

(2011) 11 DEL CK 0179
In the Delhi High Court
Case No : Criminal M.C. No. 2138 of 2010

State	Vs	APPELLANT
Satya Parkash		RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Arms Act, 1959 — Section 25, 27
Constitution of India, 1950 — Article 20, 20(1), 20(2)
Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 300
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21
Penal Code, 1860 (IPC) — Section 186, 307, 323, 34, 353

Citation : (2011) 9 AD 577

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Rajdipa Behura, APP for State, for the Appellant; Hari Har Guin and Mr. Ashutosh Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—The State has filed the instant petition, while challenging the order dated 15.05.2010 passed by learned Additional Sessions Judge whereby the respondent has been admitted to regular bail.

2. The brief facts of the case are that on 10.01.2009, a case u/s 3(2)(4) of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred as to "MCOC Act") was registered at the police station Nand Ngari, Delhi vide FIR No. 9/2009, against respondent after obtaining sanction from the Joint Commissioner of Police vide its order dated 09.01.2009, pursuant to the proposal sent by Inspector Satish Kumar, SHO police station Nand Nagari dated 05.12.2008. In the said proposal, six FIRs were referred to, starting from the year 2007 to 2008 against the respondent for obtaining the approval from the Joint Commissioner of police. The particulars of the six FIRs are as follows:-

a) u/S 25 of Arms Act registered at PS Nand Nagari vide FIR No. 144/2007.

b) u/S 307/506/34 IPC r/w Section 25 of Arms Act at registered at PS Nand Nagari, vide FIR No. 686/2007.

c) u/S 25 of Arms Act registered at PS Seema Puri vide FIR No. 507/2007.

Another three cases are registered at police station Sahibabad District Ghaziabad, UP as under:-

d) u/S 395/397/412/34 IPC registered at PS Sahibabad vide FIR No. 20/1998.

e) u/S 307/34 IPC registered at PS Sahibabad vide FIR No. 129/2006.

f) u/S 25 Arms Act read with Section 21 NDPS Act.

3. The case of the prosecution is that the respondent started his criminal activity in the year 1998 and in the earlier period of his criminal life, several cases of snatching and robbery were registered against him. Respondent also formed his own gang with Dinesh Giri and Khurvesh as its members and stated indulging in serious cases like robbery, attempt to murder, Arms Act and NDPS Act. Due to some differences arose among the gang members, he continued his criminal activities with new members of his gang namely Meete, Parvez, Bal Kishan, Raj Kumar and other young ruffians of the area and started operating the gang in an organized way.

4. Further alleged that the respondent was convicted in a case u/s 392/397/34 IPC registered at police station Dilshad Garden, Delhi vide FIR No. 14/2003. In addition to that on 10.08.2007, respondent alongwith his associates opened gun fire on one Afsar Ali. On 05.01.2008, he robbed one jewellery shop at Shyam Park Extension, Sahibabad, District Ghaziabad, UP alongwith his seven associates. Further alleged that on 04.02.2008, respondent alongwith his associates opened fire at Mohan Shiva Petrol Pump, Defence Colony, Sahibabad, District Ghaziabad, UP thereby causing serious injuries to the salesman of the petrol pump. On 30.04.2008, respondent alongwith three other associates were apprehended by the UP police of police station Sahibabad, District Ghaziabad, UP and one country made pistol, two live cartridges, 100 Grams heroine and looted property were recovered from his possession and his associates.

5. Keeping in view the aforesaid cases and other cases mentioned in the charge-sheet it has become apparent that respondent is continuing with the criminal activities and accumulating wealth and has created a terror in the society.

6. It is further alleged that in furtherance of his activities, the respondent alongwith his associates committed heinous crimes in the area of UP with intention to gain pecuniary benefits and on these allegations the aforesaid FIRs under the provisions of MCOC Act was registered.

7. During investigation his father Shri Raja Ram was examined. PW Shri Pawan Kumar s/o Shri Bijender Kumar also examined; wherein it was revealed that the father of the respondent had purchased a TATA Indica car bearing registration No. DL-1Y-A-9787 from Pawan Kumar on 15.11.2007 after making payment of

Rs. 2.00 lacs and remaining amount was agreed to payable in 24 monthly instalment of Rs. 8,150/- i.e. in lieu of remaining instalments to be paid by Shri Pawan Kumar and has also verified from the officials of M/s.TATA Motors Finance Limited. It was further revealed that an amount of Rs. 3.95 lacs were paid by Shri Raja Ram, father of the respondent. Letter dated 19.11.2009 duly signed and verified by M/s.Tata Motors Finance Limited proves the same.

8. Shri Raja Ram, father of the respondent during investigation revealed that he had sold the aforesaid vehicle to Laxmi Narain s/o Shri Balbir Singh, House No. 604, Mandoli Extension, Delhi on 25.05.2009 for Rs. 1.75 lacs. Out of which, Rs. 1.00 lacs was paid to Pawan Kumar, earlier owner of the vehicle which was adjusted against the amount of Rs. 3.75 lacs. In view of the aforesaid facts it has been brought on the record that the amount of Rs. 2.95 lacs were arranged and paid by Shri Raja Ram, father of respondent to Pawan Kumar, during the period from November 2007 to April 2009, for which no satisfactory explanation was given by the respondent or his father.

