
(2020) 12 DEL CK 0155

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 1625 Of 2020, Criminal Miscellaneous Application No. 10379, 10380 Of 2020

Vijay Mann @ Kapil

APPELLANT

Vs

State (Nct Of Delhi)

RESPONDENT

Date of Decision : 18-12-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Maharashtra Control Of Organized Crime Act, 1999 — Section 2(1)(d), 2(1)(e), 2(1)(f), 3, 3(1)(ii), 3(2), 4, 21(3), 23(1)(a)
Arms Act, 1959 — Section 25

Citation : (2020) 12 DEL CK 0155

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Akhand Pratap Singh, Bahul Kalra, Abhinandan Gautam, Raghuvinder Verma

Final Decision : Dismissed

Judgement

Prathiba M. Singh, J

1. This judgment has been pronounced through video conferencing.

2. The present petition filed under Section 482 of the Code of Criminal Procedure (CrPC) seeks quashing of the sanction given for prosecution of the Petitioner, under The Maharashtra Control of Organized Crime Act, 1999 (hereinafter, "Act"), as also proceedings in furtherance to the said sanction.

Submissions of the Petitioner

3. The case of the Petitioner is that an FIR was lodged against the Petitioner, bearing FIR No.252/2018, on 25thMay 2018, under sections 3 and 4 of the Act. Mr. Akhand Pratap Singh, Id. Counsel for the Petitioner, submitted that

on the date when the FIR under the Act was registered i.e. on 25 th

May 2018, there was only one other FIR which had been lodged against the Petitioner - being FIR bearing No. 62/2017. Two other FIRs were used

against the Petitioner to justify the grant of sanction to prosecute under the Act. However, in FIR 62/2017, the Petitioner stood acquitted .Thus, he

submitted that the ingredients required under Sections 3 and 4 of the Act to prosecute the Petitioner were not fulfilled.

4. Ld. counsel placed reliance upon Sections 2(1)(d), 2(1)(e) and 2(1)(f) of the Act to argue that unless and until it is established on record that there

is more than one charge-sheet, within the preceding period of ten years, which are pending against the Petitioner no case under the Act can be

registered. He further submitted relying upon the contents of the charge-sheet in this case, that even as per this charge-sheet, the ingredients of

Section 3 are not made out, as the charge-sheet itself records that the Petitioner was acquitted in FIR No.62/2017.

5. It was thereafter submitted that in FIR No.252/2018 and the charge-sheet which had been framed there under, the only provisions which had been

invoked were Sections 3 and 4 of the Act, and no provisions of the Indian Penal Code (IPC) had been invoked against the Petitioner.

6. Ld. counsel has thereafter taken this Court through the judgment of the Supreme Court in Mahipal Singh v. Central Bureau of Investigation and

Anr. [(2014) 11 SCC 282] to argue that procedural requirements have to be satisfied, not after the case is registered under the Act, but before. The

satisfaction of the ingredients constituting the offence must exist on the date when the crime is committed or detected. For the invocation of offence

of an organised crime, ingredients constituting that offence must exist on the date the crime is.

7. Further, reliance was placed upon the judgment of the Bombay High Court in Madhukar s/o Babu Shinde v. The State of Maharashtra [Crl. Appeal

No. 297/2017 decided by the Bombay High Court on 31st July 2018] where the Court had the occasion to consider a case wherein on the date when

the charge-sheet was registered, there was no evidence to show that either the Petitioner was a part of an organized crime syndicate, or that he was

involved in activities prohibited by law which are cognizable offences, or that more than one charge-sheet was filed against the Petitioner. The

Bombay High Court had, under such circumstances, quashed the case registered under the Act and had transferred the case to the criminal court for

proper trial. He, thus, submitted that the sanction was wrongly given for prosecution of the Petitioner under the provision of the Act and pleaded for

the court to quash the same. Ld. Counsel further relied upon the judgment of the Id. Division Bench of this Court in Mohd. Irfan v. State of NCT of

Delhi &Anr [2018 SCC OnLine Del 13223].

