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

***Reserved on: 15.04.2024***
***Pronounced on: 30.05.2024***

\+ **BAIL APPLN. 593/2024**

DHEERPAL ALIAS KANA ..... Applicant

Through: Mr.Akshay Bhandari, Ms.Megha Saroa, Mr.Anmol Sachdeva & Mr.Kushal Kumar, Advs.

versus

STATE GOVT OF NCT OF DELHI ..... Respondent

Through: Mr.Aman Usman, APP with Mr.Anil Kumar ACP/Najafgarh & SI B.K. Bharti, PS Najafgarh.

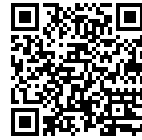
**CORAM:**
**HON'BLE MR. JUSTICE NAVIN CHAWLA**

## J U D G M E N T

1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for the applicant to be released on bail in FIR No. 531/2015 registered at Police Station: Najafgarh, South-West, Delhi for offence under Section 3 of the Maharashtra Control of Organised Crime Act, 1999 (in short, 'MCOCA') as extended to the National Capital Territory of Delhi (Section 4 of the MCOCA was later added in the chargesheet).

***Case of the prosecution and factual background:***

2. It is the case of the prosecution that the above FIR was registered on 03.07.2015 against Vikas Gulia @ Vikas Langarpuria



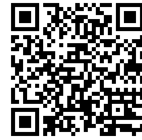

and his associates after taking requisite sanction from the Competent Authority as provided under Section 23(1)(a) of the MCOCA.

3. It is stated that Vikas Gulia @ Vikas Langarpuria is involved in as many as 18 criminal cases ranging from murder, attempt to murder, extortion, robbery, house trespass, and criminal intimidation, amongst others, registered at various Police Stations across Delhi and Haryana, thereby making him a hardcore criminal. It is stated that Vikas Gulia @ Vikas Langarpuria is attempting to establish his supremacy in the area and is the leader of the 'Vikas Langarpuria Gang'. It is stated that Vikas Gulia @ Vikas Langarpuria, along with his associates, runs an organized crime syndicate and in furtherance of their common object, undertakes activities that are terrorizing the society at large.

4. It is alleged that Vikas Gulia @ Vikas Langarpuria along with his other associates, including the applicant/accused herein, have, on multiple occasions, shot dead, injured, and intimidated individuals so as to gain pecuniary benefits, through which he has amassed assets running into crores in Delhi and Haryana. It is stated that the Courts of various jurisdictions have taken cognizance of offence against him in the last ten years, but due to the nature of his work and fear embroiled in the minds of people, no witness has come forward to depose against him and some have not even reported his criminal activities.

5. The applicant/accused is stated to be an associate and member of the 'Vikas Langarpuria Gang' and is stated to be the right-hand aide of Vikas Gulia @ Vikas Langarpuria.

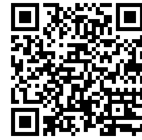
6. It is further alleged that during the course of investigation, it has come to light that Vikas Gulia @ Vikas Langarpuria was involved in



eighteen cases, (Murder-three, Attempt to murder of a public servant-two, Attempt to murder-one, Attempt to murder for extortion-one, Robbery-five, Abduction cum robbery-one, Extortion-three, and Arms Act-two), out of which, the applicant/accused is involved in ten cases (Murder-two, Attempt to murder-one, Attempt to murder for extortion-one, Kidnapping for ransom-one, Violation of Prison Act, 1894-three, Disobeying orders of Public Servant & Violating model code of conduct- one, Causing grievous hurt-one).

7. It is further alleged that from a reading of the statements of previous complainants, witnesses, and Investigating Officers given under Section 161 of the Cr.P.C., it has been found that Vikas Gulia @ Vikas Langarpuria, is involved in a case of land grabbing, wherein through an associate, Vikas Gulia @ Vikas Langarpuria had forged documents and tried to grab a plot of land in Village Tikri Kalan. It was in this case that he was arrested on 16.07.2015 and sent to five days of remand in Police Custody. He is stated to have sustained interrogation, while refusing to make a confessional statement.

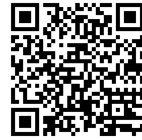
8. It is stated that Vikas Gulia @ Vikas Langarpuria and the applicant/accused used to lend money and demand the return of the same at an interest of 10% per month, failing which they would pressurize the said individuals to sell their plots/land to clear such loan. It is stated that two witnesses, Priyawarat @ Preet and Karambir were pressurized by the above-mentioned persons, wherein Priyawarat @ Preet was made to pay rupees thirty-five lacs, who stood guarantor for Karambir, and thereafter a Swift Dzire car was forcibly taken possession of. It is stated that the said car has been used in the




commission of the offence in FIR No. 212/2015 dated 13.04.2015 registered for offence under Sections 307/387/34 of the Indian Penal Code, 1860 (in short, 'IPC') and Sections 25/27/54/59 of the Arms Act, 1959 (in short, 'Arms Act') at Police Station: Chhawla, Delhi. It is stated that Priyawarat @ Preet further stated that a sum of rupees thirty-two lacs was handed over to Satte, father of the applicant/accused, by his Uncle- Krishnan.

9. It is also stated that the financial interests of the applicant/accused are looked after by one Vinit @ Johny, and he was also in touch with the applicant while the applicant was lodged in Bhondsi Jail.

