

(2026) 02 DEL CK 1737

In the Delhi High Court

Case No : Criminal Appeal No.1725 Of 2025

Deepa Singh

APPELLANT

Vs

State (Nct Of Delhi)

RESPONDENT

Date of Decision : 17-02-2026

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 8(2), 8(3), 8(5), 8(10), 187
Code of Criminal Procedure, 1973 — Section 4, 4(2), 9(2), 9(3), 10, 10(3), 156(3), 167(2)
Bharatiya Nyaya Sanhita, 2023 — Section 113, 238
Drugs and Cosmetics Act, 1940 — Section 18(c)
Maharashtra Control of Organised Crime Act, 1999 — Section 3, 4, 5, 5(1), 5(3), 5(4), 5(5), 6, 9(1), 12, 21(2), 21(2)(b), 23, 23(i)(a), 23(1)(b), 23(2), 25
Prevention of Corruption Act, 1947 — Section 5
Unlawful Activities (Prevention) Act, 1967 — Section 43D(2)(b)
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 9(4)
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 14
Prevention of Terrorism Act, 2002 — Section 23(4)
Industrial Disputes Act, 1947 — Section 7, 7A
Land Acquisition Act, 1984 — Section 3(3)
Narcotics Drugs and psychotropic Substances Act, 1985 — Section 36(2)
Prevention of Corruption Act, 1988 — Section 3(1)

Citation : (2026) 02 DEL CK 1737

Hon'ble Judges : Chandrasekharan Sudha, J

Bench : Single Bench

Advocate : Kundan Kumar, Pranshu Kumar, Jaya Chandra, Divya Kundra, Madan Jha, Mahima Chaudhary, Prerna Jain, Aman Usman

Final Decision : Dismissed

Judgement

Chandrasekharan Sudha, J

1. These appeals under Section 12 of the Maharashtra Control of Organised Crime Act, 1999, (the MCOCA) have been filed by the accused persons in Crime No. 186/2025, Sultanpuri, Police Station aggrieved by the order dated

18.12.2025 as per which the trial court dismissed their applications for default bail. The appellants/accused persons as per the aforesaid FIR are alleged to have committed the offences punishable under various Sections of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act), Section 113 and 238 of Bharatiya Nyaya Sanhita, 2023; Section 18(c) of the Drugs and Cosmetics Act, 1940 and Sections 3 and 4 of the MCOCA.

2. According to the learned counsel for the appellants/accused persons, the impugned order has been passed by the Link Judge in the absence of the Special Judge and hence invalid. Referring to Sections 5 and 6 of the MCOCA, it was argued that it is only the Special Court constituted under the MCOCA that has the power to pass orders relating to offences under the MCOCA, and hence the impugned order cannot be sustained. It was submitted that an Additional Sessions Judge, who has not been appointed in accordance with Section 5(3) of the MCOCA, has no jurisdiction to deal with MCOCA cases. Reliance is placed on the dictum in *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602, to submit that jurisdiction is purely a matter of legislative mandate, and neither the High Court nor the Supreme Court can confer jurisdiction on a particular court without following the due procedure of law in accordance with the statute. A judge can exercise powers under MCOCA only if appointed through the procedure prescribed under the statute, and in the absence of a notification constituting a Special Court under Section 5 of the MCOCA, no court can assume such jurisdiction. Reliance was also placed on the dictum in *Jamiruddin Ansari v. Central Bureau of Investigation &Anr.* AIR 2009 SC 2781 to state that MCOCA has an overriding effect over the CrPC. It was also submitted that under Section 21(2) (b) of MCOCA, only the Special Court has the power to extend custody, and neither the Link Additional Sessions Judge nor any other court can exercise that power. He further submitted that any application relating to the extension of the investigation or custody must be postponed till the Special Court is constituted. Lastly, he submitted that the only remedy left in the absence of a Special Court would be to approach the High Court seeking directions to the State to appoint a Special Judge, as no judge other than a duly appointed Special Judge can assume jurisdiction under MCOCA, and continuation of custody otherwise would be wholly without authority of law. Reference was also made to *Abdul Rashid Sikandersab Kulkarni & Ors. vs. The State of Maharashtra & Anr.* (Criminal Writ Petition No. 1306/2006) dated 06.07.2006, *Yogesh Mittal vs. State of NCT of Delhi* 246 (2018) DLT 582 (DB), *Khalid Ahmad & four others vs. The State of M.P.* (M.Cr.C. No. 1395/2016) dated 11.09.2017.

