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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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RESERVED ON -13th October, 2023
PRONOUNCED ON -20th October, 2023

+ BAIL APPLN. 1127/2023

PINKI IRANI

..... Petitioner

Through: Mr. R.K. Handoo with Mr. Yoginder Handoo, Mr. Aditya Chaudhary, Mr. Ashwin Kataria, Mr. Garvit Solanki, Advs.

versus

GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. Sanjay Jain, Sr. Adv. with Ms. Nandita Rao, ASC with Mr. Akhand Pratap Singh, SPP, Mr. Yuvraj Sharma, Mr. Nishank Tripathi, Ms. Harshita Sukhija, Mr. Amit Peshwani, Mr. Jasraj Chhabra, Advs. for State and ACP Virender Kadyan, PS EOW with Inspector Shikhar Chaudhary.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J:

1. The present bail application has been filed seeking bail in case FIR No. 208/2021 dated 07.08.2021 registered under Sections



170/384/386/388/419/420/506/186/353/463/471/120-B of IPC, 66-D Information Technology Act, Section 3 & 4 of MCOCA Act, 1999 registered at PS Special Cell.

2. Briefly stated that the case of the prosecution is that on 15.06.2020 complainant Ms. Aditi S. Singh received a call from a landline number on her mobile phone in which the caller introduced himself as a senior officer in the Ministry of Law and proposed to help her in resolving the legal matters related to her husband and her companies. The person demanded a sum of Rs. 20 Crores for getting the work done and conveyed the modalities regarding the delivery of money. Thereafter, allegedly, the caller through his associates extorted money from her on multiple occasions. It has been alleged that the accused persons hatched a conspiracy by impersonating as Government Officers of the highest ranks and extorted money from the complainant to the tune of Rs. 217 Crores on multiple occasions.
3. Further, the complainant alleged that she received a call to deliver Rs.1 Crore on 07.08.2021. On the information provided by the complainant, a trap was laid and accused Pradeep Ramdani, who came in a Hyundai I-20 car No. HR-26 BC 4740 was caught red-handed while receiving the amount of Rs. 1 Crore from the complainant. Pradeep Ramnani said that he collected the money on the instructions of his brother Deepak Ramnani. At the instance of Pradeep Ramnani, his brother Deepak Ramnani was also arrested in this case. Their interrogation further led to the alleged mastermind Sukesh Chander Sekhar, who had allegedly roped them in to collect the payment from the complainant. Sukesh Chander Shekhar was



lodged in Rohini Jail as UTP in the case of allegedly taking money from AIADMK leader T.T.V. Dinakaran on the pretext of helping him to retain the "two leaves" symbol for his party. On the intervening night of 07/08.08.2021 raid was carried out by Special Cell at Cell No. 204, Ward No. 3 of Jail No. 10, Rohini Jail, and two mobile phones were recovered from the possession of Sukesh Chander Sekhar. He was arrested in the present case. Further, the interrogations of the accused led to the identification of their associates and co-conspirators, and in total, 20 persons (except the present one) were arrested in the present case.

4. During the investigation, allegedly it transpired that accused Sukesh Chandra Shekhar diverted part of the crime proceeds to the Bollywood celebrities in the shape of gifts. Investigation also revealed that accused Sukesh Chandra Shekhar roped in applicant i.e., Ms. Pinky Irani, who is based in Mumbai to facilitate him to get in touch with various Bollywood celebrities. Allegedly, the examination/interrogation of various Bollywood celebrities such as Nora Fatehi, Jaqueline Fernandez, Leepkashi Elhawaidi, Mehboob Khan, Prashant Gunjalkar, Sophia Singh, Shaan Muthathil, Nikita Tamboli, Chahat Khanna revealed the facts and the role played by Pinky Irani. As per the prosecution case total of Rs.217 crores were extorted on different occasions. It has also been alleged that Accused Pinky Irani received an amount of Rs.74,60,000/- in her bank accounts from various bank accounts at the instance of the accused Sukesh Chandra Shekhar which is allegedly Proceeds of Crime. It is a matter of record that the accused/applicant Pinky Irani has already



been granted bail in the ED matter vide order dated 15.02.2022 by Ld. Trial court.

