IA No. 74/26
SC No. 162/21
FIR No. 197/19
PS Crime Branch
U/s 3/4 MCOC Act & 174A IPC
State Vs. Abdul Nasir

07.09.2026

Present: Sh. Akhand Pratap Singh, Ld. SPP for the State along with Insp. Pankaj Singh.

Ld. Counsel Sh. Abhishek Yadav for accused/applicant Abdul Nasir.

Further arguments on the regular bail application heard at length.

ORDER

Applicant's submissions

1. It is the applicant's case that the present FIR was registered on 09.07.2019 u/s 3/4 of the Maharashtra Control of Organised Crime Act, 1999 (in short MCOC Act) against the so called "Nasir Gang" of which the applicant is alleged to be the kingpin.

1.1 It is his case that he was arrested in the present matter on 06.10.2020 and has been in judicial custody since then thereby having already undergone incarceration for a period of approximately 5 years & 8 months. It is further submitted that as on date, he is on interim bail since 12.05.2026.

1.2 It is further his case that presently the matter is at the stage of charge, however, the very foundation of framing charges under MCOC Act is totally absent as though the prosecution's case rests entirely upon ten predicate FIRs spanning the years 2006 to 2017, however, in one of the FIR i.e. FIR no. 681/2006 PS Seelampur the applicant has already been acquitted whereas the remaining 9 FIRs are pending trial and no conviction has been recorded so far against him.

1.3 It is his case that the last & most recent predicate FIR is FIR No. 1009/15 PS Farsh Bazar registered on 23.12.2015 and though the chargesheet also mentions FIR No. 151/2017, however, he has no role whatsoever in the said FIR thereby, the last FIR against him is FIR no. 1009/2015 and the present case FIR was thus registered after a gap of over four years since the last predicate FIR and without any new substantive or triggering offence forming part of the said FIR.

1.4 It is his case that that the standalone MCOC Act FIR i.e. the present FIR being registered solely under Sections 3 and 4 of MCOC Act and Section 174-A IPC, without any substantive or triggering offence (murder, extortion, robbery, or any IPC/Arms Act offence etc.) forming part of the said FIR is impermissible in law and he is thus being detained in an FIR which is legally infirm since its very inception.

1.5 It is further his case that the essential ingredients of "continuing unlawful activity" is absent as there is a hiatus of over four years between the last predicate FIR i.e. FIR No. 1009/15 and the MCOC Act FIR i.e. the present FIR with no substantive offence shown to have been committed by the syndicate during this period. It is his case that the very foundation of a Section 3 MCOC Act charge is thus absent and continued detention on such a charge is unwarranted.

1.6 It is his case that his acquittal in predicate FIR No. 681/06 eliminates the said FIR from the catalogue of "continuing unlawful activity," as an acquittal being a judicial verdict that the applicant did not commit the offence, the same cannot be pressed into service against him.

1.7 It is his case that in the remaining 9 predicate FIRs which are pending trial the applicant enjoys the presumption of innocence and bare registration of FIRs, pendency of trial cannot be bootstrapped into a finding of "organised crime," as to do so would be to criminalise accusation itself.

1.8 It is further his case that the authorization under Section 23(1) MCOC Act is vitiated by the same legal defect, having been premised on the same factual matrix of FIRs up to 2015 which is legally unsustainable; the condition precedent therefore confers no validity on the FIR or the applicant's consequent detention.

1.9 It is his case that no "organised crime syndicate" is established and mere common involvement of accused persons in a few cases does not make out a syndicate. Furthermore, the prosecution has miserably failed to place on record the property documents, ownership papers etc reflecting the hollowness of its case.

1.10 It is his case that the Ld. Predecessor of this court vide two separate orders i.e. 04.05.2026 and 05.05.2026 passed in the present matter has already opined FIR 197/19 to be legally unsustainable under MCOC Act and he being similarly placed is entitled to bail on the ground of parity.

1.11 It is his case that he has deep roots in society, is not a flight risk and undertakes to abide by all conditions that the court may impose upon him at the time of grant of bail. He further undertakes to join the investigation/trial as & when required and to not to tamper with evidence or influence any witness in any manner.

1.12 It is further his case that the entire case of the prosecution is documentary in nature, resting upon past charge-sheets already filed before competent courts and therefore there is no occasion for tampering with evidence and the custody of the applicant is no longer required for any investigative purpose.