9. Further, it was revealed that the father of the respondent is a leprosy patient & has been getting Rs. 1,000/- per month stipend from the Government. He has been allotted a dwelling unit No. 220, by "Hope Foundation" in the year 1995 at Jai Hind Kushth Ashram, Tahirpur, Nand Nagri, Delhi. The area of said dwelling unit was approximately 25 square yards, which had been extended by constructing additional rooms and now it has been extended upto the area that five rooms have been existence at the ground floor and five rooms at the first floor. Out of these rooms, some rooms have been let out to the tenants, due to which, father of the respondent is earning Rs. 5,000/- per month as rent. It is also revealed that costs of construction of these rooms had been partially met out by respondent from time to time. It is also revealed that respondent/ father of respondent has been running a small grocery shop at the said address.

10. Keeping in view the aforesaid facts, it has allegedly been presumed by the investigating authority that respondent was being financed by some unknown sources. During further investigation it was revealed that the father of the respondent had been allotted permanent account number PAN ANZPR7620K, but no return has been processed against this PAN number.

11. Respondent was arrested on 27.05.2009 and his confessional statement was recorded on 29.05.2007 by Sh. Surender Singh Yadav, DCP/NE District, as provided u/s 18(4) MCOC Act.

12. During investigation, I.O. has collected the certified copy of the charge-sheets filed by police and the cognizance taken by the Courts and the judgments, wherein respondent alongwith his associates were involved. In the said challan u/s 173 Cr.P.C. IO referred the involvement of the respondent in 12 cases from the year 2001 to 2009.

13. In the confessional statement, respondent disclosed about the purchase of five countrymade pistols which were seized by Inspector Yogesh Malhotra of

police station Hauz Khas in FIR No. 24/2009 u/s 307/186/323/353/34 IPC and Section 25/27 Arms Act. The house of the respondent owned by his father Raja Ram bearing No. 220, "Jai Hind Kushth Ashram", Tahir Pur, Nand Nagri, Delhi was also got inspected and evaluated through the authorised valuer of the immovable property. Sh.O. P. Bhatia, Authorised Valuer of the immovable property furnished his report dated 30.10.2009, whereby the actual costs of the property owned by father of respondent is worth Rs. 4,14,000/-. It is further alleged that despite efforts, no account was found maintained except a joint account bearing No. 10028223240 in the name of the parents of the respondent in State Bank of India, Seema Puri Branch, Delhi wherein the Branch Manager vide its letter dated 13.11.2009 has informed that as on 20.02.2009 the balance was to the tune of Rs. 1,06,988/-.

14. On the other hand, learned counsel for the respondent argued that there was no material before the sanctioning authority for invoking the provisions of MCOC Act against the respondent. After registration of the FIR, there was no application of mind by the sanctioning authority to grant the permission to file the charge-sheet. Out of the six cases, three cases are u/s 25 Arms Act registered at different police stations in Delhi and three cases are registered in police stations in UP, under different provisions of IPC and in the absence of any material of pecuniary gain, while committing the aforesaid offences, cannot be taken into consideration for invocation of MCOC Act.

15. Further argued that before invoking provisions of MCOC Act, the Statement of Object and Reasons for its enactment had to be considered. On perusal of the material on record, no ingredients of any pecuniary benefit of undue economic gain or advantage by the respondent or any other person of his family are brought on the record. Therefore, the provisions of MCOC Act were wrongly and arbitrarily invoked.

16. Learned counsel for the respondent placed reliance on the decision in Altaf Ismail vs. State 2005 (1) Bom C.R. (CrI) 833 wherein it has been held as under:-

The Section 23 of the MCOC Act which opens with non-obstante clause and further clothed with negative words clearly discloses the mandate of the legislature that the cognizance of the offences under the MCOC Act should not be in routine course, but only upon the facts disclosing the applicability thereof and satisfaction of the officer of the high rank, the minimum being of the rank of Deputy Inspector General of Police in that regard. In fact, the officer of such high rank is required to decide about the approval even for recording of FIR in relation to any offence under the MCOC Act. This obviously discloses that the approving authority has to apply its mind about the applicability of the provisions of the MCOC Act to the facts disclosed in a matter before allowing the recording of FIR and for that purpose, he must be, prima facie, satisfied about the commission of offence of organized crime under the MCOC Act by the person or persons against whom the FIR is to be recorded. Obviously, for prima facie satisfaction regarding the commission of the offence of organized crime or of participation therein in

whatever manner, the approving authority must have some materials before it disclosing the activities of the person or the persons to be of the nature of offence under the MCOC Act and having committed such activities on or after 24th February, 1999. In other words, the activities of a person to be termed as the offence under the MCOC Act, the same should inevitably disclose to have been committed on or after 24th February, 1999. If the activity of the person is relating to the period prior to 24th February, 1999, obviously, it cannot be said to be an offence under MCOC Act, even though the activity may be an offence under THE provisions of some other statute in force at the relevant time. For the same reason, when the approval is granted for recording of FIR and the FIR is recorded, then such FIR should apparently disclose the activities constituting offence under the MCOC Act having been committed on or after 24th February, 1999. When the FIR does not disclose on the face of it that the offence was committed on or after 24th February, 1999, obviously, the concerned authority must be able to establish the said fact, at least, by referring to the records which were available and placed before the concerned authority before granting approval and before recording FIR.