5. The Learned Trial Court vide order dated 04.03.2023, dismissed the bail application of the applicant. The Ld. Trial Court *inter-alia* held that prima facie, conditions u/s 21(4) of the MCOC Act have not been fulfilled. Moreover, in the ED matter grant of bail to the accused/applicant was on account of her taking benefit of the proviso attached to Section 45 of the PML Act, whereas no such exempting proviso is attached to Section 21 (4) of the MCOC Act. It was further, *inter-alia* held that PMLA was a case of limited purpose only to money laundering whereas in the present case, the prosecution had put forth different evidence not only for the offence under MCOC Act but also for other offenses under IPC. Hence the present bail application has been filed for release on bail.
6. Sh. R.K. Handoo Learned counsel for the applicant submitted that the allegation of the applicant facilitating Sukesh Chandrasekhar (A-I) to get in touch with Bollywood celebrities is disjoint in time and period as the period of the offence started from 15.06.2020. Thus, the alleged facilitating of meetings of Bollywood celebrities in Tihar jail in the year 2018 cannot be pressed into service against applicant Pinky Irani, for an offence committed after June 2020.
7. Further, it was submitted by the learned counsel that the alleged "Absolute knowledge/awareness about the existence of organized crime syndicate" does not invite MCOCA. Learned counsel submitted that Awareness is neither abetment nor participation. The alleged absolute knowledge about the existence of organized crime



does not make a person a member of the organized crime syndicate or gang, as envisaged U/S 2(t) of MCOCA. It is indulgence in activities of organized crime by a gang of two or more persons, acting singly or jointly/collectively, which makes an organized crime syndicate. The "knowledge" of existence is not "indulgence" in activities of organized crime. Reliance has been placed upon ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294. Relevant paras are 13(iii), para 20 and para 22.***

8. Further, learned counsel submitted that the amount of money that has been received by banking transactions in three bank accounts of applicant Pinky Irani, PMLA complaint has been filed on the same allegations, in which Applicant has already been granted bail. The observations of the Ld. Trial Court in the PMLA case was on the same material, while granting bail, which are relevant and unchallenged wherein the Ld. Court observed that there is nothing on record to attribute any *mens-rea* to the applicant regarding the generation/usage of proceeds and has concluded that the Applicant is not involved in the generation of proceeds of crime or parking of funds or projecting the same as untainted and that evidence against her is documentary. Therefore, on the same allegations, MCOCA has been imposed.
9. Further it was submitted that the most essential requirement for invoking MCOCA is the "existence of an activity" prohibited by law, the nature of the activity (cognizable offence); type of activity (should be punishable by above 3 years); period of activity (should be within 10 years); and stage of such cases should be charge



sheeted, filed and cognizance taken by the court to constitute continuance of unlawful activity. It is submitted by the learned counsel that none of the alleged activities as stated above against applicant Pinky Irani fall within the definition of "continuing unlawful activity".

10. Further, it was also submitted that organized crime is only such continuous unlawful activity, which is committed by use of "unlawful means", which includes threat, violation, intimidation, coercion, etc., for gaining pecuniary benefits. The allegation against the Applicant does not refer to or relate to any of the unlawful means. The word 'unlawful means' has been properly explained by the Hon'ble Supreme Court in the case of *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra (Supra)*, as such acts, which has 'direct nexus with the commission of a crime, which MCOCOA seeks to prevent or control'. Thus, the acts alleged against Applicant Pinky Irani do not form part of organized crime.

11. Furthermore, it is submitted by the learned counsel that evidence to show the nexus of acts of the applicant with the prohibited activity of the syndicate, towards achieving the objective of the syndicate/gang as envisaged under section 2(e) of MCOCA, viz; to make pecuniary benefits or advantage for self or any other person. Therefore, only such acts which are committed towards the commission of the offence of the syndicate or gang, even if singly by its member, would make another person the gang liable. It is also submitted that it is an admitted case that the applicant was nowhere in the generation of proceeds of crime or commission of any acts or activity of alleged



extortion during the period of offence till 7-8-2021 but is alleged to be a beneficiary in disbursal. It is submitted that there has to be a nexus and a connecting cord between the accused and the activities of the syndicate. Thus, the alleged acts of others cannot be attributed to Applicant.