1.13 It is further his case that he is a law-abiding citizen with no likelihood of absconding or evading the process of law and his continued incarceration on a charge that is legally untenable from its very inception would amount to pre-trial punishment and a miscarriage of justice.

1.14 Ld. Counsel for the applicant relied upon ***State of Maharashtra v. Shiva @ Shivaji Ramaji Sonawane, (2015) 14 SCC 272, Gokul Bhagaji Patil Vs. State of Maharashtra and anr (2007) 2 SCC 475, Banarao Tukaram Ranjane Vs. State of Maharashtra (2006) 9 SCC 422, Mangesh Manik Kanchal Vs. The State of Maharashtra 2015 SCC OnLine Bom 6038, Ranjana Tanaji Wanve Vs. State of Maharashtra 2024 SCC OnLine SC 5548, Chenna Boyanna Krishna Yadav Vs. State of Maharashtra and anr (2007) 1 SCC 242, Daraing and ors Vs. The State of Maharashtra MANU/MH/1966/2021, Manish Sisodia Vs. Directorate of Enforcement MANU/SC/0861/2024, Hussainara Khatoon and ors Vs. Home Secretary State of Bihar Patna AIR 1979 SC 1360, Union of India Vs. K.A. Najeeb 2021 (3) ACR 2354, Supreme Court Legal Aid Committee Vs. Union of India and ors 1995 (32) ACC 71*** and ***Sunil Bihari @ Shakti Singh Vs. The State (NCT of Delhi) Bail. Appl.N 4074/2025 & CRL. MA 31699/2025*** in support of his arguments.

State's response

2. While opposing the bail application, it is the case of the

prosecution that the same deserves to be dismissed outrightly in view of the grave & serious nature of allegations against the applicant, his long-standing & persistent involvement in organized criminal activities, and the strong likelihood of his tampering with evidence, intimidating witnesses and perpetuating further crimes, if released on bail.

2.1 It is its case that the present case pertains to the dismantling of the "Nasir Gang", a dreaded organized crime syndicate operating with impunity across the National Capital Region (NCR) and adjoining states and the said gang under the applicant's leadership is known for its involvement in heinous offences including murder, extortion, armed robbery, rioting, unlawful assembly and use of sophisticated firearms. The primary aim of this gang has been to create a reign of terror in the area to further their unlawful monetary & territorial interests.

2.2 It is its case that due to the systematic & continuous nature of criminal activities committed by this syndicate the present case was registered under the stringent provisions of the MCOC Act after due approval of competent authority as mandated under Section 23(1) of the MCOC Act.

2.3 It is its case that the applicant is not only the kingpin of the gang but has played a central role in planning & executing violent crimes. Further he remained absconding for a considerable period despite issuance of non-bailable warrants, was declared a

Proclaimed Offender under Section.20(3)(a) of the MCOC Act vide order dated 04.09.2020 and his conduct thus reflects a deliberate attempt to evade the process of law.

2.4 It is its case that while the applicant remained absconding, he continued to operate & associate himself in violent criminal activities. Notably, he was arrested by the Special Cell, Delhi, in FIR No. 231/2020, PS Special Cell, wherein sophisticated firearms were recovered from his possession, while he was wanted in another heinous case vide FIR No. 289/2020, u/s 302 IPC, PS Madhu Vihar, involving a gruesome murder executed in conspiracy with other gang members. It is its case that recovery of illegal/ sophisticated firearm from the applicant at the time of his apprehension in FIR No. 231/20 and the resistance to the police party with firearms by him & his associates which resulted in an armed confrontation further demonstrates his continued association with and use of illegal firearms in furtherance of criminal activities.

2.5 It is its case that the applicant was formally arrested in this case on 06.10.2020 and during sustained interrogation, in police custody, he confessed to his role as the gang leader and admitted his continuous involvement in criminal activities over the years.

2.6 It is its case that the criminal antecedents of the applicant are extensive & shocking and he has been involved in 11 separate FIRs registered over a span of nearly 15 years, including serious charges under Sections 302, 307, 120B, 147, 148, 149, 392, 324 IPC and 25/27 Arms Act, amongst others. These cases, list of which cases is already part of chargesheet, are not isolated in nature but are systematic, premeditated and gang-related, thus fulfilling all ingredients under Section 2(d) & 2(e) of MCOC Act.