It should not be understood that the power vested in the authority u/s 23(1) of the MCOC Act can be exercised either as automaton or as autocrat. The power should be exercised on application of mind to the facts of the case and with necessary prudence and circumspection.

17. Further agreed, that all the cases were registered after extension of the provisions of MCOC Act in Delhi i.e. after 02.01.2002.

18. It is submitted, on perusal of the nature of cases i.e. one case was registered vide FIR No. 686/2007 u/s 25 Arms Act read with Section 307/506/34 IPC, on the basis of statement of witness Shri Afsar Ali. However, the so called eye witness, neither been made a witness in the instant case nor his statement u/s 161 Cr. P. C. appears to have been recorded.

19. Further submitted, rest of the cases are under Arms Act. Admittedly, three cases are registered within the jurisdiction of Delhi and rest three cases are within the jurisdiction of police station Sahibabad, District Ghaziabad, UP and the provisions of MCOC Act are not applicable in the state of UP. The offences which have been committed within the jurisdiction of State of UP, therefore, cognizance of those offences could not have been taken by the Courts in Delhi. In the absence of cognizance taken in the Court of Delhi jurisdiction, provision of MCOC Act in such nature of cases, cannot be invoked.

20. Learned counsel for the respondent has pointed out that on perusal of the disclosure statement made before Deputy Commissioner of Police by virtue of Section 18 of MCOC Act, it transpires that the questions were drafted by the investigating agency with the sole aim to bring the crime u/s 3(5) of MCOC Act and also to invoke the definition of organised crime.

21. Further submitted the sole object of Act was to prevent and control criminal

activity by organised syndicate or gangs and statement object and enactment are that:-

Organised crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fuelled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnapping for ransom, collection of protection money and money laundering etc the illegal wealth and black money generated by the organised crime is very huge and has serious adverse effect on economy.

22. Learned Additional Public Prosecutor argued that the respondent is hardened criminal and several criminal cases are pending against him in Delhi and also involved in may heinous crimes in state of UP.

23. Further argued that once the sanction was accorded by police officer, there is a presumption that sanctioning authority had applied its mind. In the instant case, the confessional statement of respondent was also recorded by Deputy Commissioner of Police, which is rebuttable presumption in favour of the prosecution and against the respondent. No satisfactory explanation with regard to the accumulation of moveable or immovable property, brought on record was given by respondent and ingredient of Section 2(d), 2(e) and 2(f) are fully brought on record. Statement of public witnesses u/s 161 Cr. P. C. namely Surya Kant Verma s/o Shri Gautam, Deepak Goel s/o Shri Prem Chand Goel, Pawan Kumar s/o Shri Bijender and Laxmi Narain s/o Shri Balbir Singh further corroborates the invoking of provisions of MCOC Act against the respondent.

24. Learned APP also placed reliance on sub Section (4) of Section 21 of MCOC Act by virtue of which, law relating to the grant of bail for offence made punishable under provisions of MCOC Act has been made stringent wherein it is provided that a person accused of an offence punishable under MCOC Act should not be granted bail unless, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence.

25. Learned Sessions Judge has referred Section 3(1), 2(d)(f) of MCOC Act and has also discussed the case of Ranjit Sing Brahmajet Sing (*supra*) wherein import and scope of Section 21(4) of MCOC Act was considered and observed as under:-

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.

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.

26. Learned Trial Court has recorded in the impugned order that at the time of deciding the bail application, the Court must bear in mind the purpose of enacting MCOC Act. This Act was enacted in the year 1999 and extended to NCT of Delhi on 02.01.2002. It was felt by the legislature that the existing legal frame was inadequate for controlling the menace of organised crime. The sole object of the Act was to prevent and control the criminal activities of organised syndicate or gangs and for matters connected therewith or incidental thereto.

27. Keeping in view the object of the enactment of this Act and before considering the facts and circumstances and material gathered by the investigating officer, in the present case, the Trial Court has analysed the material placed on record by IO with the definition of organized crime as stipulated in Section 2(e) of MCOC Act which reads as under:-

Organised Crime means 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.

28. Learned Trial Court has relied upon the observations made in Ranjit Sing Brahmjeet Sing (surpa) as under:-

31. Interpretation clauses contained in Sections 2(d), 2(e) and 2(f) are inter-related. An "organised crime syndicate" refers to an "organized crime" which in turn refers to "continuing unlawful activity".

29. The MCOC Act provides for modified application for certain provisions of the Cr. P. C. It neither modifies Section 300 Cr. P. C. nor makes it inapplicable to trial against MCOC Act. The settled law that the provisions of MCOC Act are to be strictly construed. Thus, Section 300 Cr. P. C. cannot be violated in the absence of any expression provision in MCOC Act.

30. Learned Trial Court has also relied upon the observation in Appa @ Prakash Haibhau Londhe vs. State of Maharashtra 2006 ALL M.R. (Cri) 2804 as under:-

Crimes having been committed prior to coming into force of the MCOC Act can only provide a background and cannot in themselves constitute organized crime.

31. Learned Trial Court has granted bail on following grounds:-

1) That the sanction dated 16.01.2009 was given only on the basis of six cases; out of which three cases are u/s 25 Arms Act registered in the various police stations in the territory of Delhi and remaining three cases are registered in the State of UP on other provisions of IPC read with Arms Act etc.

2) In most of the cases shown in the charge-sheet either the respondent is acquitted or convicted or is being tried separately.