3. Per contra, it was submitted by the learned Special Public Prosecutor that as per Annexure E dated 27.10.2025 Link Roster, the Link Judge was fully empowered to pass orders in the absence of the Special Judge, and hence, there is no infirmity in the impugned order. It was submitted that, admittedly, the Link Judge is a member of the Delhi Higher Judicial Services and hence qualified as per the requirement in Section 5(3) of the MCOCA. He further submitted that it is not the Presiding Officer but the Court, which is designated with the powers of

the Special Court. Reference was made to notification no. F.6(33)/2009-Judl. dated 15.09.2010. The learned SPP also submitted that this Court had given directions in *Rambeer Shokeen v. State (NCT of Delhi)*, 2017 SCC OnLine Del 8504, that in the event of the presiding officer of Special Court being not available either on account of leave of absence or due to other official engagements, it is necessary that arrangements for link courts, similar to the courts of the Metropolitan Magistrates, as per long-standing practice, is put in position. For the sake of argument, even if the period of 14 days extended by the Link Judge vide order dated 10.12.2025 is treated as unauthorised by law, it was contended that subsequent extension of the period of investigation by the Special Judge on 18.12.2025 retrospectively validated the former. Lastly, he also contended that though this issue did not arise before the Apex Court while considering the appeal arising out of *Rambeer Shokeen (Supra)*, the doctrine of merger is applicable. In support of the arguments, reference was made to the dictums in *Sukhbir Singh v. State NCT of Delhi Through SHO*, 2025 DHC 6658 and *Rambeer Shokeen v. State (NCT of Delhi)*, (2018) 4 SCC 405.

4. Heard both sides.

5. The short point that arises for consideration in this appeal is whether the Link Judge who passed the impugned order was empowered to pass the said order extending the period of investigation beyond the period of 90 days by virtue of the proviso to Clause (b) to Sub Section (2) to Section 21 of MCOCA.

6. Admittedly the appellants were in judicial custody pursuant to their arrest on 12.09.2025, which remand was being extended from time to time. The period of 90 days was to expire on 11.12.2025. On 10.12.2025 a request was submitted on behalf of the prosecution for extending the period of investigation by a further period of 90 days from 10.12.2025. However, on the said day, the judge of the Special Court was on leave. Hence, the request was taken up by the Link Judge by virtue of Annexure E Link Roster. By order dated 10.12.2025, the Link Judge allowed the request and enlarged the period of investigation by 14 days. Thereafter, the appellants/accused persons, moved an application for default bail under Section 167(2) Cr.P.C./187(2) of the *Bharatiya Nagarik Suraksha Sanhita, 2023* (the BNSS) read with Section 21(2)(B) MCOCA. In the application it was alleged that since no charge-sheet/final report had been filed within 90 days, the appellants are entitled to be released on default bail. It was also alleged that though the prosecution had got an extension of the period of investigation by a period of 14 days by the order dated 10.12.2025, the said order is of no avail as the same had not been passed by the designated Special Court. On the other hand, it was passed by an Additional Sessions Judge who had not been appointed as a Judge of the Special Court. The procedure adopted by the prosecution agency in filing a report under Section 21(2)MCOCA for extension of period of investigation before the Link Court/Judge and the order that was passed subsequently by the Link Judge as the Judge of the Special Court was on leave, is an internal arrangement of judiciary, which shall in no way affect the right of

default bail accrued to the appellants. Therefore, it was alleged that detention of the appellants beyond 11.12.2025 was without jurisdiction and illegal.

7. The learned Special Judge relying on the dictum in *Rambeer Shokeen* (Supra) dismissed the application for default bail holding that the Link Judge was empowered to pass the order dated 10.12.2025 extending the period of investigation. This according to the learned counsel for the appellant is incorrect. Here it would be apposite to refer to paragraph 79 of the judgment of the learned Single Judge of this Court in *Rambeer Shokeen* (Supra) relied on by the trial court, which reads-

"79. Before parting, some further observations are in order: (i) The case at hand has brought out error in the notification dated 15.09.2010 issued by order and in the name of Lt. Governor of National Capital Territory of Delhi vis-à-vis conferment of powers of the presiding officers of special court under MCOCA on officers of Delhi Higher Judicial Service. Corrective action needs to be initiated.