12. It was submitted by the learned counsel for the applicant that the Ld. Trial Judge himself has observed in the impugned order that the disclosure statement under section 18 of MCOCA is a "retracted statement". Further, learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in the UAPA case of ***Yedala Subba Rao & Anr. Vs UOI, (2023) 6 SCC 65***, wherein it was held that a disclosure statement is not admissible unless there is the material that would lead to discovery pursuant to disclosure.
13. It was also submitted that restrictions as envisaged U/S 21(4) of MCOCA should not be pushed too far and must be interpreted in consonance with the provisions of Article 21 of the Constitution of India and the presumption of innocence which is a human right and liberty of person should not ordinarily be interfered unless there are cogent grounds thereof.
14. Lastly, the learned counsel for the applicant submitted that the allegations against the applicant are mirror copies of allegations in PMLA. As per section 71 of PMLA, provisions of PMLA would prevail on similar provisions of MCOCA. PMLA, 2005 is a central legislation that came on the statute book after MCOCA was extended to NCT India 2002. It is submitted that where there are two special statutes, that contain obstante clauses, the latter statute would prevail.



Section 71 of PMLA has an overriding clause and came into force on 01.07.2005 while MCOCA was extended to NCT in 2002 and has an overriding clause U/S 25. PMLA being later legislation will hold the field. Reliance is placed upon *Sharat Babu Digumarti v. Govt. (NCT of Delhi)*, (2017) 2 SCC 18.

15. Sh. Sanjay Jain Learned Senior Advocate for the State submitted that the applicant has been an active member of the Organized Crime Syndicate [S. 2(f) of the MCOCA] (hereinafter referred to as Syndicate), being run by Sukesh Chandra Shekhar for carrying out Organized Crime [S. 2(e) of the MCOCA], which surfaced upon the investigation having been carried out by Delhi Police, EOW.
16. Further, it was submitted that the MCOCA Act was introduced in order to curb the continuing unlawful activity [S. 2(1)(d)] carried out either singly or jointly with the objective of gaining pecuniary benefits to constitute it to be an organized crime [S. 2(1)(e)], which when having been carried out in a planned manner in a group is an organized crime carried out by an organized crime syndicate [S. 2(1) (9)]. Ld. Senior advocate also submitted that the distinguishing feature of MCOCA, as distinct from a standalone act of crime, stems from the continuity factor attached to unlawful activity, as would be evident from the definitions quoted hereafter.
17. Further, the learned senior counsel submitted that the role of an individual as a member of an organized crime syndicate is to be evaluated from the point of view of her association/nexus with the organized crime syndicate (such syndicate being engaged in a continuing unlawful activity) against whom, at the given point in



time, more than one charge-sheets stand filed, in relation to a cognizable offence punishable with imprisonment of three years or more, within last preceding ten years. It was also submitted that the requirement of more than one charge sheet is not against the individual members but against the organized crime syndicate, which as a syndicate is engaged in continuing unlawful activity.

18.It was submitted by the learned counsel that the Applicant's contention that requirement as specified w/s. 2(1)(d) MCOCA has not been met as against the applicant, for the reason that the prerequisite of more than one charge-sheet is missing, is wrong. The above requirement is not individual-centric but is syndicate-centric and this aspect has already been settled by the Hon'ble Supreme Court in *Kavitha Lankesh v. State of Karnataka and Others; (2022) 12 SCC 753*.

19.Further, it was submitted by the learned Senior counsel that in order to appreciate the role of an individual in an MCOCA case, it must not be lost sight of that it is good enough if the same is that of a facilitator or of an abettor as referred to in Section 3(2), 3(3), 3(4) or 3(5) of the MCOCA. Learned SPP submitted that it was also an option available to the investigating agency to register a fresh FIR under the MCOCA, however in the present case keeping in view that the trapping of organized crime syndicate was found in the course of the ongoing investigation under the IPC and IT offences, it was deemed prudent to add the provisions of MCOCA in the same FIR rather than registering a new FIR.

20.Further, learned SPP submitted that the contention of the applicant



that there is no material on record to show the applicant had any link with the foundational allegation of extortion (which as per the FIR, pertains to Sukesh Chandra Shekhar) and therefore, there is no prima facie case to invoke the provision of the MCOCA as against them is meritless for the reason that for invocation of the MCOCA provisions, it is not mandatory that each member of the syndicate should have a direct role to play in the foundational crime. In the context of MCOCA, the concept of abetment is of utmost significance, particularly in view of the legal position, which shows that it has a wider implication in MCOCA matters in comparison to IPC.