3) No proof of pecuniary benefit, pecuniary gain or pecuniary advantages or any unlawful advantages are brought on record by the prosecution due to the direct effect of the cases allegedly registered against the respondent.

32. In addition, learned Sessions Judge has also opined that, "it cannot be said that respondent has no reasonable or probable defence. He is not likely to commit any offence, in case he may be released on bail."

33. Learned Trial Court has put the following conditions upon respondent while granting the bail as under:-

i) He will not leave Delhi without the permission of the Court.

ii) He will not make any attempt to tamper with evidence in any manner. iii) He will file an affidavit in court on the above referred points within two days of his release from jail.

34. Ms.Rajdipa Behura, learned APP for State submits that learned Sessions Court has wrongly recorded that the sanction dated 06.01.2009 was given only on the basis of six cases, out of which three cases are u/s 25 Arms Act registered at various police stations falling in territory of Delhi and remaining three cases are registered in State of UP and other provisions of IPC read with Arms Act etc.

35. Further it is recorded that no proof of pecuniary benefit being gained or pecuniary advantage or any family member are brought on the record by the prosecution due to direct affect of the cases allegedly registered against the respondent. Learned Trial Court has wrongly recorded that the respondent has reasonable or probable defence and he is not likely to commit any offence in case he is released on bail.

36. She further argued that at the time of taking sanction from the Joint Commissioner of Police, list of 42 cases were supplied, wherein the full details were given only of six cases. The respondent is involved in heinous crimes and is part of the organised gang. He has committed crime in the society for pecuniary gain. The proof of the same is that his father namely Shri Raja Ram had been

allotted only 25 square yards of plot with two room house, wherein he further extended and expanded and made five rooms at ground floor and five rooms at first floor. Apart, TATA Indica Car bearing No. DL-1Y-A-9787 has also been purchased by the father of the respondent. Further agreed while admitting, the father of the respondent is staying in a "Kusth Ashram" and getting Rs. 1,000/- per month stipend from the Government. However, by making said property, he is getting Rs. 5,000/- per month rental income. It shows that the respondent is earning money and the aforesaid assets in the name of the father is accumulated by him only.

37. Learned APP further submits that the Joint Commissioner of Police has accorded sanction on 09.01.2009 and passed the following order:-

I, have perused the proposal submitted by Inspector Satish Kumar, SHO/PS Nand Nagri, through DCP/North-East District containing details of an organized criminal syndicate being operated by one Satya Prakash @ Satya @ Satyadev s/o Raja Ram r/o H. No. 20, Kodhi Colony, Nand Nagri, Delhi. He has operated his gang with various associates and presently his associates are Meete, Prevez, Balkishan, Raj Kumar and some other unknown persons, who are yet to be identified.

Satya Prakash is the kingpin of this gang and he operates his crime syndicate in Delhi, Uttar Pradesh and the surrounding area. Perusal of list of offences committed by this gang reveals that these persons are desperate criminals. Who are habitual of carrying and using illegal arms. They have on various occasions used fire arms for murderous assault on several persons. Similarly, this gang has committed several daring dacoities and robberies on gun point for pecuniary gain.

Form the facts on record in the proposal which contains the involvements of Satya Prakash @ Sattee and his associates Meete, Parvesh, Bal Kishan, Raj Kumar & some other unidentified persons, it is revealed that they are running an organised crime syndicate and are involved in rampant unlawful activities.

I am further satisfied that these activities constitute an organized crime by the members of an organised crime syndicate as defined in Section 2 of MCOC Act, 1999, as extended to NCT Delhi and accused persons are running an organized crime syndicate. As per the proposal and documents on record more than one charge sheets have been filed before the Court in the last years and the court has taken cognizance of such offence.

They have been committed organised crime with the objective of gaining pecuniary benefits and other advantages for them and the member of their organised crime syndicate by unlawful means.

Therefore, I Dharmendra Kumar, Joint Commissioner of Police, New Delhi Range, Delhi in exercise of the power conferred upon me u/s 23 (I) (a) of the Maharashtra Control of Organized Crime Act, 1999 as extended to NCT of Delhi do hereby grant approval to apply section 3(2) and 3(4) of Maharashtra Control

of Organized Crime Act, 1999 (as extended to NCT of Delhi). Sh.Rajesh Deo, ACP, Seema Puri, shall investigate the case.

38. She relied upon the decision of this Court in Om Prakash Shrivastava @ Babloo Shrivastava WP (Crl.) No. 375/2007 decided on 15.10.2009 and has referred para Nos.29 & 30 thereof which are as under:-

29. In the aforesaid context it was submitted that Section 2(d) of the said Act has different ingredients and it was a new offence of continuing unlawful activity. It was submitted that the provision of the preceding 10 years u/s 2(1)(d) of the said Act become redundant and "more than one charge sheet" would suffice was the contention of the petitioner to be accepted. The first offence will not bring into force Section 3 of the said Act even if it is after the Act come into force but if a second offence is committed then it would be a continuing unlawful activity within the definition of Section 2(1)(d) of the said Act.