8. Finally, he concluded by arguing that in the State of Maharashtra v. Shiva Alias Shivaji Ramaji Sonawane and Others [(2015) 14 Supreme Court

Cases 272], the Supreme Court has again held that for constituting continuing unlawful activity, the charge sheet should be against the individuals on

the date when the case is registered. The Supreme Court in this case had held that registration of cases, filing of charge sheets and taking of

cognizance by the competent court in relation to the offence alleged to have been committed by the respondents in the past is but one of the

requirements for invocation of Section 3 of the Act. Continuation of unlawful activities is the second and equally important requirement that ought to

be satisfied.

Submissions of the Respondent

9. On behalf of the Respondent, Mr. Verma, Id. APP pointed out at the outset, that a bail application being Bail Appl. No. 1638/2019 of a co-accused,

who is a member of the same syndicate, was also rejected by the Id. Single Judge of this Court.

10. Ld. APP relied upon the Modified Status Report and the Supplementary Status Report filed by the Assistant Commissioner of Police, Special Cell/

NDR. He submitted that the Petitioner in this case is a part of the organized crime syndicate which is headed by Jitender@Gogi. The Petitioner has

been a part of this crime syndicate which was extorting money from various liquor vendors. He further submitted that the Petitioner was arrested on

13th November, 2018 when the Police intercepted him while he was on way along with other members of his gang to commit a crime against one of

the liquor shops vendors. There are several FIRs against this particular syndicate as is set out in the judgment of Digvijay Saroha v. State [2019 SCC

OnLine Del 10324]. He submitted that there are more than 27 FIRs which are registered in Delhi and in the neighbouring areas against this syndicate

and thus multiple FIRs as per the Act is not required only against an individual but against a syndicate as a whole. The Id. Single Judge had clearly held that multiple FIRs are required not against the particular individual but against the syndicate as a whole. In any event, the Court has held that the question whether legal sanction is properly granted or not would be considered in the trial and at this stage, prima facie there is sufficient material on record.

11. He relied upon the statements of the co-accused, namely, Yogesh and Dinesh who specifically named the Petitioner as being part of the group.

These statements were duly vetted by the Id. ACMM, Patiala House Court. Accused Yogesh and Dinesh had admitted that Vijay Mann is a member

of Jitender @ Gogi gang. He also relied upon the statements of various other witnesses who have given their statements to the Police that the

Petitioner as part of the Jitender alias Gogi gang was involved in extortion. The statements of the various PWs are placed on record.

12. Mr. Verma. Id. APP also relied upon the judgments in Narender Kumar v. State of Delhi [Bail Application 1440/2011 decided by the Delhi High

Court on November 1, 2011] and Sachin Bansilal Ghaiwal v. State of Maharashtra [2014 SCC OnLine Bom 725 t] to argue that it has been repeatedly

held that if there are more than one FIRs against the same syndicate, the requirement under Section 2(1)(d) of the Act is satisfied. Further, it was also

submitted on the basis of State (NCT of Delhi) v. Brijesh Singh [(2017) 10 SCC 779] that FIRs need not be only in Delhi, but can even be from

outside the state. He submitted that the petition is, thus, liable to be dismissed. The Id. APP further relied upon the Supplementary Charge Sheet at

paragraph 11 to show that more than one charge sheet has been shown to be pending against the Petitioner.