10. It is stated that the applicant while being lodged in Bhondsi Jail, was involved in three cases of using a mobile phone from Bhondsi Jail. He is stated to have used two mobile numbers to make demands of extortion in relation to the above-mentioned FIR No. 212/2015. It is further alleged that the applicant was visited frequently by one lady namely, Sonia, who also spoke to him through mobile phone. It is stated that the Call Data Records (in short, 'CDR') show that this number was used in multiple bank transactions. It is alleged that upon further investigation, it was revealed that she had multiple accounts, two with Axis Bank, one with ICICI Bank, and another with HDFC Bank. Between the period of 01.01.2014 to 17.09.2015, transactions worth more than rupees thirty-five lacs had been undertaken. Thereafter, the Income Tax Returns (ITRs) reports filed by Sonia were obtained. It is stated that the said ITR goes onto show that her gross total income for the year 2014-2015 was Rs.2,13,470/-. It is stated that

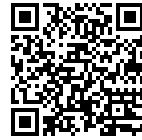


the bank details of and records of the family members of the applicant and Vikas Gulia @ Vikas Langarpuria were also obtained and placed on record.

11. Subsequently, the applicant was arrested on 21.09.2015 in relation to the above FIR and sent to Police remand for seven days. It is stated that efforts to effect recovery of the mobile phones used by the applicant in Bhondsi Jail for making extortion calls were also made. It is stated that the concerned Investigating Officer (IO) also visited the jail where one of the co-inmates informed the IO that he would usually talk to his wife after taking the phone from the applicant, and that the applicant would use the mobile phone. It is stated that upon gaining knowledge of having being booked by the police under the MCOCA, the applicant burnt the mobile phones in the *angithi* in Bhondsi Jail. The applicant has voluntarily confessed to his crimes and the same was recorded before the then DCP, South-West.

12. Further, FIR No.479/2013 was registered at Police Station: Alipur, Delhi for offence under Sections 188 and 171A of the IPC, in which one Safari Car was seized. It is stated that the said car was purchased by the applicant from one Paramjeet.

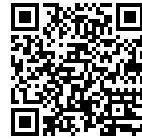
13. It is alleged that during the investigation, the houses of Vikas Gulia @ Vikas Langarpuria and the applicant were visited. The applicant's house was found to be fitted with CCTV cameras; Rs.70 Lacs in cash was lying around; and multiple SUVs, a Safari and Bolero car were also found; showing that this type of wealth is inconsistent with their normal source of income.




14. It is stated that the CDRs of the mobile phones that were discovered during the investigation reveal that the majority of calls made by the applicant were to family members, friends, and co-accused of the applicant. It is stated that while investigating FIR No. 212/2015, it was found that the applicant used a mobile to call the complainant and demand a sum of rupees twenty-five lacs, failing which he fired upon his shop so as to terrorize the complainant and his family.

15. It is stated that similar instances of extortion were uncovered during the investigation of FIR No. 227/2015 registered at Police Station: Baba Haridas Nagar, Delhi for the offence under Sections 323/387/452/34/120B of the IPC. It is stated that in the said FIR, it was revealed that complainant Narender @ Bhalle received a call on his mobile from the accused Vikas Gulia @ Vikas Langarpuria which mobile number was being used by the real brother of the applicant herein, that is, Sunil @ Kheri. It is stated that other associates of the applicant and Vikas Gulia @ Vikas Langarpuria have also been found to be involved in cases in relation to crimes of serious nature.

16. After the completion of investigation, a chargesheet under Sections 3 and 4 of the MCOCA was filed, wherein the prosecution has cited 86 witnesses. In the said proceedings, the learned Additional Sessions Judge-03 (Special Judge – Companies Act), Dwarka Courts, South-West district, New Delhi (hereinafter referred to as the 'Trial Court') was pleased to frame charges against the accused *vide* order dated 02.07.2016 for offence under Sections 3 and 4 of the MCOCA.




17. It is stated that the accused Vikas Gulia @ Vikas Langarpuria was declared as a Proclaimed Offender by the learned Trial Court on 28.05.2019 after he jumped the *interim* bail granted to him.

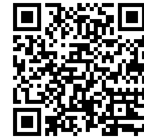
18. It is stated that even the applicant herein jumped the *interim* bail granted to him for his wife's treatment *vide* Order dated 18.08.2021, and NBWs were issued against him on 13.01.2022.

19. Thereafter, on 28.04.2022, the applicant was apprehended with an illegal pistol and two live cartridges, in relation to which another FIR No. 93/2022 was registered at Police Station: Special Cell, Delhi for offence under Section 25 of the Arms Act.

20. During trial, the accused Vikas Gulia @ Vikas Langarpuria was deported from United Arab Emirates to India and arrested in FIR No. 190/2019 registered at Special Cell, Delhi. He was produced before the concerned Court on 18.01.2023 after production warrants were issued against him.

21. It is stated that the applicant, by the Order dated 16.11.2017 passed by the learned Additional Sessions Judge, Hisar, Haryana, has been convicted and sentenced to undergo life imprisonment and pay fine of Rs.5,000/- in FIR No. 60/2014 registered at Police Station: Hisar Civil Lines, Haryana for the Offence under Sections 302/120B/148/149/216 of the IPC and Section 25 of the Arms Act.

22. It is stated that, at present, the trial in the present FIR is progressing fast, in which 46 out of the 86 cited witnesses have been examined. It is stated that an application under Section 294 of the Cr.P.C. was moved by the learned APP on 04.10.2108 to call the accused for admission/denial of certain documents. It is stated that




thereafter, 26 prosecution witnesses have been dropped and formal proof of documents has been dispensed with as neither of the accused objected to the application, and now 14 witnesses are left to be examined.