30. Learned counsel also sought to draw strength from the observations of the Division Bench of this Court in Jagmohan @ Mohar Singh case (supra) where the relevant provisions of the said Act were discussed threadbare. The challenge of the petitioner revolved around the phrase "preceding period of ten years" in the definition of Section 2(d) of the said Act for continuing unlawful activity. It was pleaded on behalf of the petitioner that the expression be read down as being applicable with effect from the date when the Act came into force. The Division Bench observed as under:

16. So far as the objection to taking into account the cases in which an acquittal has taken place in view of bar of Article 20 of the Constitution of India is concerned one has to keep in mind that the accused/ petitioner is not being asked to stand trial for those cases. Those cases are cited only to say that he has been accused in the past.

17. In fact the very definition shows that before a case under MCOCA is registered there should be previous charge-sheets and cognizance taken thereon. In case, petitioners interpretation of Article 20 being applicable is accepted, entire definition of the offence would be hit by Article 20 and, therefore, should be struck down. Although, the petitioner's counsel is categorical that he is not challenging the constitutionality of the Act but he wants to protect his client under Article 20. The Bombay High Court dealt with the question of virus of the Act in the light of the fundamental rights of the citizens and in that connection also came to examine whether the result of the previous prosecutions had any effect on the current FIR or prosecution. The Bombay High Court came to the same conclusion that the result of the previous charge-sheet is not material for our present purpose. While holding the definition of Section 2(1)(d) to be constitutionally valid High Court of Bombay in the case of Bharat Shantilal Shah and Ors. vs. The State of Maharashtra Criminal Writ Petition No. 27/2003, observed as under:

27. We also do not find substance in the challenge that the equality clause in the

Constitution is violated because the definition ropes in anyone charged more than once, irrespective of whether the charge resulted in an acquittal or conviction. The circumstances that followed the charge are not material. The provision only defines what is continued unlawful activities and refers to whether a person has been charged over a period of ten years for the purpose of seeing whether the person is charged for the first time or has been charged often. The circumstance of conviction or acquittal that followed the charge are not material. The limited purpose is to see antecedents of the person. Not to convict.

18. The definition of the offence, i.e., continuing unlawful activity and organized crime u/s 2(d) & (e) of MCOCA, pre-supposes an earlier trial with filing of the charge-sheet and cognizance being taken by the Court. The acquittal or conviction is not determinative of commission of the offence. Rather, the filing of the charge-sheets and cognizance by the Court are regarded as demonstrative of indulging in and having propensity in unlawful activity or organized crime, which is actionable under the Act.

19. Learned Counsel for the petitioners had laid considerable emphasis in urging that the facts of the cases in which petitioners have been acquitted cannot be taken into account for the purposes of invocation of MCOCA. As noted earlier, the conviction is not a sine qua non for invocation of the offence u/s 2(d) & (e) of MCOCA. The ingredients of the offence to be satisfied are filing of more than one charge-sheet before the Competent Court against a member of the organized crime syndicate and taking of cognizance. The requirement of conviction has understandably not been made one of the ingredients of the offence considering the object sought to be achieved. Respondents have sought to demonstrate the chain and sequence of events, where acquittals have followed witnesses turning hostile or the non-availability of witnesses. Understandably, petitioners cannot be permitted to take advantage of these acquittals, especially which have followed witnesses turning hostile or evidence being obliterated.

20. The petitioner's counsel claim that only the offences registered after the promulgation of MCOCA in Delhi can be taken into consideration for booking a person under MCOCA. He has cited authorities to show that the penal law applicable to an offence is the one that was in force at the time of commission of the offence. According to him since the earlier alleged offences were committed before coming into force of MCOCA in Delhi, those cannot be taken into account for invoking MCOCA. Again as stated earlier, the petitioner is not being prosecuted for whatever he did in the past. He is being prosecuted for continuing with the unlawful activity. Certainly if a person commits no unlawful activity and is not arrested in any case after the invocation of MCOCA, he cannot be arrested under this Act on account of the offence committed by him before coming into operation of MCOCA even if he had been found guilty in them. In case, however, he continues with his unlawful activity and is arrested after the promulgation of the Act, the Act will come into play and he can be arrested and challaned for the act.

21. One of the important points raised by the petitioners is that the FIRs and the charge-sheets recorded against the petitioners prior to the coming into operation of this Act of MCOCA in Delhi cannot be considered as the law has only prospective effect. It is submitted by the counsel for the petitioners that the offences committed prior to 2nd January, 2002 could not be termed as organized crime and the petitioners could not have been termed as organized crime syndicate because at that time the Act was not in force and the offence of the petitioners, if any, could not be either "organized crime" or "continuing unlawful activity". In case the argument of the learned Counsel for the petitioners has to be accepted the first case under this Act can be registered only after two cases of the nature described in the Act had been registered against a person or against an organized crime syndicate after 2nd January, 2002. As the definition shows for making a crime punishable under Sections 3 & 4 of MCOCA, there has to be more than one case registered or in other words it is the third case which can be registered for an offence under Sections 3 & 4 of MCOCA. Such an interpretation will come directly in conflict with the very purpose of the Act. The object of the Act as stated in the extended title of the Act is, "The Act to make special provisions for prevention and control of and for coping with criminal activity by organized crime syndicate or gang and for matters connected with and incidental thereto." If such an interpretation is accepted then the state will have to wait and helplessly watch organized crime taking place till it is the third time a person or a syndicate is found involved in the offence after the Act came into operation in Delhi. It is further to be noticed that "continuing unlawful activity" could have taken place ten years prior to the registration of the new case. Obviously the intention of the legislature could not have been other than giving immediate effect to the Act by taking note of all the offences or charge-sheets registered within ten years prior to the commencement of the Act.