Analysis and Findings

13. Heard Id. counsels for the parties. The prayer in the present writ petition is for quashing of FIR No. 252/2018 registered at PS Alipur, Delhi qua the

Petitioner and further quashing of sanction 1st May, 2019 granted by the Joint Commissioner of Police, Special Cell to prosecute the Petitioner, under

the provisions of the Act. A perusal of the documents on record shows that the proposal for grant of approval under Section 23 (1) (a) of the Act was

initiated by the Assistant Commissioner of Police, Sub-Division, Alipur on 24th

May, 2018. The said proposal, captured various facts in respect of the Petitioner and the syndicate to which he belonged. The allegations in the said proposal are:

â?¢ That one Jitender @ Gogi formed an organized crime syndicate in the area of Alipur village in Delhi;

â?¢ That he has a dedicated team of members who are involved in offences which are committed by the entire syndicate;

â?¢ That Jitender @ Gogi was arrested in March, 2016 with a huge recovery of sophisticated weapons from his possession;

â?¢ That he was forcefully released from police custody in Bahadurgarh, Haryana and still absconding;

â?¢ That the said kingpin of the gang and along with his members of the syndicate have created enormous terror in the area concerned and though

they are involved in raising money from citizens under threat. No one is willing to give evidence against them;

â?¢ At least details of 19 FIRs are mentioned which are against the said kingpin and other members of the syndicate.

14. Upon receipt of the said proposal, the Joint Commissioner of Police passed the following order:

â??I have carefully gone through the proposal submitted by ACP/Alipur. Accused Jitender @ Gogi S/o Sh. Mehar Singh R/o Near Chhota

Shiv Mandir, Village Alipur Delhi is a notorious criminal. He along with his associates have committed a number of sensational crime

including gruesome & inimical murder, attempt to murder, dacoity, road robbery, car-jacking, theft, criminal intimidation, obstruction of

public servant to deter them from discharge of official duties and offences under the Arm Act etc. in the area of Delhi and Haryana. The

Honâ??ble Courts have taken cognizance against him and his associates in more than two cases. The criminal involvement of accused

Jitender @ Gogi S/o Sh. Mehar Singh R/o as above and his associates amount to continuing unlawful activities under taken by the member

of an organised crime syndicate. The activities of accused Jitender @ Gogi S/o Sh. Mehar Singh R/o as above is sufficient to bring him

under MCOC Act 1999, as extended to NCT Delhi.

In view of the above, the approval u/s 23(1)(a) of Maharashtra Control of

Organized Crime Act 1999 is accorded to proceed as per law.â??

It is this order which is under challenge.

15. One of the FIRs which was also taken into consideration was FIR No.0252 dated 25th May, 2018 wherein Jitender @Gogi is the accused in this

FIR. On the strength of the information and the FIR No.0252/2018, the Petitioner was arrested on 13th November, 2018.

16. After the arrest of the Petitioner on 13th November, 2018 further sanction was given by the Special Commissioner of Police to prosecute various

other members of the syndicate, namely, Digvijay Saroha, Yogesh Tunda and Dinesh Karala on 5th December, 2018.

17. The sections of the Act that are relevant for the present case are extracted below:

2. Definitions-

(1) In this Act, unless the context otherwise requires,-xxxx

(d) ""continuing unlawful activity"" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable

with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of

such syndicate in respect of which more than one charge-sheets have been 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 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 person or promoting

insurgency;

(f) ""organised crime syndicate"" means a group of two or more persons who, acting either singly or collectively, as a syndicate of gang

indulge in activities of organised crime;

3. 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;

(ii) in any other case, 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.

(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 of rupees five lacs.

(3) Whoever harbours or conceals or attempts to harbour or conceal, any 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.

(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.

(5) Whoever holds any property derived or obtained from commission of an organised crime or which has been acquired through the

organised crime syndicate funds shall be punishable with a term which shall not be less than three years but which may extend to

imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs.

4. Punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate. "If any person on behalf of a

member of an organised crime syndicate is, or, at any time has been, in possession of movable or immovable property which he cannot

satisfactorily account for, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend

to ten years and shall also be liable to fine, subject to a minimum fine of rupees one lac and such property shall also be liable for attachment

and forfeiture, as provided by section 20.