21. It was also submitted that if any individual facilitates the continuing commission of the crime by or on behalf of the syndicate, such an individual will attract all the trappings of being a member of the organized crime syndicate and can be charged under the provisions of the MCOCA as part of the syndicate. It was submitted that one member of the syndicate need not necessarily have the same or similar role as another member of the syndicate concerned. Different members may have different roles, not necessarily overlapping and not necessarily full length or for the entire period of commission of the crime, and may or may not have a role same or similar to the head “mastermind” of the syndicate.

22. Furthermore, Learned SPP submitted that the role of the Applicant here was distinct from other members of the Syndicate, since, the Applicant herself had stated that she has known the mastermind of the Syndicate for the past 12 years, which is evident from the



conversation between the applicant and Jacqueline Fernandes. Further, in the statement of the applicant recorded u/s. 18 of the MCOCA, it has been admitted by the applicant that she was associated with the mastermind of the syndicate since 2017, after which she visited Tihar Jail, several times along with various female models/actresses, concealing the true identity of Sukesh Chandra Shekhar.

23. Learned Sr. SPP for the state further submitted that the it was the applicant who projected Sukesh Chander Shekhar to be a high-ranking and immensely influential Officer, who could be a catalyst in enhancing their career prospects in the fashion world/TV serials/cinema and on each such visit inside the jail, the visiting female models and actresses, in the presence of Pinky Irani (except in one meeting when she was not present), would receive expensive gifts from Sukesh Chandra Shekar, which clearly establishes that in the mind of Pinky Irani, there was no ambiguity as regards the true identity and syndicate activities of Sukesh Chandra Shekar.

24. Learned Sr. SPP for the state submitted that the contention with respect to the confession so made u/s. 18 of MCOCA is to be disregarded as it is completely misconceived in facts as well as in law. The procedure prescribed in Section 18 for recording the confession is aimed at ensuring that the accused is made aware of the available option as to whether she would like to make the confession or not. All procedural requirements revolve around the aforesaid fundamental objective. It is abundantly clear in view of the various judgments, that the validity of Section 18 statements i.e. whether



admissible or not, whether the same were duly retracted or not, is to be seen at the stage of trial and not bail.

25. Further, it was submitted by the learned Sr. SPP that in the present case, the Confessional statement recorded under section 18 MCOCA of Pinky Irani read with statements recorded u/s. 164 of the Cr.P.C. of Jacqueline Fernandes, Nikita Tamboli, Chahat Khanna, and Nora Fatehi, reveal the active involvement of the applicant. Reliance has been placed upon *Mohd. Farooq Abdul Gafur v. State of Maharashtra, (2010) 14 SCC 641*.

26. Furthermore, it was submitted by the learned Sr. SPP that there is sufficient material corroborating the facts surfacing from Section 18 statements, consisting of statements recorded u/s. 161 as well as u/s. 164 of the Cr.P.C. of various actresses/models, which assert the fact that Pinky Irani was instrumental in fulfilling the whims and fancies of Sukesh Chandra Shekar.

27. Learned Sr. SPP for the state further submitted that MCOCA mandates satisfaction of the twin condition for the grant of bail as provided in Section 21(4). As per, Section 21 (4), the Court has to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such an offence and she is not likely to commit any offence while on bail. Reliance can be placed upon *State of Maharashtra v. Vishwanath Maranna Shetty (2012) 10 SCC 561*.

28. Further, it was submitted by Sh. Sanjay Jain Senior Advocate that the offences under MCOCA are neither overlapping nor are akin to offences under PMLA. The argument sought to be canvassed by the



applicant is that Section 71 of PMLA provides that PMLA would have an overriding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force is misplaced. The occasion to apply Section 71 of the PMLA, particularly the expression 'notwithstanding anything inconsistent therewith would arise only if there is an overlap between the two enactments.

29. Learned Sr. SPP further submitted that it is crystal clear that PMLA has its own field of operation and is concerned with the involvement in any process or activity with the proceeds of crime. Hence, the investigation in PMLA is primarily tailored to trace the proceeds of crime, which essentially means property, as defined in Section 2(b) of the said Act. On the other hand, MCOCA is a special Act for the prevention and control of continuing criminal/unlawful activities of an organized crime syndicate, which may be engaged in committing offence not only under IPC but those qualified as offences under other enactments as well.