***Submissions by the Learned Counsel for the Applicant:***

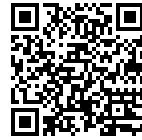
23. The learned counsel for the applicant submits that not even a *prima facie* case under Section 3 of the MCOCA is made out against the applicant, as requirements mandated in Section 2(1)(d) and 2(1)(e) of the MCOCA have not been fulfilled. He submits that to attract Section 2(1)(d) and 2(1)(e) of the MCOCA, there should be at least two chargesheets against the whole syndicate for the Offences which are punishable with three or more years; in which cognizance has been taken in the last ten years; and the Offence is alleged to be committed by the syndicate as a whole, or by any member acting on behalf of the syndicate, with a view to gain the pecuniary benefit or gaining undue economic or other advantage; and at least two members of the alleged syndicate are facing trial together. He places reliance on the judgment of the Supreme Court in ***Md. Iliyas Mohamad Bilal Kapadiya v. State of Gujarat.***, (2022) 13 SCC 817. He submits that in order to show that more than one chargesheet is pending, the prosecution cannot use cases where the accused is facing trial alone or with persons who are not members of the alleged syndicate. This would not satisfy the conditions of Section 2(1)(d) and 2(1)(e) of the MCOCA.

24. By placing reliance on the judgment of the Supreme Court in ***State (NCT of Delhi) v. Brijesh Singh @ Arun Kumar and Anr.***, (2017) 10 SCC 779, he submits that another requirement to initiate

such proceedings would be that at least one such case which is pending against two persons of the alleged syndicate, should be registered in Delhi. He submits that in the present case, the prosecution relies upon FIR No. 153/2014 registered at Police Station: Najafgarh, Delhi, and FIR No. 212/2015 registered at Police Station: Chhawala, Delhi to meet the above criterion. He submits that in FIR No. 153/2014, the applicant and co-accused have been acquitted, while in FIR No. 212/2015, the applicant and the co-accused were discharged as the Police was unable to make out a case fit for trial. He submits that, therefore, the charge under Section 3 of the MCOCA against the applicant, cannot be sustained against the applicant.

25. He submits that once an accused has been acquitted in the trial forming the basis of the case under the MCOCA, the same cannot be used against him for the purposes of the MCOCA. He places reliance on the judgment of the Supreme Court in ***State of Maharashtra v. Shiva @ Shivaji Ramaji Sonawane & Ors.***, (2015) 14 SCC 272.

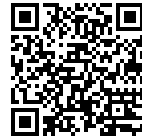
26. He further submits that in the above-mentioned FIR, there is no allegation that the applicant committed an offence on behalf of a syndicate or as a member thereof. Therefore, the requirement of Section of 2(1)(d) and 2(1)(e) are not fulfilled. He submits that a chargesheet without such specific allegations would also not allow for proceedings under the MCOCA to be invoked or continued. In support, he places reliance on the judgment of the Bombay High Court in ***State of Maharashtra v. Rahul Ramchandra Taru.,*** 2011 SCC OnLine Bom 605.




27. He submits that while FIR No.153/2014 has been registered against the applicant, Vikas Gulia @ Vikas Langarpuria, and one Paramjeet, for allegedly firing at the complainant, the Status Report filed by the prosecution alleges a whole new story of extortion. The offence alleged in FIR No.153/2014 cannot be said to be an organised crime. The prosecution has, in the Status Report, also alleged that the said crime was committed with a view to increase the dominance in the said area to gain pecuniary benefits, however, no such allegation has been made in the chargesheet. He submits that Paramjeet has not been alleged to be a part of the syndicate, and, therefore, he has not been set up for trial. If the allegation was that the said crime was committed by members of an alleged organised crime syndicate, then it would have been but natural to array Paramjeet as an accused. He submits that it is not the case of the prosecution therein that the alleged offence was committed on behalf of a syndicate or as a member thereof; the same can also be seen from the judgment of acquittal. He submits that in ***State (NCT of Delhi) v. Khalil Ahmed***, 2012 SCC OnLine Del 6375, this Court discharged an accused under the MCOCA by noting that the prosecution failed to prove that the offence alleged were being carried out on behalf of an organised crime syndicate.

28. He submits that, therefore, no offence is made out against the applicant under Sections 3 and 4 of the MCOCA.

29. The learned counsel for the applicant submits that under Section 436A of the Cr.P.C., an accused can be granted bail if he/she has already undergone half of the maximum sentence for an offence for

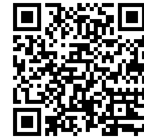



which the accused is facing trial. He places reliance on the judgment of the Supreme Court in ***Hussain & Anr. v. Union of India,*** (2017) 5 SCC 702. He submits that the applicant has undergone almost 8 years in custody, after removing the period in which he jumped *interim* bail. He places reliance on the Order dated 13.09.2018 of this Court passed in CRL.A.837/2018 titled ***Rafiq v. State;*** and the Order dated 13.09.2018 passed in CRL.A.678/2018 titled ***Baldev @ Billu v. State,*** to submit that generally, the sentence awarded for the Offence under the MCOCA is nine years of imprisonment. He submits that the above would show more than sufficient grounds to grant the benefit of Section 436A of the Cr.P.C. to the applicant and release him on bail.

30. He further submits that out of the ten cases showing previous involvements, the applicant has been acquitted in eight of them. He submits that even in FIR No. 60/2014, where the applicant was convicted and sentenced to life-imprisonment, he has been granted bail during the pendency of the appeal.

31. He submits that as per Section 427 (2) of the Cr.P.C., when an accused is sentenced to life imprisonment and is thereafter convicted in another case, the sentence will run concurrently. He also places reliance on the judgment of this Court in ***Zile Singh v. State GNCT of Delhi,*** 2013 SCC OnLine Del 5015.