23. Cognizance of, and investigation into, an offence.

â?" (1) Notwithstanding anything contained in the Code, -

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(a) no information about the commission of an offence of an organised crime under this Act, shall be recorded by a police officer without

the prior approval of the police officer not below the rank of the Additional Commissioner of Police;

(b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Assistant

Commissioner of Police.

(2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the

rank of Additional Commissioner of Police.

18. On behalf of the Petitioner, the issues raised are legal in nature:

i) That on the date when the sanction was given, for proceeding against the Petitioner under the provisions of the Act, there was only one FIR against

the Petitioner and even in that FIR, the Petitioner had already been acquitted;

ii) That under Sections 3 and 4 of the Act, in order to constitute continuing unlawful activity, there has to be more than one FIR on the date when the

sanction is given and any FIRs registered thereafter or evidence received thereafter would have no bearing and cannot be taken into consideration.

19. A perusal of the submissions recorded herein above would show that the Petitioner relies upon the following decisions:

â?¢ Mahipal Singh v. Central Bureau of Investigation and Anr [(2014) 11 SCC 282]

â?¢ Madhukar s/o Babu Shinde v. State of Maharashtra [Crl. Appeal 297/2017 decided by the Bombay High Court on 31st July 2018]

â?¢ Mohd. Irfan v. State of NCT of Delhi & Anr [2018 SCC OnLine Del 13223]

â?¢ State of Maharashtra v. Shiva Alias Shivaji Ramaji Sonawane and Others [(2015) 14 Supreme Court Cases 272]

20. On behalf of the Respondent, the following decisions are relied upon:

â?¢ Digvijay Saroha v. State [2019 SCC OnLine Del 10324]

â?¢ Narender Kumar v. State of Delhi [Bail Application 1440/2011 decided by the Delhi High Court on November 1, 2011]

â?¢ Sachin Bansilal Ghaiwal v. State of Maharashtra [2014 SCC OnLine Bom 725]

â?¢ State (NCT of Delhi) v. Brijesh Singh @ Arun Kumar & Anr [(2017) 10 SCC 779]

21. In Mahipal Singh (supra), the essential ingredients for invoking the provisions of the Act have been laid down. The Supreme Court held that in

order for any accused to be brought within the mischief of the provision of the Act, the ingredients of the offence have to be satisfied on the date the

offence alleged to have been committed. The observations of the Supreme Court are as under:

â??14...As observed earlier, for punishment for offence of organized crime under section 3 of MCOCA, the accused is required to be

involved in continuing unlawful activity which inter alia provides that more than one charge-sheets have been filed before a competent

court within the preceding period of ten years and the court had taken cognizance of such offence. Therefore, in the case in hand, on the

date of commission of the offence, all the ingredients to bring the act within section 3 of MCOCA have not been satisfied. We are conscious

of the fact that there may be a case in which on the date of registration of the case, one may not be aware of the fact of charge-sheet and

cognizance being taken in more than one case in respect of the offence of specified nature within the preceding period of ten years, but

during the course of investigation, if it transpires that such charge-sheets and cognizance have been taken, Section 3 of the MCOCA can be

invoked. There may be a case in which the investigating agency does not know exactly the date on which the crime was committed; in our

opinion, in such a case the date on which the offence comes to the notice of the investigating agency, the ingredients constituting the

offence have to be satisfied. In our opinion, an act which is not an offence on the date of its commission or the date on which it came to be

known, cannot be treated as an offence because of certain events taking place later on. We may hasten to add here that there may not be

any impediment in complying with the procedural requirement later on in case the ingredients of the offence are satisfied, but satisfying the

requirement later on to bring the act within the mischief of penal provision is not permissible. In other words, procedural requirement for

prosecution of a person for an offence can later on be satisfied but ingredients constituting the offence must exist on the date the crime is

committed or detected. Submission of charge-sheets is more than one case and taking cognizance in such number of cases are ingredients of

the offence and have to be satisfied on the date the crime was committed or came to be known.â??