39. Further submits that the requirement of Section 2(e) is not essential if the requirement of Section 2(d) of MCOC Act for continuing unlawful activity is proved. In support of this contention, she placed reliance on *The State of Maharashtra vs. Rahul Ramchandra Taru* Criminal Appeal No. 239 of 2011 decided by Division Bench of Bombay High Court on 06.05.2011 and refers to para Nos.11 and 15 thereof which read as under:-

11. In *Prafulla s/o. Uddhav Shende vs. State of Maharashtra*, (2009 ALL MR(Cri.) 870), the learned single Judge of this court while dealing with the bunch of appeals arising out of judgments passed by the Special Court at Nagpur, placed reliance on the various decisions, mainly, the decision in *Ranjeetsingh Brahmajeetsing Sharma's* case (supra), also made a reference to the case of *Sherbahadur Akram Khan* (Supra) and observed in paragraphs 29, 43 and 44 that :

29. Since the definitions, though intertwined in a cyclic order, are clear and unambiguous, it would follow that each ingredient in the definitions, or the alternative thereof provided by the definitions themselves, would have to be

proved. Viewed thus, for charging a person of organised crime or being a member of organised crime syndicate, it would be necessary to prove that the persons concerned have indulged in:

- (i) an activity,
- (ii) which is prohibited by law,
- (iii) which is a cognizable offence punishable with imprisonment for three years or more,
- (iv) undertaken either singly or jointly,
- (v) as a member of organised crime syndicate i.e. acting as a syndicate or a gang, or on behalf of such syndicate.
- (vi) (a) in respect of similar activities (in the past) more than one chargesheets have been filed in competent court within the preceding period of ten years, (b) and the court has taken cognizance of such offence.
- (vii) the activity is undertaken by : (a) violence, or (b) threat of violence, or intimidation or (c) coercion or (d) other unlawful means.
- (viii) (a) with the object of gaining pecuniary benefits or gaining undue or other advantage or himself or any other person, or (b) with the object of promoting insurgency.

43. This fortifies the conclusion that mere proof of filing chargesheets in the past is not enough. It is only one of the requisites for constituting offence of organised crime. If only the past charge-sheets were to be enough to constitute offence of organised crime, it could have offended the requirement of Article 20(1) of the Constitution and possibly Article 20(2) as well, (and in any case Section 300, Cr.P.C.). Had these judgments of the Supreme Court and Division Benches of this Court been cited before the learned single Judge deciding *Bhartiya Samrakshan Kamgar Sangh and Others Vs. State of Maharashtra and Others*, the learned Single Judge, without doubt, would not have held that the matter was simply one of an arithmetical equation. The said judgment cannot be reconciled with the judgments of division benches in *Jaising vs. State* (2003 ALL MR (Cri) 1506 and *Prakashchandra Panpalia and Another Vs. Village Panchayat*, which I am bound to follow.

44..... Therefore, since the previous criminal history of the applicants denotes that they had been or are being separately charged/tried for those offence before competent courts, there is no question of such offences constituting offence of organised crime.

(emphasis supplied)

15. We propose to clarify that to address the question which is posed in this appeal, interpretation of expressions "or other advantage" and "or other unlawful means", occurring u/s 2(1)(e) of MCOCA, is not strictly necessary. Even if, both

the terms are given wider meaning, the prosecution is not absolved of its duty to prove that within the preceding period of 10 years more than one chargesheets, alleging commission of cognizable offence punishable with imprisonment of three years or more, have been filed and further to prove that in such chargesheets, it has been alleged that the accused either singly or jointly and as a member of organized crime syndicate or on behalf of such syndicate committed the unlawful activity. This follows that merely alleging that more than one chargesheets in respect of cognizable offence punishable with imprisonment of three years or more have been filed, is not sufficient. This does not satisfy requirements of law. This is what precisely held by the Supreme Court in the case of Ranjeetsingh Brahmajeetsing Sharma (supra). The unlawful activity alleged in the previous chargesheets should have nexus with the commission of the crime which MCOCA seeks to prevent or control. An offence falling within the definition of organized crime and committed by organized crime syndicate is the offence contemplated by the Statement of Objects and Reasons under the MCOCA.

40. She submits that the Joint Commissioner of Police after considering the total cases against him has accorded sanction after applying due mind.

41. I have perused the original police file, whereby the proposal for registration of FIR under provisions of MCOC Act was sent against the respondent. On the last page of said proposal, there is a interpolation in the date and it is made as "9.1.09" which creates the doubt that the Inspector Satish Kumar, SHO police station Nand Nagari, Delhi did not put the facts before the Joint Commissioner of Police with clean hands.

42. I also note that in the said proposal, there is no mentioning of any further list of 26 cases. Neither it is mentioned as annexure nor details thereof. Therefore, the sanctioning authority also did not discuss about those cases, while granting the sanction vide its order dated 09.01.2009. Therefore, it seems that the police authority has been trying to mislead the Court by relying on the list of number of cases against the respondent.

43. The total cases referred before the Joint Commissioner of Police were six cases in fact and out of them only three cases are registered in Delhi one case is registered u/s 307/506/34 IPC and remaining two cases u/s 25 Arms Act. The remaining three cases are registered in police station Sahibabad, District Ghaziabad, UP.