2.7 It is its case that during his police custody remand on 09.10.2020, numerous property documents relating to several properties were recovered at his instance from the upper portion of his residence, which is also the residence of his brothers namely Adil, Nadir Hayat and Badar. The documents included agreements to sell, GPAs, Wills, Sale Deeds, Compromise Deeds, Rent Agreements and other property-related documents.

2.8 It is its case that during subsequent investigation, the concerned persons connected with several of these properties came forward and their statements were recorded u/s 161 & 164 Cr.P.C. and as protected witnesses u/s 19 MCOC Act. Protected Witnesses "A" and "D" disclosed a specific instance wherein, pursuant to a property transaction, persons associated with the Nasir Gang (including accused Nadeem Kalia and Gulfam Khan) forcibly attempted to dispossess the owners/tenants from a valuable property at Chauhan Bangar, Jafrabad, and claimed that the property belonged to them, further stating that they were "Nasir bhai ke aadmi" and that forged documents of the property had been prepared. The version of Witness "D", being a tenant in the said property, materially corroborates the occurrence narrated by the owner of the property i.e. Witness "A".

2.9 It is further its case that Protected Witnesses "B" and "C" independently disclosed another specific incident concerning a disputed property at Jafrabad, wherein accused Adil, brother of the applicant & an active member of the syndicate, proposed the transfer of the said property against arranging financial assistance and after the property was transferred, the promised payment was withheld, possession of the property was sought and the concerned person was threatened when he persisted with his demands. Their statements materially corroborate each other regarding the specific role of co-accused Adil in using the criminal influence of the Nasir Gang for securing control/possession over disputed property and intimidating person asserting their rights.

2.10 It is its case that the aforesaid evidence coupled with the recovery of numerous property documents from the residence of the applicant, his position as the kingpin & head of the organised crime syndicate and the other evidence collected during investigation, substantially corroborates the fact regarding the systematic use of the criminal influence and reputation of the Nasir Gang for acquiring/controlling disputed properties, using intimidation and deriving unlawful pecuniary gains.

2.11 It is its case that during the course of investigation, another independent witness voluntarily joined the investigation and furnished material information regarding the applicant, his associates and the modus operandi of the organised crime syndicate.

His statements were recorded u/s 161 & 164 Cr.P.C. and considering the threat perception, his identity was also protected u/s 19 of the MCOC Act and he has been referred to as Protected Witness "E". The said witness has specifically disclosed the role of the applicant as the head of the syndicate and identified his close associates involved in its criminal activities, thereby further corroborating the existence, structure and functioning of the Nasir Gang.

2.12 It is further its case that during investigation substantial oral & documentary evidence has been collected against the applicant which independently & cumulatively corroborates his role as the kingpin of the organised crime syndicate and his involvement in continuing unlawful activities for pecuniary gains. The material evidence includes certified copies of FIRs, chargesheets, orders on charge/cognizance and other relevant judicial orders pertaining to the criminal cases the applicant and his associates are involved in and which material establishes the continuing nature of the unlawful activities of the applicant and his associates including involvement in serious offences carrying the prescribed punishment and further reveals that the syndicate continued its criminal activities even after registration of the present case.

2.13 It is its case that applicant's confessional statement u/s 18 of MCOC Act was recorded by the DCP/Crime on 27.10.2020 after due compliance with the statutory safeguards wherein he admitted about the existence & functioning of the Nasir Gang and disclosed the roles of his associates in various organised criminal activities, including extortion, contract killings, supply/procurement of illegal arms, grabbing of disputed properties, intimidation and generation of unlawful pecuniary gains. Significantly, the role and association of the applicant have also surfaced in the voluntary confessional statements of other accused persons recorded u/s 18 of the MCOC Act, independently corroborating his position as the head of the organised crime syndicate and the involvement of the syndicate in the aforesaid organised criminal activities.

2.14 It is its case that the investigation has also revealed that the applicant and his close family members maintained a lifestyle and incurred substantial expenditure disproportionate to their known legitimate sources of income. Statements of persons associated with various expenditure incurred by the family, including jewellers, cooks, venue organisers and other service providers, further disclosed that payments were withheld and demands were suppressed by taking advantage of the applicant's criminal reputation and influence. These circumstances further corroborate the fact regarding generation & retention of unlawful pecuniary gains through the activities of the syndicate.