22. In State of Maharashtra (supra), the Supreme Court was dealing with the case where two accused were separately tried under two separate FIRs

and they were acquitted. Under those circumstances, the Supreme Court held:

â??9. It was in the above backdrop that the High Court held that once the respondents had been acquitted for the offences punishable

under IPC and the Arms Act in Crimes Nos.37 and 38 of 2001 and once the trial court had recorded an acquittal even for the offence

punishable under Section 4 read with Section 25 of the Arms Act in MCOCA Crimes Nos.1 and 2 of 2002, all that remained incriminating

was the filing of charge-sheets against the respondents in the past and taking of cognizance by the competent court over a period of ten

years prior to the enforcement of MCOCA. The filing of charge-sheets or taking of the cognizance in the same did not, declared the High

Court, by itself constitute an offence punishable under Section 3 of the MCOCA. That is because the involvement of the respondents in

previous offences was just about one requirement but by no means the only requirement which the prosecution has to satisfy to secure a

conviction under MCOCA. What was equally, if not, more important was the commission of an offence by the respondents that would

constitute â??continuing unlawful activityâ?. So long as that requirement failed, as was the position in the instant case, there was no

question of convicting the respondents under Section 3 of the MCOCA. That reasoning does not, in our opinion, suffer from any

infirmity.â??

In the above case, the crimes were stated to have been committed prior to the promulgation of the Act. Under such circumstances, the Supreme

Court had acquitted the accused.

23. In Mohd. Irfan (supra), a Id. Division Bench of this Court upholding the Constitutional validity of Section 3(1)(ii) of the Act, elaborated on what constitutes an organized crime syndicate. The Court observed as under:

25. Thus, the MCOCA seeks to deal with offenders who are members of a crime syndicate, or a gang, and who are primarily driven with the object of gaining pecuniary benefit, or gaining undue economic or other advantage-either for themselves, or for any other person, or for promoting insurgency. The offenders covered by the MCOCA operate as an organized crime syndicate or a gang i.e. in a group of two or more persons, either singly or collectively as a part of a syndicate or gang, to indulge in activity of organized crime. An offender involved in only one offence of the kind dealt with under the MCOCA, would not bring the crime, or the offender, within the realm of the MCOCA. The unlawful activity has to be continuing. Unlawful activity is defined in the Act to be a cognizable offence punishable with imprisonment of three years or more. Moreover, mere registration of the FIR is not the benchmark set by the Act, since multiple charge sheets should have been filed before the competent Court within the preceding period of ten years, in respect whereof the Court has taken cognizance of the offence. Thus, the offender sought to be covered by the MCOCA would, of necessity, be highly motivated and driven, who is part of a crime syndicate or a gang, and who is driven "not by passion; not by vengeance and; not by his/her circumstances alone, but by his objective of gaining pecuniary benefit, or gaining undue economic or other advantage for himself/ herself, or for other persons, or for promoting insurgency. This offender would be involved in multiple cases (at least two). As pointed out by Mr. Mehra, in the present case, the petitioner is found to be involved in 17 criminal cases of kidnapping with murder, robbery, dacoity, Arms Act, night burglary and theft etc."

24. In Madhukar s/o Babu (supra), the Id. Division Bench of the Bombay High Court referring to Mahipal Singh (supra) observed that the ingredients of the offence i.e. submission of charge sheet and cognizance of offence in more than one case have not been satisfied and had accordingly held that the accused could not be prosecuted under Section 3 of the Act but could be

tried under the various provisions of IPC.

25. In *Govind Sakharam Ubhe v. The State of Maharashtra* [2009 SCC Online Bom 770], a Id. Division Bench of the Bombay High Court held that the

words “more than one charge-sheet” in Section 2(1)(d) referred to unlawful activities of the crime syndicate and not the individual. The

observations of the Court are as under:

“In the light of this, we are of the opinion that the words “more than one charge-sheet” contained in Section 2(1)(d) refer to

unlawful activities of the organized crime syndicate. Requirement of more than one charge-sheet is qua the unlawful activities of the

organized crime syndicate and not qua individual member thereof.”