44. The MCOC Act is extended to Delhi on 02.01.2002 and as per the requirement to initiate the proceedings under the said Act, at least two cases must have been registered after the said date and in one of the case, the cognizance have been taken by the Courts. It is also a requirement that u/s 2(1) (e) that a person should have pecuniary gain out of that for himself or for any other person or on behalf of anyone.

45. In the present case, the police has established that two story house consisting of five rooms each on ground and first floors on a plot of 25 square

yards and one Indica car is in the name of father of the respondent. However, father of the respondent, who is beneficiary, as alleged, has not been made accused. The police could not establish anything against the respondent or any pecuniary gain which he earned from committing the alleged crime. u/s 2(1)(e) it is mandatory that two cases against the said person should have been registered under the provisions, wherein, there is a direct or indirect pecuniary gain out of the crime. In the absence of that, the provisions of MCOC Act do not apply. For the convenience, the definition of Section 2(d) and 2(e) are reproduced as under:-

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

(e) Organised Crime means 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.

46. On perusal of provision of Section 2(d) & 2(e) and after perusing the original charge-sheet, which is produced by learned APP, as per the proposal sent by IO of the case, he has only forwarded six cases which is apparent from the order dated 09.01.2009 of the Joint Commissioner of Police. Out of those, three cases are registered in Delhi. All three cases are registered under provisions of Arms Act and in one of the cases, other offences of IPC, however, no such case is registered which indicates any pecuniary gain out of the alleged three cases.

47. None of the three cases, no offence of pecuniary gain is indicated. The requirement of Section 2(e) is also not fulfilled because it requires the crime with the object of gaining pecuniary benefits or gaining undue economic advantage for himself or any other person or permitted insurgency.

48. Learned APP has raised three issues on the order passed by the learned Additional Sessions Judge vide Order dated 15.05.2010 while granting bail to the respondent, which according to the petitioner was not justified and hence not maintainable, therefore, impugned order deserves to be set-aside.

49. The three issues are as:-

(i) That the Ld ASJ was erred while making the statement that the special Act of MCOC is not applicable to state of U.P.

(ii) That the opinion/remarks while writing the judgment that "...the Respondent

is not likely to commit any offence in case he may be released on bail.."

(iii) That the Ld ASJ erred in considering the fact while granting sanction dated 16/1/2009 was based on three cases registered in Delhi and those are of "Arms Act" although FIR No. 686/07 was registered under 307/506 Indian Penal Code, 1860 r/w 25 of Arms Act.

50. Hereafter, I will discuss the three issues raised by the petitioner.

51. (i) issue : Whether the said act of MCOC is applicable to the state of UP"-the bare perusal of the Act of MCOC wherein section 1(2) makes it clear that "Act" is extended to the whole of NCT of Delhi. In this context there is nothing in the bare act/context which speak about UP or Haryana or Himachal Pradesh or any State. Further the section 1(3) of the said Act clearly speak about the date of notification of Lt. Governor of Delhi in Delhi gazette, here also there is not even an iota of mentioning or indication about consideration or involvement of any other State or State of U.P. So by any stretch of imagination we cannot make this Act applicable in other State when it is not specified in the Act. It is further submitted that in case the investigating agency satisfies the ingredients of section 2(1)(d) in NCT of Delhi or more than two cases are registered in Delhi then other cases anywhere in India can be considered. Further it is submitted that sanctioning authority u/s 23(1)(a) while giving approval has failed to consider the material placed before it. The said relevant materials/documents comprised of these 6 FIRs among which 3 were registered in UP and remaining 3 FIRs registered in Delhi.

52. At this juncture the Ld. ASJ has refused to consider the three cases registered in UP as relevant cases for invoking section 23(1)(a) when rest of the 3 cases are of "Arms act".

53. It was argued that when sufficient material particulars are not placed before the sanctioning authority the how come the approval be given u/s 23(1)(a). So invocation of the section 23(1)(a) was invalid and there was non-application of mind and no consideration was made and the sanctioning authority even failed to ask for sufficient material for consideration.

54. At this stage it is advantageous to advert first to the contention relating to the validity of the sanction, for, if that contention deserves approval it renders the entire trial vitiated and then it would be unnecessary to harp on the other contention.

55. Taking cognizance is the act which the designated court has to perform and granting sanction is an act which the sanctioning authority has to perform.

56. Latter is a condition precedent for the former.

57. Thus, a valid sanction is sine quo non for enabling the prosecution agency to approach the court in order to enable the Court to take cognizance of the offences under MCOC Act.

58. The corollary is that, if there was no valid sanction the designated Court gets no jurisdiction to try a case against any person mentioned in the report as to the Court is forbidden from taking cognizance of the offence without such sanction.

59. The Supreme Court in Rambhai Nathabhai Gadhvi and Others Vs. State of Gujarat, and Adnan Bilal Mulla vs. State of Maharashtra 2010 All M.R. (Cri) 1212.