2.15 It is its case that when considered cumulatively, the evidence clearly establishes that the applicant is not merely an individual criminal but the kingpin and controlling head of a highly organised and structured crime syndicate, operating in Delhi and adjoining areas. It is its case that the material on record establishes the syndicate's involvement in serious continuing unlawful activities including contract killings, extortion, intimidation, illegal acquisition/control of disputed properties, use & procurement of illegal firearms and other organised criminal activities for unlawful pecuniary gains.

2.16 It is its case that the present case is governed by the stringent provisions of Section 21(4) of the MCOC Act, under which bail can be granted only when the twin conditions prescribed therein are satisfied. In the present case, having regard to the substantial oral, documentary and confessional evidence collected against the applicant, including the independent corroboration emerging from the statements of protected witnesses and the confessional statements of other accused persons, there are no reasonable grounds for believing that the applicant is not guilty of the offences alleged against him. Further, considering his position as the kingpin of the syndicate, criminal antecedents, past conduct and influence over associates and witnesses, there are reasonable grounds to apprehend that he is likely to misuse the liberty of bail and interfere with the prosecution case.

2.17 It is its case that the applicant's leadership position, criminal antecedents, influence in the locality and the conduct of his associates give rise to a grave and genuine apprehension that, if enlarged on bail, he may misuse the liberty, influence or intimidate protected witnesses, tamper with evidence, re-establish contact with members of the syndicate, evade the process of law or otherwise obstruct the fair conduct of the trial.

2.18 Ld. SPP for the State has relied upon ***State of Kavitha Lankesh Vs. State of Karnataka 2021 SCC Online SC 956, Vinod G. Asrani Vs. State of Maharashtra (2007) 3 SCC 633, Praveen Venkatesh Takalki Vs. NIA (2013) SCC BOM 2088, Mohd. Farooq Abdul Gafur Vs. State of Maharashtra (2010) 14 SCC 641, State of Maharashtra Vs. Kamal Ahmed Mohammad Vakil Ansari (2013) 12 SCC 17, Sachin Bansilal Ghaiwal Vs. State of Maharashtra (2014) SCC Online Bom 725, Ranjitsing Brahamjeetsingh Sharma Vs. State of Maharashtra (2005) 5 SCC 294, Farman Imran Shah Vs. State of Maharashtra (2014) SCC Online Bom 408, Parveen Bazard Vs. State (NCT of Delhi) 2021 Online Del 383, Ganesh Nivrutti Marne Vs. State of Maharashtra (2010) SCC Online Bom 716, Digvijay Saroha Vs. State 2019 SCC Online Del 10324, Govind Sakharam Ubhe Vs. State of Maharashtra 2009 SCC Online Bom 770, Mujahid Vs. The State of Maharashtra 2014 SCC Online Bom 4048, Zakir Abdul Mirajkar Vs. State of Maharashtra 2022 SCC Online SC 1092, Maharashtra Vs. Vishwanth Maranna Shetty (2012) 10 SCC 561, Gokul Bhagaji Patil Vs. State of Maharashtra and anr (2007) 2 SCC 475, Kamlesh Kothari Vs. State (NCT of Delhi 2023 SCC OnLine Del 3984, Prasad Shrikant Purohit Vs. State of Maharahstra (2015) 7 SCC 440, Naresh Balyan Vs. State of NCT of Delhi 2026 SCC OnLine Del 5770, State (NCT of Delhi) Vs. Asrar @ Israr @ Popat Crl.A. 230/2025 & Crl.MA 5878/2025, State of Gujarat Vs. Sandip Omprakash Gupta (2024) 14 SCC 401*** and ***Leena Paulose Vs. State of NCT of Delhi 2026 SCC OnLine Del 2618*** in support of his arguments.

Findings

3. I have carefully considered the rival contentions raised at bar, examined the legal provisions and have also perused the relied upon case laws.