26. This judgment of the Bombay High Court in *Govind Sakharam Ubhe* (supra) has been followed by a Id. Single Judge of this Court in *Narender*

Kumar v. State of Delhi (supra). The Court, after considering the said judgment held in a case involving an accused who had various other associates

committing crimes in Delhi and neighbouring areas that the essential ingredients of the Act are satisfied. The Id. Single Judge observed as under:

“7. Thus, a perusal of Section 2(e) and 2(d) clearly shows that if any offence is committed by any individual either singly or jointly as a

member of the syndicate or on behalf of the syndicate by use of violence or threat of violence, intimidation or coercion with the objective of

gaining pecuniary benefit, the same is an organized crime. Section 2 (f) defines “organized crime syndicate” as a group of two or more

persons who are acting either singly or collectively as a syndicate or gang indulging in activities of organized crime. Since the Petitioner

had acted as a member of the syndicate of Amit @ Babloo, he falls within the ambit of committing organized crime as a member of an

organized crime syndicate. ...

10. Since the necessary ingredients of an offence under Section 3 of MCOCA are made out against the Petitioner in view of the bar under

Section 21(3) of MCOCA, the present application for anticipatory bail is not maintainable.

Application is dismissed.”

27. In *State (NCT of Delhi)* (supra), the Supreme Court has made it clear that the charge sheet against the accused need not be only in Delhi but

could even be charge sheets in other states. The conclusions of the Supreme Court in the said judgment are as under:

35. The Appeal is disposed of as follows:

(a) The words "competent Court" in Section 2(d) of MCOCA is not restricted to Courts in Delhi and charge sheets filed in Courts in

other States can be taken into account for the purpose of constituting continuing unlawful activity;

...

(c) The judgment of the High Court is upheld though for different reasons

28. A reading of the above decisions clearly shows that the following principle emerges:

i) That the requirement of more than one charge sheet under Section 2(1)(d) need not be against the individual alone but against the entire syndicate

as a whole;

ii) That the ingredients of the Section have to be satisfied on the date when the sanction has been granted;

iii) That it is sufficient if the alleged crime has been committed prior to the sanction and the procedural requirements of registration of charge sheet are satisfied later.

iv) For the purpose of taking cognizance under the Act, the charge sheets need not have been filed in only one State i.e., Delhi but charge sheets in

other states can also be taken into consideration.

29. The facts of the present case show that in the FIR which was lodged and considered at the time of granting sanction, the clear allegation against

the Petitioner "Mr. Vijay Mann was that the Petitioner was a part of the crime syndicate operated by Jitender @ Gogi. The said FIR was lodged

on 25th May, 2018. Statements of various witnesses which have been filed with the supplementary status report shows that the co-accused mentioned

the name of the Petitioner. For example one of the co accused Yogesh Dahiya mentioned the name of the Petitioner as being part of the gang and

stated as under:

"Gogi hamara grand leader hai. Hamare saathi Kuldeep Fajja, Deepak Boxer, Deepak Chota Bajaa, Praveen Lara, Sanjay Falla,

Gulshan Bhardawaj, Mohit Pandhi, Rohit Moi, Vijay Mann, Suryaveer, Ashok

Pradhan vagerha bahar hain. Hamara gang jabran vasooli

karta hai. Bahari Dilli aur Haryana border area mein hamare gang ka sikka chalta hai. Hum log sattebajo aur property dealers vagerha

se pese ki vasooli kartehain. Property dealeron ke bhi him niptaare vagerha kra dete hain. Is pese se hamare gang ka kharcha chalta hia.