32. The learned counsel for the applicant submits that the right to speedy trial is a fundamental right, which has been recognised by the Supreme Court in ***A.R.Antulay v. R.S.Nayak & Anr.***, AIR 1988 SC 1531. He also places reliance on the judgment of the Supreme Court in ***Satender Kumar Antil v. CBI***, (2022) 10 SCC 51 to submit that even

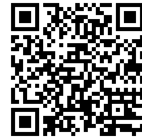


in cases invoking Special Acts, where there is a delay in the trial, the embargo on the grant of bail will fade and the fundamental rights as cast in Part-III of the Constitution of India will shine. He also places reliance on ***Austin v. State of NCT of Delhi*** (Order dated 16.03.2023 of this Court in BAIL APPLN. 1/2022); ***Union of India v. K.A. Najeeb,*** (2021) 3 SCC 713; ***Mohd Muslim @ Hussain v. State (NCT of Delhi),*** 2023 SCC OnLine SC 352, ***Kartik Dangi v. State of NCT of Delhi*** (Order dated 16.12.2021 of this Court in Bail Appl. 2872/2021); ***Vishwajeet Singh v. State (NCT of Delhi),*** 2024 SCC OnLine Del 1284**;** ***Musa Annu Sayyed v. State of Maharashtra*** (Bombay High Court in Bail Appl. 172/2021 decided on 25.11.2022); and on ***Gangadhar @ Gangaram v. The State of Madhya Pradesh,*** (2020) 9 SCC 202, in support of the same.

33. He submits that as the applicant has been in custody for almost 8 years now, and the trial is not likely to conclude anytime soon, with 14 witnesses cited by the prosecution yet to be examined, the applicant be released on bail.

34. By placing reliance on the judgments of the Supreme Court in ***Prabhakar Tewari v. State of Uttar Pradesh & Anr.***, (2020) 11 SCC 648 and ***Maulana Mohd Amir Rashadi v. State of Uttar Pradesh & Anr.***, (2012) 2 SCC 382, he submits that while granting bail, the role of the accused in the case in hand and the chances of him fleeing from the jurisdiction of the Court has to be seen, and not his previous involvements.

35. Further, placing reliance on the judgment of the Supreme Court in ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra &***

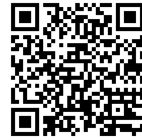



***Anr.***, (2005) 5 SCC 294, he submits that the requirement of satisfying that no offence will be committed if granted bail, is with regard to the same Act and not any offence. He submits that there is no allegation of the accused having committed any offence under the MCOCA while being out on *interim* bail.

36. He submits that in ***State of Maharashtra v. Bharat Shanti Lal Shah,*** (2008) 13 SCC 5, the Supreme Court has held that the requirement that the accused should not be on bail in any other case previously, to be granted bail in the MCOCA, has been struck down as unconstitutional. He submits that the law requires that the accused should not have been on bail in a case under the MCOCA before being arrested in the case in hand under the MCOCA. He submits that the applicant is not on bail in any previous case under the MCOCA.

***<u>Submissions by the learned APP:</u>***

37. On the other hand, the learned APP submits that Vikas Gulia @ Vikas Langarpuria is a hard-core criminal who is involved in as many as eighteen criminal cases of different nature, registered across Police Stations in Delhi and Haryana. He submits that Vikas Gulia @ Vikas Langarpuria is the leader of his gang/syndicate and was trying to establish dominance in the area. He further submits Vikas Gulia @ Vikas Langarpuria and his associates have amassed great wealth over the last few years by engaging in many criminal activities. He submits that in the last ten years, several Courts of competent jurisdictions have taken cognizance against the syndicate in more than one case. He submits that the activities undertaken by Vikas Gulia @ Vikas Langarpuria point towards the fact that he along with his associates



had formed a network of criminals and was running an organised crime syndicate. He submits that the applicant is a part of such a gang.

38. The learned APP submits, that Vikas Gulia @ Vikas Langarpuria, the applicant, and their other associates have established a *modus operandi* through which they have been able to amass a fortune. He submits that the applicant is pivotal in all this, as he is the right-hand man of Vikas Gulia @ Vikas Langarpuria. He submits that for the period of 2011-2015, the applicant has had ten FIRs registered against him, out of which in three he has been named with Vikas Gulia @ Vikas Langarpuria as an accused.

39. He submits that in the case at hand, the twin conditions required under Section 2 of the MCOCA have been fulfilled. He places reliance on the judgment of the Supreme Court in ***Abhishek v. State of Maharashtra & Ors.***, (2022) 8 SCC 282.

40. The learned APP submits, that the argument of the applicant that since the applicant has been discharged in FIR No. 212/2015, the basis of initiation of the current proceedings must also go, cannot be accepted, as, if it was so, then the proceedings under the MCOCA would essentially never conclude and would always be subject to fluctuation basis the discharge/acquittal/conviction/appeal/suspension of sentence in a previous chargesheet/case, as opposed to the merits of the case basis which trial is proceeding. He submits that the conditions under Section 2 of the MCOCA get satisfied when the competent Court in the previous crime/chargesheet took cognizance, irrespective of the result of the trial in previous case(s).

41. He submits that for Section 2(1)(d) of the MCOCA to be invoked, the chargesheet has to be against the syndicate and not against each member of the same. He places reliance on the judgment of the Supreme Court in ***Zakir Abdul Mirajkar v. State of Maharashtra and Ors.***, 2022 SCC OnLine SC 1092.

42. He submits that the discharge of the applicant or his acquittal can have no effect on his prosecution, as the applicant has been convicted in FIR No. 60/2014, and in FIR No.153/2014, the witnesses failed to identify the applicant and the co-accused because they were being threatened by the accused persons. He places reliance on the judgment of the Supreme Court in ***Paramjeet Singh @ Pamma v. State of Uttarakhand,*** (2010) 10 SCC 439, to submit that conviction even on the basis of statements recorded under Section 161 of the Cr.P.C. is sustainable.