3.1 In nutshell the prosecution case against the applicant is that he is the kingpin/leader of a notorious organised crime syndicate popularly known as the "Nasir Gang" which had been operating in the Trans-Yamuna area of Delhi for several years and the said syndicate was involved in various organised criminal activities including extortion, intimidation, illegal property grabbing, violent assaults, use of firearms, and creating an atmosphere of fear among local residents and businessmen for pecuniary gains. Considering the organised and systematic nature of criminal activities committed by the syndicate, the present FIR was registered under the provisions of the MCOCA after obtaining due approval from the competent authority.

3.2 Since the provisions of MCOCA have been invoked in the present case it would be expedient to re-apprise as to why the said Act was enacted. MCOCA was initially enacted for the State of Maharashtra for combating the menace of organized crime which posed a serious threat to civil society in Mumbai. The government was of the opinion that the existing legal regime was inadequate to deal with the problem and hence, the necessity for a special law to curb the menace of organized crime led to enactment of MCOCA for the State of Maharashtra in the year 1999. Subsequently the Act was extended to the National Capital Territory of Delhi w.e.f. 02.01.2002 by GSR-6 (E) in exercise of powers conferred by Section 2 of the Union Territories (Laws) Act, 1950 by the Central Government with certain modifications. MCOCA was enacted to make special provisions for prevention & control of and for coping with, criminal activity by an organized crime syndicate or gang and for matters connected therewith or incidental thereto. The enactment has a special purpose i.e. to tackle the menace of serious, heinous offences committed in an organized manner. The statement of Objects and Reasons of MCOCA leaves no doubt that offences contemplated under the said Act are serious offences with the potential of prejudicing the security of the nation.

3.3 Statutory provisions of the MCOCA which are germane to the present controversy are set out below for ease of reference.

Section 2

"(2) Definitions
(1) ....(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 other person or promoting insurgency;
(f)"organized crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organized crime;

Section 3

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 organized crime or any act preparatory to organized crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.
(3)Whoever harbours or conceals or attempts to harbour or conceal, any member of an organized 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 organized 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 organized crime or which has been acquired through the organized 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.

Section 4

4. Punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate

If any person on behalf of a member of an organized 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.

Section 18

"18. Certain confessions made to police officer to be taken into consideration

(1)Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Deputy Commissioner of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator;Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2)The confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him.

(3)The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is being made voluntarily. The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and time of the

same.

(4)Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.

(5)The person from whom a confession has been recorded under sub-section (1) shall also be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under sub-section (4) alongwith the original statement of confession, written or recorded on mechanical device without unreasonable delay.

(6)The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon.

Section 23

23. Cognizance of, and investigation into, an offence

(1)Notwithstanding anything contained in the Code,--

(a)no information about the commission of an offence of 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.

3.4 The MCOCA being a special legislation there is modified provision in the same as incorporated in Section 21(4) MCOCA which provides that the accused can only be released on bail if there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence while on bail. The said provision is reproduced hereunder:-

> ***"21. Modified application of certain provisions of the Code***
>
> ....
>
> *(3)Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act.*
>
> *(4)Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless--*
>
> *(a)the Public Prosecutor has been given an opportunity to oppose the application of such release; and*
>
> *(b)where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*
>
> *(5)Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question.*
>
> *(6)The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code or any other law for the time being in force on the granting of bail..............."*

3.5 While considering bail under the MCOCA it has to be kept in mind that Section 21 (4) of the Act provides for a stricter regime and the test under the said Act requires much stronger degree of satisfaction. When there is an embargo put in by a specific provision under a special enactment, just like Section 21 (4) in the case at hand, then in the matter of grant of bail in respect of offences allegedly committed thereunder, the power to grant bail should necessarily be subject to satisfaction of the conditions mentioned in such specific provision. The twin conditions for grant of bail incorporated in Section 21(4) of MCOCA requires the Court to be satisfied that there are "reasonable grounds for believing that the accused is not guilty of such offence", which is "something more than prima facie grounds".

3.6 Though the twin conditions restrict the right of the accused to grant of bail but it cannot be said that the said conditions impose absolute restrain on grant of bail. The conditions do not take away the discretion vested in the court, which discretion ofcourse has to be exercised judiciously, keeping in view the mandate of law, the nature of allegations and upon appreciation of the entire material placed on record by the rival parties in support of & against the grant of bail. In view of the twin conditions the court has to arrive at a conclusion as to whether the given facts & circumstances are sufficient in themselves to justify the satisfaction that the accused/applicant is not guilty of the offence and thus entitled to bail.

