case it is established that the applicant tried to tamper with the evidence, the prosecution will at liberty to apply for cancellation of bail.

vii. The applicant shall report at the concerned Police Station twice in a month, i.e., on every 2nd and 4th Monday of the concerned month at 4:00 PM and the concerned officer is directed to release him by 5:00 PM after recording his presence and completion of all the necessary formalities.

30. The application stands disposed of alongwith all the pending application(s), if any.

31. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and observations made are only for the purpose of the present bail application.

32. Let a copy of this judgment be communicated to the concerned Jail Superintendent.

33. Judgment be uploaded on the website of this Court, forthwith.