43. The learned APP further submits, that the working of the applicant was mostly in the outskirts of NCT of Delhi and, therefore, most FIRs came to be registered in Haryana. By placing reliance on the judgment of ***Vijay Maan @ Kapil v. State,*** 2020 SCC OnLine Del 1632, he submits that it is not necessary that more than one chargesheet has to be filed in Delhi.

44. The learned APP submits that only 14 out of the 86 cited witnesses remain to be examined, and the prosecution is duty bound to examine them expeditiously. The learned APP submits that the delay in trial, and resultant long period of incarceration cannot be attributed to the prosecution as it is the applicant, co-accused, or their counsel,

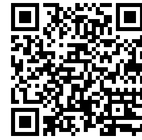
who caused the delay. In support of the same, he relies on the date-wise proceedings of the trial before the learned Trial Court.

45. The learned APP places reliance on the judgment of the Calcutta High Court in ***Aniul Haque v. State of West Bengal***, (CRM No. 10983/2013 decided on 20.08.2013) to submit that for the purpose of availing the benefit Section 436A of the Cr.P.C., delay cannot be taken as a ground.

46. He further submits that the independent witnesses have supported the case of the prosecution.

47. He submits that the applicant cannot get the benefit under Section 436A of the Cr.P.C., as, in case of conviction, the learned Trial Court has the power to award punishment for upto life imprisonment. He submits that the applicant cannot claim any benefit by showing that other accused were awarded 10 years sentence, without showing the facts/role of such persons.

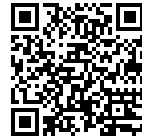
48. He further submits that the benefit of Section 428 of the Cr.P.C. cannot be granted to the applicant at this stage, as admittedly in the present case, the trial is still in progress. Even otherwise, the period which has lapsed in an earlier Trial/Case, cannot be set-off against the term of imprisonment that is to be awarded in a latter case. He submits that the benefit of Section 428 of the Cr.P.C. can be extended when the accused/prisoner is able to show that for the purpose of investigation, inquiry, or trial of the case, he was detained, and is then convicted and sentenced. He draws support from the judgment of the Supreme Court in ***Atul Manubhai Parekh v. Central Bureau of Investigation,*** (2010) 1 SCC 603. He submits that on the ground of



period undergone, the sentence of the applicant was suspended by the High Court of Punjab and Haryana in FIR No. 60/2014; once he has already availed of this relief, it would be incorrect to seek it once again, especially where trial is pending.

49. He submits that Section 427 of the Cr.P.C. will also have no application in the facts of the present case, as the Trial Court dealing with a later case is to see if the same forms part of the earlier transaction or if the facts are similar. Further, the same is a discretionary power available at the stage of awarding sentence, and cannot be applied at this stage. He places reliance on the judgement of the Kerala High Court in ***Mushthafa P.K. v. State of Kerala,*** 2014 SCC OnLine Ker 8482.

50. He further submits that the conduct of the applicant and the co-accused does not inspire much confidence. He submits that, admittedly, the co-accused was released on *interim* bail, but instead of surrendering on time, he escaped to the United Arab Emirates and had to be deported from there and was arrested in FIR No. 190/2019. The applicant herein was also released on *interim* bail by the learned Trial Court on 18.08.2021 for his wife's treatment, however, he jumped the *interim* bail. He submits that the Court proceeded to issue NBWs against him, and on 28.04.2022, the applicant was arrested in another FIR No. 93/2022 under Section 25 of the Arms Act, being in possession of an illegal pistol and 2 live cartridges. He submits, that the applicant is a habitual offender and would commit further crimes in the event he is released on bail.



51. Placing reliance on the judgment of the Supreme Court in ***State of Maharashtra v. Vishwanath Maranna Shetty,*** (2012) 10 SCC 561, he submits that the Court while adjudicating upon a bail application for the offence under the MCOCA, is to keep in view Section 21 of the MCOCA as well.

***Analysis and findings:***

52. I have considered the submissions made by the learned counsels for the parties.

53. In considering the application filed by the applicant for grant of bail, this Court also has to keep in view the provisions of Section 21(4) of the MCOCA, which reads as under:

> "***21. Modified application of certain provisions of the Code.—***
>
> *xxxx*
>
> (*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."*

54. In my view, the applicant has not been able to meet the twin test that is laid by the above provisions.

***Flight Risk:***

55. At the outset, it is to be noted that when the co-accused namely, Vikas Gulia @ Vikas Langarpuria, was released on *interim* bail, he absconded to the United Arab Emirates thereby causing further delay in the trial; even when the applicant was released on *interim* bail, he failed to surrender and was thereafter, apprehended with possession of an illegal weapon and two live cartridges for which yet another FIR being FIR No. 93/2022 was registered against him. It, therefore, cannot be ruled out that the applicant is a flight risk. The possibility of the applicant being involved in a crime of a similar nature can also not be ruled out, at this stage, keeping in view the antecedents and his previous conduct.

***Existence of prima facie case under the MCOCA:***

56. As is evident from the above submissions, the first ground urged by the applicant to seek bail is the lack of *prima facie* case under the MCOCA against him post his discharge in FIR No.212/2015 and his acquittal in FIR No.153/2014; the two cases that were registered against him in Delhi and were being relied upon by the prosecution for bringing home the charge under the MCOCA.