3.7 In bail matters, the law is fairly well settled that at the stage of bail the court has to see the broad probabilities of the case and if the accused has been able to demonstrate that there are broad probabilities that he is not guilty of the offence u/s 3/4 of the MCOCA then he has a right to be released on bail. At this stage the court cannot go into a meticulous examination of the facts nor it can examine the probative value of the witnesses, their statements. What the court has to see is if there is a genuine case against the accused, he has the requisite mensrea to commit the offence and the court is not expected to weigh the evidence, delve deep into the merits of the case or find out whether the accused is indeed guilty or not, which stage will come only once the trial is concluded. The court is not to determine, at the stage of bail, the guilt of the accused but to only assess the matter on broad probabilities. The court is not required to record a positive finding that the accused has not committed an offence under MCOCA but is to consider the question from the angle as to whether the accused was possessed of the requisite mensrea or not. The court has to maintain a delicate balance between judgment of acquittal or conviction and an order granting bail much before commencement of trial. The court is also required to record a finding as to the possibility of the accused committing a crime which is an offence under the MCOCA, after grant of bail. In nutshell what the court has to see is whether there is a genuine case against the accused or not.

3.8 It is also trite that while disposing off a bail application detailed reasons are not necessary to be assigned, however, the court is expected to ascribe reasons for granting or refusal to grant bail that demonstrates application of mind at least in serious cases. Furthermore, the consideration which should primarily weigh with the court at the time of considering the bail application is the nature of accusations/offence but the other factors like the antecedents of the applicant and whether there is chance of his tampering with the witnesses, the evidence also to be considered, kept in mind.

3.9 A careful reading of Section 2 would reveal that to constitute "Organized Crime" there has to be any continuing unlawful activity by an individual, singly or jointly, as a member of the 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. Simply stated the activity committed was prohibited by law in force at that time and was a cognizable offence having punishment of three years or more.

3.10 To constitute "continuing unlawful activity" within the meaning of Section 2(1)(d) of the Act, the following ingredients are essential:-

(1) the activity must be prohibited by law;

(2) it must be a cognizable offence punishable with imprisonment of three years or more;

(3) it must be undertaken singly or jointly;

(4) it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate;

(5) in respect of which more than one charge sheet is filed before a competent court.

3.11 Having refreshed MCOCA and the general principles guiding the bail application, let us now discuss the grounds agitated by the applicant for seeking bail.

3.12 At the outset, it is pleaded on behalf of the applicant that the standalone MCOCA FIR/present FIR is impermissible in law as the same is registered only u/s 3/4 of MCOCA and section 174A IPC without any substantive or triggering offence forming part of the same FIR. As far as the said contention is concerned, same has no merits whatsoever as offences prescribed under MCOCA are substantive offences themselves. It has been held in ***Naresh Balyan (supra)*** that "organised crime" in itself being a substantive offence, an FIR registered only for commission of offences u/s 3 & 4 of the MCOCA is permissible. The investigating agency has both the options available to it i.e. either to incorporate MCOCA in a pending FIR or record a fresh FIR.

3.13 It is well settled that to invoke the provisions of MCOCA there has to be some act or omission which amounts to organized crime after the act i.e. MCOCA came into force. If a person continues with unlawful activities after promulgation of MCOCA then he can be tried for offence under the said Act ***{Sandip Omparkash Gupta (supra)}***. The applicant is allegedly involved in numerous cases, heinous offences after the promulgation of MCOCA, details of which FIRs, charge sheets are part of the record. He has been involved in criminal activity for more than a decade and as per the charge sheet FIRs span against the applicant from the year 2006 till 2020. The MCOCA came into force in the National Capital Territory of Delhi in 2002 and therefore all the criminal activities as detailed in the charge sheet were allegedly committed by the applicant after promulgation of MCOCA. Some of these FIRs including FIR 117/12 PS Jafrabad, FIR no. 254/12 PS Jafrabad, FIR no. 442/13 PS Jafrabad, FIR no. 1009/15 PS Farsh Bazar and FIR no. 151/17 PS Jafrabad are of murder. Though Ld. Counsel for the applicant argued that the applicant is not an accused in FIR no. 151/17, however, that will not alter the situation as it is the prosecution case that the said crime was committed by the syndicate of which the applicant is the kingpin. His syndicate which has around 6 members, including the applicant, is involved in number of criminal activities and its member's involvement is detailed in the charge sheet which reflects their involvement in dozens of criminal cases some of which are heinous offences.