30. Learned Sr. SPP also submitted that MCOCA is aimed at providing a special legal framework to deal with organized crime. Hence, the two enactments have no overlap between them and thereby, there is no requirement for testing the consistency or lack of it between the two enactments, rendering Section 71 of PMLA, wholly inapplicable. The Learned Sr. SPP submitted that it automatically follows that the overriding effect as stated above is a non-issue. Reliance has been placed on *Vijay Madanlal Choudhary and Others v. Union of India and Others*; 2022 SCC OnLine SC 929, which upheld the twin



conditions for bail as provided under PMLA, drawing parallel from MCOCA, thus, re-endorsing the proposition that the two Acts are independent, at best parallel and not overlapping.

31. Moreover, the learned Sr. SPP submitted that the proposition of defence that there is some remote trappings or semblance of overlap between MCOCA and another special enactment, to press the argument of inapplicability of MCOCA on the strength of overriding provisions similar to Section 71 of PMLA does not have standing. It was submitted that while indulging in a process/activity directly or indirectly, in connection with the proceeds of crime, is one of the various possible driving forces for an organized crime, covered under MCOCA, its applicability will not be compromised merely because the act of money laundering per se is punishable under PMLA and not under MCOCA. The applicability of MCOCA is submitted to be broader and not confined to one particular offence. The special Act covers in its ambit any "continuing unlawful activity" amounting to "organized crime", abetted or committed by an "organized crime syndicate" or a member of an organized crime syndicate, indulging in activities of organized crime and that such an offence continues to remain punishable under MCOCA. The upshot of the submission is that merely because there may be a commonality in the facts constituting an offence under PMLA and MCOCA, it will not be akin to an overlap, and even if, in a particular case if it were to be so, it would not cloud or eclipse the applicability of MCOCA under the provisions of Section 71 of PMLA or such similar provisions under other special criminal enactments.

32. Before proceeding to analyze the contentions of the parties which have been recorded herein above, it is necessary to refer to the relevant provisions of the MCOC Act. In order to understand the relevant provisions, it is also necessary to look at the statement of object and reasons of the Act.

“Organised crime has been for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract, killing, extortion, smuggling in contrabands, illegal trade in narcotics kidnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organised crime being very huge, it has had serious adverse effect on our economy. It was seen that the organised criminal syndicates made a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There was reason to believe that organised criminal gangs have been operating in the State and thus, there was immediate need to curb their activities.

It was also noticed that the organized criminals have been making extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission would be an indispensable aid to law enforcement and the administration of justice.

2. The existing legal framework i. e. the penal and procedural laws and the adjudicatory system were found to be rather inadequate to curb or control the menace of organised crime. Government, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime.”



33. The bare perusal of the statement of object and reasons make it clear that MCOCA was enacted with a special purpose to tackle the serious offences committed in an organized manner. The statement reveals that intention of the legislature is to curb such activities.
34. The relevant definitions are given in Section 2(d), 2(e) and 2(f). The punishment for organised crime has been prescribed in Section 3 which reads as under:

“2(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;

2(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;

2(f) "organised 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 organised crime;”

35. Recently the Hon’ble Supreme Court in the *State of Gujrat vs. Sandeep Omprakash Gupta*, 2022 SCC OnLine SC 1727 whilst dealing with a case under the Gujarat Control of Terrorism and



Organised Crime Act, 2015; which has similar provisions as that in MCOC Act, inter alia held as under:

“In understanding the ambit of the enactment, emphasis must be given to three definitions:

- a. Organised crime (Section 2(1)(e))*
- b. Organised crime syndicate (Section 2(1)(f)); and*
- c. Continuing unlawful activity (Section 2(1)(c)).*

The expression “organised crime” is defined with reference to a “continuing unlawful activity”.

The definition is exhaustive since it is prefaced by the word 'means'.

The ingredients of an organised crime are:

- a. The existence of a continuing unlawful activity;*
- b. Engagement in the above activity by an individual;*
- c. The individual may be acting singly or jointly either as a member of an organised crime syndicate or on behalf of such a syndicate;*
- d. The use of violence or its threat or intimidation or coercion or other unlawful means; and*
- e. The object being to gain pecuniary benefits or undue economic or other advantage either for the person undertaking the activity or any other person or for promoting insurgency.*

The above definition of organised crime, as its elements indicate, incorporates two other concepts namely, a continuing unlawful activity and an organised crime syndicate. Hence, it becomes necessary to understand the ambit of both those expressions.