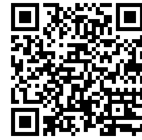
57. In ***Zakir Abdul Mirajkar*** (Supra), the Supreme Court highlighted the purpose and object of the MCOCA, as under:

> *"**17.** The Maharashtra Control of Organized Crime Act 1999, as its long title indicates, is "an Act to make special provisions for the prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang and for matters connected therewith or incidental thereto". The statement of objects and reasons contains the reasons*

*which constituted the foundation for the legislature to step in:*
*Firstly, organized crime which is in existence for some years poses a serious threat to society;*
*Secondly, organized crime is not confined by national boundaries;*
*Thirdly, organized crime is fuelled by illegal wealth generated by contract killing, extortion, smuggling and contraband, illegal trade in narcotics, kidnapping for ransom, collection of protection money and money laundering, and other activities;*
*Fourthly, the illegal wealth and black money generated by organized crime pose adverse effects on the economy;*
*Fifthly, organized crime syndicates make common cause with terrorists fostering narcoterrorism which extends beyond national boundaries;*
*Sixthly, the existing legal framework in terms of penal and procedural laws and the adjudicatory system were found inadequate to curb and control organized crime; and Seventhly, the special law was enacted with "stringent and deterrent provisions" including in certain circumstances, the power to intercept wire, electronic or oral communication."*

58. Section 2(1)(e) of the MCOCA defines the term 'organized crime', as under:

*"(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"*



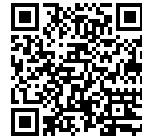
59. An 'organized crime', therefore, means any 'continuing unlawful activity' by an individual, singly or jointly, either as a member of an 'organized crime syndicate' or on behalf of such syndicate, and by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantages for himself or any other person or promoting insurgency.

60. Section 2(1)(d) of the MCOCA defines the term 'continuing unlawful activity' to mean 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 chargesheets have been filed before a competent Court within the preceding period of ten years and the said Court has taken cognizance of such offence.

61. Reading of the above would show that for 'continuing unlawful activity', there has to be more than one chargesheet filed within the preceding ten years for a cognizable offence punishable with imprisonment of three years or more, and the Court should have taken cognizance of such offence.

62. Section 2(1)(f) of the MCOCA defines the term 'organized crime syndicate' as under:

> *"(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;"*




63. A reading of the above would show that for bringing home the charge under Section 3 of the MCOCA, the accused must be shown to have singly or jointly, as a member of an organized crimes syndicate or on behalf of such syndicate, committed a cognizable offence punishable with imprisonment of three years or more by use of violence or threat of violence or intimidation or coercion or other unlawful means, with the objective of, *inter alia*, gaining pecuniary benefits or gaining undue economic or other advantages for himself or any other person or promoting insurgency, and for which more than one chargesheets have been filed before the competent Court within the preceding period of ten years and the said Court has taken cognizance of such offence.

64. In the present case, the prosecution, in the chargesheet filed upon completion of investigation in the subject FIR No.531/2015, *inter alia*, alleges that Vikas Gulia @ Vikas Langarpuria was a hardcore criminal involved in as many as eighteen criminal cases, including that of murder, attempt to murder, extortion, robbery, house trespass and criminal intimation, among others, registered at various Police Stations at Delhi and Haryana. He is the leader of 'Vikas Langarpuria Gang'. The applicant was a member of this Gang and there are ten other FIRs against the applicant herein, wherein he has been named with Vikas Gulia @ Vikas Langarpuria in three of them.

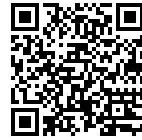
65. The applicant has also been convicted and sentenced to undergo life imprisonment in the case arising out of FIR No.60/2014 registered at Police Station: Civil Lines, Hisar, Haryana for offence under Sections 302/120B/148/149/216 of the IPC and Section 25 of the

Arms Act, by the Court of the learned Additional Sessions Judge, Hisar, Haryana, *vide* its judgment and Order on sentence dated 13.11.2017 and 16.11.2017, respectively. There are also various other allegations against the applicant of extortion, murder, attempt to murder, land grabbing, and so on.

66. In ***Md. Iliyas Mohamad Bilal Kapadiya*** (Supra), the Supreme Court has observed that the following conditions will have to be fulfilled for invoking the provisions of the Gujarat Control of Terrorism and Organized Crime Act, 2015, which is analogous to the MCOCA:

> *"**9.** We are of the prima facie view that for invoking the provisions of the GCTOC Act, the following conditions will have to be fulfilled:*
> ***9.1.** That such an activity should be prohibited by law for the time being in force.*
> ***9.2.** That such an activity is a cognizable offence punishable with imprisonment of three years or more.*
> ***9.3.** That such an activity is undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate.*
> ***9.4.** That in respect of such an activity more than one charge-sheet must have been filed before a competent Court.*
> ***9.5.** That the charge-sheet must have been filed within a preceding period of ten years.*
> ***9.6.** That the Courts have taken cognizance of such offences."*

67. In ***Brijesh Singh*** (Supra), the Supreme Court held that the activity of organized crime being committed within Delhi is a *sine qua non* for registration of prosecution under the MCOCA, and in the




absence of an organised crime being committed in Delhi, the accused cannot be prosecuted on the basis of chargesheets filed outside Delhi.

68. In ***Shiva @ Shivaji Ramaji Sonawane & Ors.,*** (Supra) the Supreme Court while considering an appeal against an order of acquittal of the accused under the MCOCA by the Bombay High Court, upheld the acquittal by observing that Section 3 of the MCOCA could not be invoked only on the basis of the chargesheets filed prior to the promulgation of the MCOCA; for Section 3 would come into play only if the accused were proved to have committed an offence for gain or any pecuniary benefit or undue economic or other advantages after the promulgation of the MCOCA.