Pese kam padne par hum vyapaariyon or toll walo se be ugaahi karte hain. Gogi mujhe aur mere pariwaar ko lagataar pese deta hai jis se

mera aur pariwaar ka kharcha chalta hai. Mere pariwaar ki aur koi aamdani nahi hai. Agar gang ka aadmi jail chala jata hai to hamara

gang use bahar nikalne ki har trah se koshish karta hai. Yaha tak ki use chahe police custody ya court se hi kyun na bhagna pade.

Hamare gang ne Jitender urf Gogi ko bhi isi trah planning karke Haryana police ki custody se chuda liya tha. Kuldeep Pajja ki parole dilane ke baad

use bhi parole jump kara di thi. July 2015 mein pakde jane ke baad main jail mein hi hoon. Main apni life se tang aa gya hoon aur bahar aa kar normal

zindagi jeena chahta hoon. Bahut zayada sochne ke baad main aap ke saamne apna bayan de raha hoon. Mene apna bayan padh lia, theek hai.â??

Another co-accused, namely, Dinesh also stated as under:

â??...Ab hamare gang ka leader Jitender urf Gogi hai aur hamare saathi Kuldeep Fajja, Deepak Boxer, Deepak Bajana, Praveen Lara,

Sanjay Falla, Gulshan Bhardwaj, Mohit Panchi, Rohit Moi, Vijay Mann, Suryaveer, Ashok Pradhan vagerha bahar hain jo hamara gang,

darakar aur dhamka kar peson ki zabran vasooli karta hai aur bahari Dilli aur Haryana border area ke saansiyo, sattebaazon, property

dealeron ve toll operator se pesa vasoolte hain. Hamara gang jhagde wali property ki settlement ka kaam bhi karta hai isse bhi hamare

gang ko acche pese milte jate hain or hamara gang ilaakon ke bade businessmen aur politician type log se bhi darakar aur dhamka kar

pese vasoolta hai...â??

30. One of the witnesses (Shri Ishwar Singh) who was a victim of extortion in his statement also mentioned the name of the petitioner. The relevant

extract of the statement reads as under:

â??Bayan kiya hai ki main pata uprokt par rehta hoon aur Gannaur ve Guhana main mene sharaab ke 8 sub-contract liye hue hain.

Bajana khurd ke theke par mene Sandeep ko as a manager cum partner rakha

hua tha. Aur Sandeep hi isi theke par baithta tha. Jo is

theke se Jitender @ Gogi gang ke Deepak Bajana, Rohit Moi, Gulshan Gullu, Vijay etc. Gogi gang ke naam par har mahine Rs.50,000/-

mahina extortion ke le jate the. Jo September mahine main unhone 50,000 ki jagha 1 lakh maangne shuru kar diye jo Sandeep ne isme apni

laachari dikhlai aur kaha ki mein itne pese nahi de sakta kyunki hume kist bhi bharni hoti hai...â??

Similarly, another witness â?" Mr. Sandeep who was also a victim of extortion mentioned the following to the Police:

â??Bayan kia hai ki main pata uprokt par rehta hoon aur Ishwar Singh ke Bajana khurd ke sharaab ke theke par pehle main Manager

cum partner tha. Aur ab main is theke par as a manager kaam karta hoon. Aur isi theke par baithta hoon. Jo is theke se Jitender @ Gogi

gang ke Deepak Bajana, Phalla, Rohit Moi, Gulshan Gullu, Vijay, etc. Gogi gang ke naam par har mahine Rs.50,000/- mahina extortion ke

le jaate the.â??

31. Though, the above statements were recorded as part of the same FIR, the actual incidents had taken place prior to the grant of the sanction. In

any event, the statements of the co-accused and the statements of witnesses merely lend credence to the case set up by the Special Cell i.e. that the

Petitioner is part of an organized crime syndicate.

32. Vehement reliance has been placed by the prosecution on the decision of the Id. Single Judge in a bail application filed by a co-accused â?