(ii) These proceedings have brought to the fore the confusion that might prevail not only in the cases involving offences under the MCOCA but also under other special enactments covered by the afore-said notification dated 15.09.2010, in the event of the presiding officers of special courts being not available either on account of leave of absence or due to other official engagements. There should never be a vacuum. Since such special courts as under MCOCA (or under other enactments like TADA, POTA etc.) are generally also designated as the courts of cognizance, it is necessary that arrangement for link courts, similar to the courts of the Metropolitan Magistrates, as per long standing practice, is put in position.

(iii) The impropriety reflected in the inept handling on the part of the judicial officers who dealt with the matter at hand, as noticed above, points to the need for proper sensitization of the judicial officers at large in the intricacies and nuances of such special enactments through training or orientation programmes organized by the judicial academy."

(Emphasis Supplied)

8. According to the learned counsel for the appellant/accused persons, the learned Single Judge in *Rambeer Shokeen* (Supra) went wrong in passing directions as contained in clause (ii) of paragraph 79 of the judgement as the Court had no power to confer jurisdiction on any Court without following the due procedure of law in accordance with the statute. Conferring jurisdiction is purely a matter of legislative mandate. The direction issued is against the specific provision contained in MCOCA and hence illegal and invalid. In support of the argument reference was made to the following judgments :-

8.1. In *Jamiruddin Ansari* (Supra), it was held that Section 25 MCOCA has an overriding effect over the provisions of the Code of Criminal Procedure, 1973 (Cr.P.C). A Special Judge under the MCOCA cannot invoke the provisions of Section 156(3) Cr.P.C. for ordering a special enquiry on a private complaint and

take cognizance thereupon, without traversing the route indicated in Section 23 of the MCOCA. In order to give a harmonious construction to the provisions of Section 9(1) and Section 23 of MCOCA, on receipt of a private complaint, the judge of the Special Court has to forward the same to the officer indicated in Section 23(i)(a) to have an enquiry conducted into the complaint by a police officer indicated in Section 23(1) clause (b) and only thereafter cognizance of the offence complained of can be taken provided, sanction is accorded to the Special Court to take cognizance of such offence under Sub-section (2) of Section 23.

8.2. In the judgment dated 06.07.2006 in Criminal Writ Petition No. 1320 of 2006 of the High Court of Bombay the legality and validity of a remand order passed by an Additional Sessions Judge while the Judge of the Special Court, MCOCA was on leave was considered. It was held that on a plain reading of Section 5 of MCOCA, it is clear that the intention of the legislature is to set up a Special Court by notification under Section 5(1) to be presided over by a judge who is to be appointed by the State Government in consultation with the Chief Justice of the Court under Section 5(3). Section 5(3) also contemplates the appointment of additional judges. It is also obvious that the appointment of a Special Judge can be made only from the category of Sessions Judge or Additional Sessions Judge, vide Section 5(4). After referring to the aforesaid provisions of MCOCA, it was held that there is no provision in the Statute which confers any power on the judge of the Special Court to further confer the power to act as a Special Judge on any Sessions judge. A judge or an additional judge of the Special Court under the MCOCA can only be appointed by the State Government in consultation with the Chief Justice under Section 5(3). Subsection (5) of Section 5 allows the distribution of business of the Special Court between the judge of the Special Court and the additional judges. This is the provision for distribution of urgent business in the absence of the judge of the Special Court. There is, however, nothing in that provision which suggests that the distribution of business may be amongst judges who have not been appointed as judges of the Special Court under Section 5(3). In other words, the powers of the Special Court may not be conferred on any judge unless he has been appointed as a Special or Additional Special Judge in accordance with Section 5(3) by the State Government in consultation with the Chief Justice. Any construction to the contrary would run counter to the scheme of the setting up and conferral of the jurisdiction of the Special Court under the provisions of the MCOCA. It was thus held that the judge who passed the remand order had no power to pass such an order as the said order could only have been passed by the judge of the Special Court who alone was empowered to exercise jurisdiction in the matters by virtue of Section 6 of the MCOCA.

8.3. In *A.R. Antulay (Supra)*, a Constitution Bench of the Apex Court set aside its earlier order by which the case against the appellant therein, the then Chief Minister of the State, was transferred from a Special Court under the Prevention of Corruption Act, 1947 (the PC Act) to the High Court. The appellant therein was alleged to have committed offences punishable under various Sections of the IPC

as well as Section 5 of PC Act. For a speedy disposal of the case, the Apex Court transferred the case against the appellant to the High Court. The Constitution Bench held that the Supreme Court by its directions could not have conferred jurisdiction on the High Court to try the case when it did not possess the jurisdiction under the scheme of the PC Act. The direction to transfer the case to the High Court was held to be without jurisdiction as the High Court had no jurisdiction to try an offence under the PC Act.