The ingredients of a continuing unlawful activity are:

- a. The activity must be prohibited by law for the time being in force;*
- b. The activity must be a cognizable act punishable with imprisonment of three years or more;*
- c. The activity may be undertaken either singly or jointly as a member of an organised crime syndicate or on behalf of such a syndicate;*
- d. More than one charge-sheet should have been filed in respect of the activity before a competent court within the preceding period of ten years; and*
- e. The court should have taken cognizance of the offence.*

The elements of the definition of organised crime syndicate are:

- a. A group of two or more persons;*
- b. Who act singly or collectively, as a syndicate or gang; and*
- c. Indulge in activities of organised crime.*

Section 2(1)(c) while defining “continuing unlawful activity” and Section 2(1)(e) while defining “organised crime”, both contain the expression “as a member of an organised crime syndicate or on behalf of such syndicate.” While defining an organised crime syndicate, Section 2(1)(f) refers to “activities of organised crime”.

Section 3 provides for the punishment for organised crime. Sub-section (1) of Section 3 covers 'whoever commits an offence of organised crime'. Sub- section (2) covers 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. Sub-section (3) covers whoever harbours or conceals or attempts to harbour or conceal any member of an organised crime syndicate. Sub-section (4) covers any person who is a member of an organised crime syndicate. Sub-section (5) covers whoever holds any property derived or obtained from the commission of an organised crime or which has been acquired through the funds of an organised crime syndicate. Section 4 punishes the possession of unaccountable wealth on behalf of a member of an organised crime syndicate.

23. 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 charge- sheets 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.

24. A close analysis of the term, 'organised crime' would indicate that there has to be 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 as singly or jointly as a member of organised crime syndicate or on behalf of such syndicate, in respect of which activity more than one chargesheets have been filed before a competent court within the preceding period of ten years and the Court has taken cognizance of such offence."

36. Before proceeding further, it is also necessary to be reminded that the provisions of the MCOA Act have to be strictly construed. The reading of the relevant provisions and statement of object and reasons also makes it clear that this is special enactment for dealing with the menace of organised crime which poses a serious threat to the society. The purpose and intent of the legislation is to tackle organised crime. In *State of Maharashtra & Ors. v. Lalit Somdatta Nagpal & Anr. (2007) 4 SCC 171*, it was inter alia held that the provisions of MCOA have to be strictly interpreted as the provisions seek to deprive the accused of their right to freedom at the initial stage of investigation making it extremely difficult for them to obtain bail.

37. The Apex Court in *Ranjitsing Brahmajetsing Sharma v. State of Maharashtra & Anr. (2005) 5 SCC 294*, inter-alia, held that the role



of the appellant was said to be of rendering help and support to the organizing crime syndicate while functioning as Commissioner of Police at different places. The Apex court was essentially concerned with the operation of Section 24 of MCOCA providing for punishment of public servant failing in discharge of their duty. However, the court taking overall view of the matter with reference to the facts from the prima facie opinion that the High Court might not have been correct while coming to the conclusion that the appellant committed an offence under Section 3(2) as well as Section 24 of MCOCA Act; the interim bail granted to the appellant was continued. In this case, it was inter alia held as under:

“24. The Statement of Objects and Reasons clearly states as to why the said Act had to be enacted. Thus, it will be safe to presume that the expression “any unlawful means” must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control. In other words, an offence falling within the definition of organised crime and committed by an organised crime syndicate is the offence contemplated by the Statement of Objects and Reasons. There are offences and offences under the Penal Code, 1860 and other penal statutes providing for punishment of three years or more and in relation to such offences more than one charge-sheet may be filed. As we have indicated herein before, only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA. Furthermore, mens rea is a necessary ingredient for commission of a crime under MCOCA.”