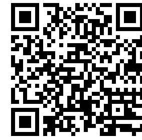
69. At the same time, while considering a challenge to the sanction granted by the Competent Authority under Section 23 (2) of the MCOCA, the Supreme Court in ***Abhishek*** (Supra) held that though there is no doubt that the MCOCA has been promulgated for making special provisions for dealing with the menace of organized crime causing serious threat to the society and makes stringent provisions with several extraordinary measures, at the same time, it needs to be strictly construed for application of such provisions. However, the rule of strict construction cannot be applied in such a manner so as to make the statute nugatory or to make such provisions practically unworkable thereby defying the entire purpose of law. It held that for the application of the MCOCA, what is required to be seen is whether the basic and threshold requirements, as per the combined reading of sub-Section (d), (e), and (f) of Section 2(1) of the MCOCA are fulfilled. Further, the Supreme Court held as under:

*"**43.** A bare look at clause (e) of Section 2(1) of Mcoca makes it clear that "organised crime" means any unlawful activity by an individual singly or jointly, either as a member of 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. The suggestions on behalf of the appellant to limit the activity only to the use of violence is obviously incorrect when it omits to mention the wide-ranging activities contemplated by clause (e) of Section 2(1) of Mcoca i.e. threat or violence or intimidation or coercion or other unlawful means. Actual use of violence is not always a sine qua non for an activity falling within the mischief of organised crime, when undertaken by an individual singly or jointly as part of organised crime syndicate or on behalf of such syndicate. Threat of violence or even intimidation or even coercion would fall within the mischief. This apart, use of other unlawful means would also fall within the same mischief.*

*__44.__ The second part of the requirement of the nature of activity i.e. its objective, has also not been projected correctly on behalf of the appellant. The requirement of law is not limited to pecuniary benefits but it could also be of "gaining undue economic or other advantage". The frame of the proposition that the object ought to be gaining pecuniary benefit or other "similar" benefit is not correct as it misses out the specific phraseology of the enactment which refers to undue economic or other advantage apart from pecuniary benefit.*

*xxxx*

*__47.__ We have no hesitation in endorsing the views of Full Bench decision of Bombay High Court in the case of State of Maharashtra v. Jagan Gagansingh Nepali 2011 SCC OnLine Bom 1049. Looking to the object and purpose*



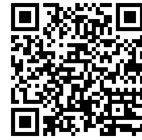
*of this enactment, the expression "other advantage" cannot be read in a restrictive manner and is required to be given its full effect. The High Court has rightly said that there could be advantage to a person committing a crime which may not be directly leading to pecuniary advantage or benefit but could be of getting a strong hold or supremacy in the society or even in the syndicate itself. As noticed above, 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.*

*xxxx*

***54.*** *The threshold requirement in terms of clause (d) of Section 2(1) MCOCA is that of the activity /activities undertaken by the accused persons either singly or jointly, as a member of an organized crime syndicate, which involves a cognizable offence punishable with imprisonment of 3 years or more and in respect of which, more than one charge-sheets have been filed before the competent Court within 10 years and cognizance had been Taken.*

*xxxx*

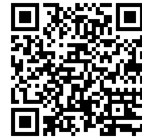
***58.*** *The submissions about taking irrelevant factors into account with reference to the said two cases resulting in acquittal and discharge must fail for the simple reason that for the purpose of clause (d) of Section 2(1) of MCOCA, the result of a particular matter is not decisive of the question as to whether the activity in question answers to the description or "continuing unlawful activity" or not. These had not been offences committed single-handed by the appellant and charge-sheets were indeed filed therein. The matter of settlement because of cross-cases or a matter of acquittal because of the witnesses not turning up, could hardly be of any relevance so far as clause (d) of Section 2(1) of MCOCA is concerned. Therefore, it cannot be said that any irrelevant matter has been taken into*




*consideration by the sanctioning authority.*

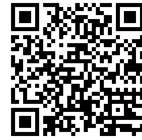
> ***59.*** *Khaja Bilal Ahmed as relied upon on behalf of the appellant, even otherwise has no direct application for being related to a preventive detention matter. In any case, there is no quarrel with the proposition therein that for a detaining authority, it is incumbent that its satisfaction must not be based on irrelevant or invalid grounds but, we are clearly of the view that in the present case, the authority cannot be said to have proceeded on any irrelevant consideration. What is significant and pertinent for the purpose of Section 2(1)(d) is the involvement of the person concerned in the referred activity and filing of charge-sheet and taking of cognizance in the offence a predicated. Acquittal or discharge is of no significance."*

70. In ***Abhishek*** (Supra), the Supreme Court while considering the submissions of the appellant therein that he had been acquitted in one of the cases used by the prosecution against him for registering the case and for obtaining sanction under the MCOCA, further observed that the MCOCA essentially intends to deal with criminal activity by an organized crime syndicate or gangs; and protection of witnesses is also one of the avowed objectives of this enactment; it seeks to curb the menace where criminal case cannot be taken to its logical conclusion because of the witnesses either turning hostile or not turning up at all. It was held that the reasons for the acquittal of the accused in the cited case would, therefore, have to be examined by the Court as they may rather fortify the requirement of invocation of the MCOCA in a given case.




71. In the present case, therefore, applying the above test laid down by the Supreme Court, though FIR No. 212/2015 ideally cannot be relied upon for bringing home the charge under the MCOCA against the applicant; the applicant having been discharged from the said case by the Court trying the case having found not even a *prima facie* case being made out against the accused/applicant, at the same time, the mere acquittal of the applicant in the case arising out of the FIR No.153/2014, at least at this stage, where the Court is only to consider the grant of bail to the applicant, may not be relevant. The Court trying the case under the MCOCA would have to see the reasons why the applicant was acquitted in that case and whether it was because the witnesses turned hostile due to the threat extended by the applicant and his alleged gang, or for other genuine reasons. In case it finds that the witnesses had turned hostile because of the threat(s) extended by the applicant or on his behalf, it would, in fact, fortify the charge under MCOCA against him.