8.4. In *Yogesh Mittal (Supra)*, a Division Bench of this Court held that the failure by the investigating agency to file a supplementary charge sheet before the Court having jurisdiction, that is, the Court of the Special Judge, PMLA, before the expiry of 90 days would entitle the accused to the relief of statutory/default bail under Section 167(2) Cr.P.C.

8.5. Finally in *Sadique & Ors. (Supra)* it was held after examining the various provisions of the Unlawful Activities (Prevention) Act, 1967 (the UAPA), that so far as the offences under the Act are concerned, a magistrate has no power to extend the period of investigation under the first proviso to Section 43D(2)(b) of the UAPA. Consequently, any extension of time to complete investigation passed by the magistrate would be invalid and the only competent authority to consider such request would be "the Court" as specified in the proviso to Section 43D(2) (b) of the UAPA.

9. It would be apposite to refer to Section 4 Cr.P.C./Section 4 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* (the BNSS) which reads thus:-

4. Trial of offences under the Indian Penal Code and other laws.—(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences."

(Emphasis supplied)

10. Therefore, as per Sub-section (2) to Section 4, when there is a procedure prescribed under a special Act/Enactment/Legislation, it would be the procedure contained therein that would require to be followed.

11. Sections 5 and 6 of MCOCA reads:-

"5. Special Courts. (1) The State Government may, by notification in the Official Gazette, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

(2) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the State Government whose decision shall be final.

(3) A Special Court shall be presided over by a Judge to be appointed by the State Government, with the concurrence of the Chief Justice of the Bombay High Court. The State Government may also appoint, with the concurrence of the Chief Justice of the Bombay High Court, additional Judges to exercise jurisdiction in a Special Court.

(4) A person shall not be qualified for appointment as a Judge or an additional Judge of a Special Court, unless he immediately before such appointment, is a sessions Judge or an additional sessions Judge.

(5) Where any additional Judge is or additional Judges are appointed in a Special Court, the Judge of the Special Court may, from time to time, by general or special order in writing, provide for the distribution of the business of the Special Court among himself and the additional Judge or additional Judges and also for the disposal of urgent business in the event of his absence or the absence of any additional Judges.

6. Jurisdiction of Special Court. Notwithstanding anything contained in the Code, every offence punishable under this Act shall be triable only by the Special Court within whose local jurisdiction it was committed, or as the case may be, by the Special Court constituted for trying such offence under sub-section (1) of section 5."

(Emphasis Supplied)

12. This Court is informed that there are 11 Sessions divisions in Delhi and that in each division, only one court has been designated as the Special Court. Therefore, it would be the said Special Court who is empowered to deal with offences under the MCOCA. Sub-section (5) to Section 5 of MCOCA comes into operation, where more than one judge is appointed to the Special Court or when additional Judges are appointed to the Special Court. In such circumstance, the judge of the Special Court may from time to time by general or special order in writing, provide for the distribution of the business of the Special Court among himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judges. When there is only one judge appointed to the Special Court in each of the sessions division, Sub-section (5) of Section 5 of MCOCA cannot come into play and the judge appointed to the Special Court cannot distribute the business of his Court in his absence to any other member of the Delhi Higher Judicial Service or the Sessions judge or additional Sessions judge appointed under Section 9(2) or (3) Cr.P.C/ Section 8(2) or (3) BNSS.

13. When there is only one judge appointed to the Special Court established in a Sessions division, what would be the course open in case the said judge is unavailable or goes on leave? The learned prosecutor relied on the notification dated 15.09.2010 as answer to the aforesaid question and submitted that all officers of the Delhi Higher Judicial Service have been empowered to exercise the powers of a Special Court under the MCOCA. The notification relied on reads

thus:-

“(TO BE PUBLISHED IN DELHI GAZETTEE PART –IV EXTRA ORDINARY)

GOVERNMENT OF NATIONAL CAPITAL

TERRITORY OF DELHI

DEPARTMENT OF NATIONAL CAPITAL

TERRITORY OF DELHI

DEPARTMENT OF LAW, JUSTICE AND

LEGISLATIVE AFFAIRS 8th LEVEL, C-WING, DELHI

SECRETARIAT, I.P.