Digvijay Saroha (supra). In the said bail application, the Id. Single Judge has taken into consideration the entire material available on record to indicate

that the Petitioner therein was involved in the commission of organized crime under the gang leadership of Jitender @ Gogi. While rejecting the bail

application, the Id. Single Judge has followed the decision in Govind Sakharam Ubhe (supra) and two decisions in P. Rasad Shrikant Purohit v. State of

Maharashtra [2015 7 SCC 440] and State (NCT of Delhi) (supra). The Court thereafter observed as under:

â??14. Perusal of the above judgments reveal that the requirement of one or more chargesheet relates to unlawful activities of the

organized crime syndicate and does not pertain to a particular member of the crime syndicate accused. The contention of Ld. Counsel for

the petitioner that in the absence of two chargesheet against the petitioner, he could not have been charged with MCOCA and he be released on bail is, therefore, not in consonance with law. ...

17. Let us examine the present bail application in view of the above law laid down by the Honâ??ble Supreme Court. Perusal of the

material brought on record reveals involvement of petitioner Digvijay Saroha to the effect that he has been a part of organized crime

syndicate and has knowingly facilitated the alleged organized crime syndicate. The MCOCA does not contemplate that the petitioner should

have direct role to play as regards the commission of an organised crime. If there is a nexus of the petitioner who is a member of an,

â??organised crime syndicateâ??, or nexus with the offence in the nature of an, â??organised crimeâ?? is established, the petitioner will

prima facie satisfy the ingredients of Section 3(2) of MCOCA. In the present case, the petitioner Digvijay Saroha is alleged to be a member

of an organized crime syndicate run by Jitender @ Gogi. There are approximately 27 cases filed against this organized crime syndicate. As

per reply filed by the prosecution, there is confessional statement of co-accused Yogesh, which reveals that petitioner Digvijay Saroha is the

member of an organized crime syndicate being run by Jitender @ Gogi. It has also come on record that during interrogation petitioner/

accused Digvijay Saroha has disclosed that he is an active member of Jitender @ Gogi Gang and used to collect information regarding

members of opposite gang as well suspected targets from whom money can be extorted. During the investigation one witness namely Ms.

Nikita Dahiya has deposed that this 'Organised Crime Syndicate' used to collect extortion money from her and accused Digvijay Saroha is

one of the associates of this gang, who used to collect protection money from her. Thus, Prima facie, the prosecution has established

petitionerâ??s role in conspiring, assisting and managing the crime syndicate. There are no reasonable grounds to believe that petitioner

is not guilty of the offences, he has been charged with. On the contrary, the material brought on record, points to his role in the abetment of

the offences committed by the crime syndicate.â??

33. The Id. Single Judge therefore came to the conclusion that the requirement

of more than one charge sheet pertains to the crime syndicate to which the accused belonged and not to the individual member of the crime syndicate accused. The Court has also concluded that the Petitioner therein i.e.

Digvijay Saroha (supra) was part of the organized crime syndicate. So long as nexus is shown, the ingredients of Section 3(2) are satisfied. The most

important finding in the said decision is that there are approximately 27 cases filed against the said organized crime syndicate which used to extort

money and create terror. The Court then came to the conclusion that the Petitioner therein was part of the syndicate.

34. The findings in Digvijay Saroha (supra), though in a bail application strengthen the case of the Respondent in the present case. The legal

proposition that more than one charge sheet ought to have been filed on the date when the sanction is granted is to be tested against a syndicate as a

whole and not against the individual. As observed in Digvijay Saroha (supra), more than 27 cases are pending against the syndicate of which the

Petitioner is stated to be a part. In any event, approximately 19 cases have already been mentioned in the proposal which forms the basis of the

sanction challenged in the present case. In the opinion of this Court, the said cases pending against the syndicate coupled with the fact that there was

sufficient material for the Special Cell authorities to grant sanction in the form of statements which have been recorded, clearly shows that the

ingredients to proceed under the Act were satisfied

35. The sanction has been granted in accordance with law. In view of the above, there is no merit in the present petition and the same is dismissed.

All pending applications are also disposed of.