3.14 From the very definition, 'Organised Crime Syndicate' is a group of two or more persons who singly or collectively act as a syndicate or gang, to indulge in activities of organised crime. The 'organised crime' means continuing unlawful activity by an individual singly or jointly as the member of organised crime syndicate. The 'continuing unlawful activity' means an activity undertaken singly or jointly as a member of Organised Crime Syndicate, which is punishable for an imprisonment of three years or more in respect of which more than one Chargesheet have been filed before the competent Court within preceding period of ten years and on which cognizance has been taken by the Court.

3.15 Number of FIRs registered against the applicant, his co-accused persons/members of syndicate and the organised crime syndicate prima facie show the applicant has been indulging in Organized crime as part of organized criminal syndicate. Mere gap between invoking of MCOCA and the last FIR is of no consequence once the criminal unlawful activity continues which qualifies as an organized crime. The only requirement of law is filing of more than one charge sheet against the syndicate and taking of cognizance by the competent court which prima facie stands fulfilled in the case at hand. Just because a crime syndicate keeps a low profile or does not commit a crime for a certain period or may be commits a crime but does not get reported would not preclude the investigating agencies from invoking MCOCA. In fact the applicant allegedly kept indulging himself in criminal activity after invoking of MCOCA and was involved in FIR no. 289/20 PS Madhu Vihar u/s 302/201/34 IPC as well as FIR no. 231/20 PS Special Cell under the Arms Act which reflects that even invoking of provisions of MCOCA failed to deter the applicant from indulging in criminal activities. Not only he kept on absconding after the present FIR was registered/MCOCA was invoked against him but he also continued to indulge in unlawful activities. At the time of his apprehension by Special Cell which led to registration of FIR no. 231/20 he was found in possession of arms/pistol on his person and subsequently a huge cache of arms/ammunition was recovered at his instance. Therefore considering his past involvements, FIRs & filing of charge sheets in those FIRs prima facie there appears to be no infirmity in invoking MCOCA against the applicant. Filing of charge sheet fulfilled one of the requirement for invoking MCOCA and the continuous involvement in heinous offences including murder which necessarily involved violence, after promulgation of MCOCA fulfilled the other equally important requirements. Hiatus of 4 years, as was pointed by the Ld. Counsel for the applicant is of no consequence. There is no requirement under the MCOCA that a person should indulge in criminal activity continuously, on a regular basis/interval. The continuous criminal, unlawful activities from 2006 till 2015, even if FIR in 2017 is ignored, coupled with the manner in which the unlawful activities were committed i.e. use of violence, with different objective of causing pecuniary gain as well as to establish dominion over other gangs as well as for spreading fear in the society compelling it to succumb to its demand, unlawful demand fulfills the requirement for invoking MCOCA.

3.16 The arguments, raised on behalf of the applicant, that the prosecution has not placed on record any proof of pecuniary gain having been derived by the syndicate or non compliance of directions of the Ld. Predecessor dated 10.08.2021 also have no merits as it is well settled that the requirement of law is not limited to pecuniary benefits but it could also be of "gaining undue economic or other advantage". The expression "other advantage" cannot be read in a restrictive manner and is required to be given its full effect. There could be advantage to a person committing a crime which may not be directly leading to pecuniary advantage or benefit but could be of getting a strong hold or supremacy in the society or even in the syndicate itself. The purpose of this enactment is to be kept in view while interpreting any expression therein and in the name of strict construction, its spirit and object cannot be whittled down. Reliance may be placed upon ***Dheerpal @ Kana vs State Govt of NCT Of Delhi 2024 SCC OnLine Del 4106***. In the case hand it is the prosecution case that the offence, criminal activity which led to registration of FIR no. 151/17 was committed to spread fear and establish supremacy in the neighborhood, to further the purpose/objective of the Nasir gang of which the applicant is the alleged kingpin/leader. In the said matter two rival gang members were murdered while one was grievously injured. This murder according to the prosecution was to take revenge as well as establish the Nasir Gang's supremacy in the area.