ESTATE, NEW DELHI -110002

NO. f.6(33)2009-JUDL./1125-1131 DATED

TO THE 15th September, 2010

NOTIFICATION

NO.F.6(33)/2009-Judl./ In exercise of powers conferred by sub-section (4) of section 9 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (Act 28 of 1987), sub-section (4) of section 23 of the Prevention of Terrorism Act, 2002(Act 15 of 2002),Section 3 of the Maharashtra Control of Organized Crimes Act, 1999 as extended to the National Capital Territory of Delhi, section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 33 of 1989), section 5-B of the Suppression of Unlawful Act against safety of Civil Aviation Act, 1982 (Act 66 of 1982), section 6-A of the Anti-Hijacking Act, 1982 (Act 65 of 1982), sub-section(2) of section 36 of the Narcotics Drugs and psychotropic Substances Act, 1985 (Act 61 of 1985), sub-section (2) of section 153 of the Electricity Act, 2003 (Act 36 of 2003), sub-section (1) of section 3 of Prevention of Corruption Act, 1988, section 7 & 7A of Industrial Disputes Act, 1947 and section 3(3) of the Land Acquisition Act, 1984 and in consultation with the Chief Justice of the High Court of Delhi, the Lt. Governor of the National Capital Territory of Delhi, hereby confers the powers of Presiding Officer of the Designated court and Special Court constituted under the aforesaid acts on each of the officers of the Delhi Higher Judicial Service, to be exercisable by each of them with effect from the date of assumption of the charge of the post of Presiding Officer or Judge of the Designated Court or Special Court, as the case may be, in pursuance of the transfer or posting orders made by the Chief Justice of the Delhi High Court.

By order and in the Name of the

Lt. Governor of National

Capital Territory of Delhi

(Savita Rao)

Special Secretary (Law, Justice & L.A.)”

(Emphasis Supplied)

14. As rightly pointed out by the learned counsel for the appellants/accused persons, officer(s) of the Delhi Higher Judicial Service has been conferred with the powers of a Special Court only with effect from the date that he/they assume charge of the said court in pursuance of their transfer or posting orders. Therefore, the argument that all the officers of the Delhi Higher Judicial Service have been empowered or conferred with the power to deal with offences under the MCOCA by way of the aforesaid notification is apparently incorrect.

15. Let us assume for a moment that no Special Court has been constituted in a particular district or sessions division. Till a Special Court is established and a judge appointed to the Special Court, who is the authority or Court which can deal with offences under the Act? The answer lies in Section 5 itself.

16. Sub-section (4) says that a person shall not be qualified for appointment as a judge or additional judge of a Special Court unless he immediately before appointment was a sessions judge or an additional sessions judge. This makes it clear that a sessions judge or an additional sessions judge would be qualified to be appointed as a judge of the Special Court under Section 5(3) of the MCOCA. Here it would be apposite to refer to Section 10 Cr.P.C. which reads thus:-

“10. Subordination of Assistant Sessions Judges.—

(1) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction.

(2) The Sessions Judge may, from time to time, make rules consistent with this Code, as to the distribution of business among such Assistant Sessions Judges.

(3) The Sessions Judge may also make provision for the disposal of any urgent application, in the event of his absence or inability to act, by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by the Chief Judicial Magistrate, and every such Judge or Magistrate shall be deemed to have jurisdiction to deal with any such application.”

(Emphasis supplied.)

17. After the omission of post of Assistant Sessions judge from the Bharatiya Nagarik Suraksha Sanhita, 2023, the essence of the aforesaid Section was preserved in Section 8(5) and (8), which reads thus:

“8. Court of Session:

(1) The State Government shall establish a Court of Session for every sessions

division.

(2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.

(3) The High Court may also appoint Additional Sessions Judges to exercise jurisdiction in a Court of Session.

(4) The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case, he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.

(5) Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or may be, made or pending before such Court of Session by an Additional Sessions Judge or if there be no Additional Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application.

(6) The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.

(7) The Sessions Judge may, from time to time, make orders consistent with this Sanhita, as to the distribution of business among such Additional Sessions Judges.

(8) The Sessions Judge may also make provision for the disposal of any urgent application, in the event of his absence or inability to act, by an Additional Sessions Judge or if there be no Additional Sessions Judge, by the Chief Judicial Magistrate, and such Judge or Magistrate shall be deemed to have jurisdiction to deal with any such application.