38. The bare reading of this makes it clear that each and every offence cannot be brought within the purview of the MCOC and in order to penalise a person under the MCOC, the ingredients of Section 2(d), 2(e) and 2(f) must be fulfilled. It is also pertinent to mention, that *mens rea* is a necessary ingredient for the commission of crime under MCOCA.
39. It is also necessary to understand that the factum of recording of offence of organised crime and not the recording of a crime against an offender as such is required to attribute to the provisions of MCOCA.
40. In *State of Gujrat vs. Sandip Omprakash Gupta (Supra)* the apex court also enumerated the conditions which normally weigh with the court states in granting bail in non-bailable offences.

“26. The considerations which normally weigh with the Court in granting bail in non-bailable offences are:

(1) the nature and seriousness of the offences;

(2) the character of the evidence;

(3) circumstances which are peculiar to the accused; (4) a reasonable possibility of the presence of the accused not being secured at the trial;

(5) reasonable apprehension of witnesses being tampered with; (6) the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.”



41. However, in addition to the above conditions, the conditions as laid down in Section 21(4) are also required to be taking into account which reads as under:

“21. (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.”

42. It is a well settled proposition that these conditions are cumulative and not alternative. It was reiterated in **Sandeep Omprakash Gupta** (*supra*) that the satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds and the expression “reasonable grounds” means something more than *prime facie* grounds. It was further inter alia held that it contemplates substantial provable causes for believing that the accused is not guilty of the alleged offence.

43. In **Sandeep Omprakash Gupta** (*supra*) the judgement of **Ranjitsing Brahmajeetsing Sharma** (*Supra*) was also cited with approval which reads as under:

“29. The Court should bear in mind the principles enunciated in the case of Ranjitsing Brahmajeetsing Sharma



v. *State of Maharashtra and Another* reported in (2005) 5 SCC 294. We quote paras 43, 44 and 46 resply:

"43. Section 21(4) of MCOCA does not make any distinction between an offence which entails punishment of life imprisonment and an imprisonment for a year or two. It does not provide that even in case a person remains behind the bars for a period exceeding three years, although his involvement may be in terms of Section 24 of the Act, the court is prohibited to enlarge him on bail. Each case, therefore, must be considered on its own facts. The question as to whether he is involved in the commission of organised crime or abetment thereof must be judged objectively. 30

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

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

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

44. In the present case, as per the prosecution, the evidence against the petitioner is that she was roped in by Sukesh Chandra Shekhar to facilitate him to get in touch with various bollywood celebrities and the petitioner was always in knowledge of the fact that Sukesh Chandra Shekhar is running organized crime syndicate in Tihar Jail.
45. The prosecution has further relied upon the confessional statement of Pinki Irani recorded under Section 18 of MCOCA, wherein she has confessed all the material facts about her being aware of the existence/running of the crime syndicate and her own association in the crime syndicate. The prosecution has also alleged that the petitioner has impersonated himself as Alka Kumar, P. Kumar, Angel K CFO of Jaya TV/ Sun TV and CFO of News Express Post for contacting models and actresses at the behest of Sukesh Chandra Sekhar. Learned Senior SPP has also argued that the petitioner claimed that she had known Sukesh Chandra Sekhar for approximately 12 years and she had absolute knowledge about the existence of an organized crime syndicate and intentionally receiving



pecuniary gains from Sukesh Chandra Sekhar. The evidence which is stated to be against the petitioner is that she was the main conduit between Sukesh Chandra Sekhar and Bollywood celebrities and has been working for him for the last 4-5 years.

46. The prosecution has also alleged that the petitioner helped Sukesh Chandra Sekhar in maintaining a flamboyant lifestyle to convey a sense of being above the law of the land and this played a measure role in enabling Sukesh Chandra Sekhar to acquire the influence that facilitated his running of syndicate despite being lodged inside prison.
47. The prosecution has also alleged that the petitioner told Shan Muthathil that he would receive a call from the Home Ministry which will prove that Sukesh Chandra Sekhar is an important person and in pursuance of that Shan Muthathil did receive a call. It has been submitted that this is proof that the petitioner was a close associate of Sukesh Chandra Sekhar. The state alleged that the petitioner remained a member of the crime syndicate as she concealed the real identity of the member of the present case and she always knew that Sukesh Chandra Sekhar was running a syndicate from inside the jail. The petitioner allegedly helped Sukesh Chandra Sekhar to create the aura and purchased costly items for the purpose of gifting them to the females whom the applicant had helped in meeting Sukesh Chandra Sekhar.
48. The question to be considered is whether such acts would fall within the definition of “continuing unlawful activity”, “Organized Crime” or “Organised Crime Syndicate”, for the purpose of ‘Organized



Crime’, there has to be the existence of ‘continuing unlawful activity’.