3.17 Mere acquittal in one of the matter i.e. FIR no. 681/2006 PS Seelampur is of no help to the applicant. What is required is the filing of charge sheet and taking of cognizance by a competent court in more than one matter in the preceding 10 years. It is not in dispute that charge sheets have been filed and cognizance taken thereof by the competent court in more than half a dozen matters. It is well settled law that the requirement under MCOCA is of taking cognizance and it does not talk about conviction or acquittal {***Umesh @ Kala vs State 2025 SCC OnLine Del 6570*** and ***Dheerpal @ Kana (supra)***}. For similar reasoning the defence submissions that the approval u/s 23 or the sanction being vitiated doesn't hold water. Also at the stage of bail, the court is not required to go into the details and give a finding as to whether the approval is in accordance with the law or not as such exercise is to be undertaken only during the trial. It is at the stage of trial, when the sanctioning authority enters the witness box, that the accused/applicant shall have ample opportunity to attack/contest the approval, sanction u/s 23 of the Act. Reliance may be placed upon the law laid down in ***Naresh Balyan (supra).***

3.18 As far as parity is concerned, no doubt some of the co-accused persons are on bail, however, the conduct of the accused/applicant does not entitle him to the benefit of parity. Reason being that after the MCOCA was invoked and the FIR was registered on 09.07.2019, it is the prosecution case that the applicant evaded the process of law, absconded and was declared a proclaimed offender on 04.09.2020. He was subsequently apprehended in FIR no. 231/20 PS Special Cell under the Arms Act wherein, as discussed above, huge cache of weapon/ammunition was recovered from him and he was arrested in the present matter. He was arrested the very next day of registration of FIR no. 289/20, which has discussed above, is of murder. Hence despite MCOCA being invoked against him, the applicant continued to indulge in criminal activities which duly reflects his utter disregard to the law.

3.19 It is well settled that the mandate under Article 21 of the Constitution prohibits prolonged pre-trial incarceration of the accused, particularly when there is no reasonable likelihood of expeditious conclusion of trial. The right to a speedy trial has been recognized as a important facet of Article 21 of the Constitution and pre-trial incarceration cannot, by mere passage of time, being permitted to assume the character of punishment. However, in cases under the Special Statutes like MCOCA, which incorporates conditions restricting bail, prolonged incarceration though a relevant ground but cannot by itself be a determinative ground to release the accused on bail. What is required in such cases is harmonization of the constitutional guarantee of liberty of an individual/accused and the legislative objective which led to statutory provisions restricting bail. Article 21 protects individual's liberty, however, it also reflects the States obligation to protect the life, liberty and security of the community of the society. The facts of each case must be assessed independently and the rights of the society, public at large must be balanced with those of the accused, particularly in cases involving heinous offences. Long incarceration cannot be a stand-alone consideration and requires to be weighed viz-a-viz the nature of offence and the material against the accused. Considering the past involvements of the applicant he rather appears to be a threat to the society.

3.20 Also in terms of section 21 of the Act the Court is required to record a finding as to the possibility of the applicant's committing a crime after grant of bail, however, such an offence in future 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 applicant, his propensities and the nature & manner in which he is alleged to have committed the offence. The past involvements of the applicant, that too in heinous offences and his role of being the syndicate's kingpin certainly curtails this court's hands in recording any such finding in favour of the applicant ***{Umesh @ Kala (supra)}***.

गौरव राव
GAURAV RAO
न्यायाधीश: विशेष विशिष्ट न्यायालय-13, (मकोका)
Judge: Special Exclusive Court-13, (MACOCA)
कमरा नं. 405, चतुर्थ तल
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राउज़ ऐवेन्यू न्यायालय परिसर, नई दिल्ली
Rouse Avenue Courts Complex, New Delhi

3.21 Therefore in view of above discussion, I am not inclined to enlarge the applicant on bail at this stage. Accordingly, bail application stands dismissed.

3.22 It is made clear that the findings recorded as above are merely tentative in nature and shall have no bearing on the merits of the case.

Sd/-
(Gaurav Rao)
Special Exclusive Court 13(MCOCA)
Rouse Avenue Courts
New Delhi/07.03.2026

न्यायाधीश: विशेष विशिष्ट न्यायालय-13, (मकोका)
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