Explanation.—For the purposes of this Sanhita, "appointment" does not include the first appointment, posting or promotion of a person by the Government to any Service, or post in connection with the affairs of the Union or of a State, where under any law, such appointment, posting or promotion is required to be made by the Government."

(Emphasis supplied.)

18. A reading of Sub-section (3) to Section 10 makes it clear that a sessions judge, appointed under sub-section (2) to Section 9 Cr.P.C./Section 8(2) BNSS, has the power to make arrangements or provisions for the disposal of any urgent application in the event of his absence or inability to act, by an additional or

assistant sessions judge, or, if there is no additional assistant sessions judge, by the chief judicial magistrate, and every such judge or magistrate shall be deemed to have jurisdiction to deal with any such application. Therefore, a Sessions Judge of a particular sessions division has the power to distribute the work under sub-section (3) to Section 10 to the officers mentioned therein. As noticed earlier, sub-section (5) of Section 5 of the MCOCA cannot come into play in the case on hand because admittedly there is only one judge appointed to the Special Court constituted in the sessions division concerned. Sub-section (5) comes into play only when additional judge(s) is/are appointed to a Special Court. In the absence of additional judges, the judge appointed under sub-section (3) cannot make over or make provision for the disposal of any urgent application in the event of his absence or inability to act. But a Sessions judge appointed under Section 9(2) Cr.P.C by virtue of sub-section (3) to Section 10 Cr.P.C. certainly has the power to do so.

19. It is true that sub-section (2) to Section 4 Cr.P.C says that if there is an enactment, it will be the provisions of the said enactment which would come into play. It is no doubt true that sub-section (3) to Section 5 of the MCOCA empowers the authority concerned to appoint additional judges. But as long as additional judges have not been appointed to the Special Court, sub-section (5) of Section 5 MCOCA cannot come into play. In such situations, there cannot be a vacuum or a situation that no judge will be able to exercise the powers. The Sessions judge appointed under Section 9(2) Cr.P.C will have the power to make necessary arrangements for distribution of work as long as additional judges are not appointed under Sub-Section (3). Once additional judges are appointed under Sub-Section (3) to Section 5, then the Sessions judge can no longer exercise the power under Section 10(3) for distributing work of a Special Court because then by virtue of Section 4(2) Cr.P.C. it would only be judge of the Special Court under Section 5 (5) who can make arrangements for distribution of work.

20. Now even assuming for argument sake that the allegation of the appellants that the order passed by the Link Judge was without authority, the question that arises is whether the appellants can be said to have been illegally detained in unlawful custody and therefore entitled to be released on bail? The answer can only be in the negative because as held in Abdul Rashid (Supra), relied on by the appellants themselves, the de facto doctrine, which is a doctrine of necessity and public policy would come into play. (See paragraphs 13 to 17 of the judgment).

21. Hence, I find no infirmity in the impugned order calling for interference by this Court.

22. Before I conclude, a word regarding the notification relied on by the prosecutor. I have already given reasons as to why the notification does not solve the situation as the one that arose in the case on hand. This fact was noticed by the learned Single Judge in Rambeer Shokeen (Supra) which judgment was rendered on 22.05.2017. Nearly nine years have elapsed. It is a matter of great

concern that no steps have been taken till date to rectify the defect pointed out in paragraph 79(i) of the aforesaid judgment.

23. Further, it would certainly be ideal if additional Judge(s) are appointed to the Special Court or a few officers, if not, all the members of the Delhi Higher Judicial Service, are empowered to deal with offences under the MCOCA. When there is only one judge appointed to the Special Court, difficulties in work arrangement would certainly arise when the said judge goes on leave or otherwise. The Legislature has foreseen this situation and has provided for appointment of additional judges under Section 5(3) of MCOCA. This would no doubt be a decision that will have to be taken by the State Government in consultation with the Hon'ble the Chief Justice of this Court. It would do well for the High Court on the administrative side to consider the feasibility of appointing additional judge(s) to the Special Court already constituted or conferring the power to deal with offences under MCOCA to more members of the Delhi Higher Judicial Service. This order may be placed before the Hon'ble the Chief Justice of this Court for considering the matter.

24. In the result, the appeals sans merit are dismissed.

25. Application(s), if any, pending, shall stand closed.

26. The Registry is directed to place a copy of this order in the connected matter.