49. The continuing unlawful activity has been defined in Section 2(d) of the MCOC Act. In order to bring an offence under the definition of continuing unlawful activity it is necessary that;

- i. The act must be prohibited by law for the time being in force;
- ii. The alleged act must be a cognizable act punishable with imprisonment of 3 years or more;
- iii. The act might have been undertaken either singly or jointly as a member of an organized crime syndicate or on behalf of such syndicate; and
- iv. More than one charge sheet should have been filed in respect of activity before a competent court within the proceeding period of 10 years and the court should have taken cognizance of the offense.

50. As far as conditions 4 and 5 are concerned, it is a settled proposition that it is not necessary that the charge sheet should have been filed against the petitioner. If the charge sheets have been filed against the organized crime syndicate that would suffice the purpose.

51. The question is whether conditions 1, 2, and 3 have been fulfilled or not. The evidence which has been enumerated above against the petitioner is that she knew that Sukesh Chandra Sekhar was in Tihar Jail for a crime and despite knowing that she helped Sukesh Chandra Sekhar in creating an aura, concealed her identity to make the people believe that he is an influential person.



52. Further, the petitioner also allegedly got meetings arranged between Sukesh Chandra Sekhar and various female celebrities. The petitioner also received a sum of Rs. 75,00,000/- in her bank account. It has also been alleged that she purchased expensive gifts for such females.

53. It is an admitted case that the petitioner was not directly involved in the foundational crime. However, taking into account the fact that the *mens rea* is a necessary ingredient, this court even at the stage of bail has to examine and evaluate whether the petitioner was a member of the organized crime syndicate or had required *mens rea*. It is pertinent to mention here that the act alleged to have been committed by the alleged accused should not only be prohibited by law but should also be a cognizable offence punishable with imprisonment for three years or more and must have been done singly or jointly as a member of an organized crime syndicate or on behalf of such organized crime syndicate. It is also pertinent to mention that the alleged offence should be relatable to the statement of objects and reasons and the ingredients of “continuing unlawful activity” and “organized crime”. This Court considers that the allegations are required to be tested during the trial to meet the requisite of MCOCA. It is also a matter of trial that whether money received by the petitioner was for gaining undue economic advantage, as the case of defence is that this money was transferred for distributing gift to the celebrities.

54. It is a settled proposition that the court at the stage of bail has only to see the prima facie case. Even in the case of MCOCA, the court is not required to arrive at a positive finding that the applicant has not



committed such an offence because in such a case it will be impossible for the prosecution to obtain a judgment of conviction of the applicant in case the bail is granted.

55. The court is only required to evaluate and examine the case on the basis of broad probabilities. In regard to the offence to be committed in the future, the antecedents of the offender have to be seen. It is a settled proposition that at the stage of bail, the Court cannot meticulously examine the evidence and conduct a mini trial. The findings at this stage are tentative in nature and do not affect the merits of the case. The case at this stage has to be seen from the angle of *prima-facie* view. Even the rigors of section 21(4) of MCOCA does not completely oust the jurisdiction to grant bail, if the broad probability is in favor of petitioner.

56. In the present case, there is nothing on the record regarding the criminal antecedents of the petitioner. It is also to be taken into account that the accused is a woman of 52 years of age and has been in custody since 30.11.2022.

57. I consider that taking into account the totality of the facts and circumstances of the case, the petitioner is admitted to court bail subject to the following conditions:

- a) The Applicant shall furnish a personal bail bond in the sum of Rs.5,00,000/- with two sureties of the like amount subject to the satisfaction of the learned Trial Court/CMM/Duty MM.
- b) the Applicant shall appear before the court every month as fixed by the concerned court personally or through VC and, as and when directed by the court during inquiry and trial;



- c) the Applicant shall under no circumstances leave India without prior permission of the Court concerned;
- d) the Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case;
- e) the Applicant shall provide her mobile number(s) to the concerned police officer at PS Special Cell; and
- f) In case of a change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

58. In view of the above, the present application stands disposed of.

DINESH KUMAR SHARMA, J

OCTOBER 20, 2023/AR/HT/AJ

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