60. (ii) Issue : Whether the opinion/remarks while writing the judgment that ".... the Respondent is not likely to commit any offence in case he may be released on bail....." is maintainable or justified" It is submitted that it is not necessary that the learned Additional Sessions Judge must have the same or similar opinion that of the prosecution. Even the opinion of two judges may also differ on the same issue. But the opinion may by learned Additional Sessions Judge was based upon the then situation and circumstances of the respondent and his family. The considered view was taken on the basis of the "leper - handicapped of the father of the respondent, the ailing mother suffering from "cancer" (now admitted and undergoing treatment in Guru Teg Bahadur Medical College in East Delhi) and the new born first child of respondent who is suffering from lungs disorder whose proper care was not taken till date. Further when the learned Additional Sessions Judge came to know about the application filed by respondent's wife before Ms.Anuradha Shukla against the UP police and the MM was kind enough to pass an order dated 20.05.2008 in favour of the respondent's wife. Further the erring police official of UP filed revision before learned Additional Sessions Judge Sh.Surender Kumar Sharma, who vide order dated 25.08.2009 has rejected the revision petition. The need of the hour was considered and was taken into account as at this situation when younger brother and sister and also the new born child and mother suffering from "cancer" needed their brother, father and son respectively. So, it is obvious that the respondent cannot ignore the same and hence the said "opinion" was given by learned Additional Sessions Judge.

61. (iii) Issue : Whether learned Additional Sessions Judge was erred in considering the FIR No. 686/2007 which was registered under 307/506/34 IPC read with Section 25 Arms Act calling it or considering it a case under "Arms Act"" The Additional Sessions Judge has not ignored the fact that the FIR was registered u/s 307/506 IPC is clear from when we read paragraph (2) (ii) on page 2 of the order dated 15.05.2010. Further it is submitted that learned counsel for the petitioner has remarked that the counsel of the respondent has argued the same in paragraph 14 in page 8 of the order dated 15.05.2010. But counsel has failed to observe or ignored paragraph (17) in page No. 11 wherein the reason for calling the FIR No. 686/2007 under "Arms Act" was explained by learned Additional Sessions Judge. The Additional Sessions Judge has observed that in the disputed FIR No. 686/2007 the complainant Afsar Ali was neither made "witness" in the said case nor his statement u/s 161 Cr. P.C was recorded. Hence, at the end of the trial obviously, even if the respondent would have been convicted, then he could have been convicted only under "Arms Act" (The respondent was acquitted in FIR No. 686/2007). Hence, by calling the FIR No.

686/2007 under "Arms Act" is not bad in law. Generally, the duty of the Court at this stage is not to weigh the evidence meticulously, but to arrive at finding on the basis of broad probabilities. However, it was observed by the Apex Court that while dealing with the special statute like MCOC Act 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.

62. Additionally, law is settled on bail in *Prakash Kadam and Vs. Ramprasad Vishwanath Gupta and Another*, wherein it has been observed as under:-

16. The Sessions Court granted bail to the appellants but that has been cancelled by the High Court by the impugned judgment.

17. xxx xxx xxx

18. In considering whether to cancel the bail the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same court which granted bail is approached for cancelling the bail. It will not apply when the order granted bail is appealed against before an appellant/ Revisional Court.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. The factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.

63. In another case of Apex Court, *Bhagirathsinh Judeja Vs. State of Gujarat*, wherein it has held as under:-

In our opinion, the learned Judge appears to have misdirected himself while examining the question of directing cancellation of bail by interfering with a discretionary order made by the learned Sessions Judge. One could have appreciated the anxiety of the learned Judge of the High Court that in the circumstances found by him that the victim attacked was a social and political worker and therefore the accused should not be, granted bail but we fail to appreciate how that circumstance should be considered so overriding as to permit interference with a discretionary order of the learned Sessions Judge granting bail. The High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was for cancellation of the bail. Very cogent and overwhelming circumstances all necessary for an order seeking cancellation of the bail. And the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation

are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court.

64. In *Dolat Ram and Others Vs. State of Haryana*, it has been observed as under:-

Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and delay with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking the grounds of cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.

65. Giving any opinion on the facts of the case at this stage would prejudice the trial as the matter is still in its infancy. However, it is well settled that once bail is granted the same should not be cancelled in a mechanical manner, without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial, to allow the accused, to retain his freedom by enjoying the concession of bail during trial.

66. I find there is an interpolation in the proposal sent by the IO to the Joint Commissioner of Police. Therefore, proposal itself is doubtful. Consequently, the sanctioning order dated 09.01.2009 have the same fate.

67. I note learned Trial Court has wrongly recorded the fact that the sanction dated 06.01.2009, whereas the order is dated 09.01.2009 and has also recorded wrongly that only on the basis of six cases, out of them three registered in Delhi and three at police station Sahibabad, District Ghaziabad, UP. Out of the cases registered in territory of Delhi, only case FIR No. 686/2007 registered u/s 307/506/34 IPC read with Section 25 Arms Act at police station Nand Nagri, Delhi. This fact does not affect the case because none of the cases, out of these three cases, is of pecuniary gain, therefore, requirements of Section 2(e) of MCOC Act are not fulfilled.

68. For the reasons stated above I am of the considered view that no ground to interfere with the impugned order passed by learned Trial Court is made out. The said order is a well reasoned order and I concur with the same.

69. It is made clear that the observations made in this order shall not come in the way during trial proceedings.

70. Consequently, Criminal M.C.No. 2138/2010 is hereby dismissed.

71. Before parting with the present order, it is expected from the Trial Court to make an endeavour after affording reasonable opportunity to parties to submit on the point of charge, to pass an appropriate order on charge at the earliest, as matter is pending for charge since long. It is also open for the Trial Court to pass order on charge on the basis of the material available before it.

72. No order as to costs.