72. A reading of the order dated 29.04.2023 passed by the learned Additional Sessions Judge: Fast Track Court, South-West District, Dwarka Courts, New Delhi in SC No.20/2014 (909/2018) would show that the alleged victim and the witnesses had turned hostile and refused to identify the applicant. The reason thereof may have to be gathered by the learned Trial Court in the trial pending before it. As far as the present application is concerned, in view of the judgment of the Supreme Court in ***Abhishek*** (Supra), which has stated that for registration of the FIR and criminal case, under MCOCA, only the registration of the FIR meeting the requirements of sub-sections (d),



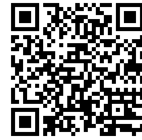

(e), and (f) of Section 2(1) of MCOCA and the concerned Court having taken cognizance thereon is required, it cannot be said that there is not even a *prima facie* case under MCOCA made out against the applicant herein.

73. The submission of the learned counsel for the applicant that there must be at least two chargesheets in Delhi for making out the case of MCOCA against him, also cannot be accepted.

74. In ***Shiva*** (supra), the Court was considering a case of an appeal against an Order of acquittal of the accused therein under the MCOCA, that is at the final stage. The Supreme Court in the facts of that case found that the acquittal of the accused in the underlying case, which was the only case post the promulgation of the MCOCA, meant that no case under the MCOCA survives against such accused. The judgment, therefore, may not have much application for deciding the present application and at the stage of trial. Once there is a chargesheet in Delhi coupled with other chargesheets, though in different States, which meet the test of sub-sections (d), (e), and (f) of Section 2(1) of the MCOCA, the case under the MCOCA can be registered in Delhi and the same would sustain.

***<u>Benefit of Section 436A of the Cr.P.C.:</u>***

75. The next ground taken by the applicant for seeking bail is by placing reliance on Section 436A of the Cr.P.C. and the judgments of the Delhi High Court in ***Rafiq*** (Supra) and ***Baldev*** (Supra), wherein the sentence of imprisonment of nine years has been awarded to the accused. He submits that the applicant has already undergone




approximately eight years in custody, excluding the period when he had failed to surrender post the period of grant of *interim* bail to him. He submits that, therefore, the applicant is entitled to the benefit of Section 436A of the Cr.P.C.. He has also contended that as he has already been sentenced to life imprisonment, on his conviction in FIR No.60/2014, he is also entitled to the benefit of Section 427 (2) of the Cr.P.C.

76. I am unable to agree with the above submissions made by the learned counsel for the applicant.

77. The applicant has been charged, including under Section 3 of the MCOCA, which states that if such an Offence has resulted in the death of any person, the accused shall be punished with death or imprisonment for life, while in other cases, shall be punishable with imprisonment for a term which shall not be less than five years but which may be extended to imprisonment for life.

78. Merely because in some cases the High Court or the Supreme Court have found it fit to impose a sentence of imprisonment of 9 years, it does not mean that the rule is that only such punishment shall be imposed on the applicant if convicted or that the applicant cannot be awarded more than nine years of imprisonment if found guilty in the subject case.

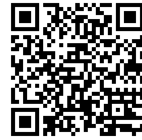
79. Section 436A of the Cr.P.C. reads as under:

> ***"436A. Maximum period for which an under trial prisoner can be detained.****—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law not being an offence for which the punishment of death has been specified as*

> *one of the punishments under that law undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:*
>
> *Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:*
>
> *Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.*
>
> *Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded."*

80. On a bare reading of the above, it is apparent that the provision is not applicable where the Offence charged is punishable by death. Even otherwise, it is applicable where the accused has undergone detention for a period extending '*up to one-half of the maximum period of imprisonment specified for that Offence under that law*'. In the present case, as noted hereinabove, the maximum punishment is not only punishable with death but also imprisonment for life, therefore, the applicant is not entitled to the benefit of Section 436A of the Cr.P.C., at this stage.

81. As far as Section 427 (2) of the Cr.P.C. is concerned, the same is not applicable at this stage where the question is of grant of bail,



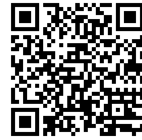

and as the sentence awarded to the applicant has been suspended by the appellate court.

***Delay in Trial:***

82. The learned counsel for the applicant, placing reliance on the judgments mentioned hereinabove, has submitted that there is a considerable delay in the conclusion of the trial; the applicant has already undergone imprisonment of more than eight years; and till date, 14 witnesses remain to be examined.

83. On the other hand, the learned APP, in my opinion rightly so, has given a complete date-wise analysis of the progress of the trial before the learned Trial Court to show that the delay in the trial is being caused by one accused or the other. In any case, the delay in the conclusion of the trial, though an important factor to be taken into consideration while deciding on an application of the accused seeking grant of bail, cannot be the sole criterion for enlarging the accused on bail. It would have to be determined on the facts and circumstances of each case as to whether the delay in the conclusion of the trial has resulted in the violation of the fundamental rights of the accused. The rights of the society would have to be balanced against the rights of the accused, especially where the accused is charged of a heinous crime or crime under a special statute like MCOCA, the objects whereof have been reiterated hereinabove.

84. Keeping in view the above and specially the previous conduct of the applicant in not surrendering after the expiry of his *interim* bail and being alleged of indulging in another crime of a similar nature; out of the 86 witnesses cited by the prosecution 72 already stand



examined and, therefore, the Trial is also likely to conclude soon, in my view, the applicant has failed to make out a case for grant of bail.

85. In my view, in the present case, the balance of these competing rights can be achieved by requesting the learned Trial Court to expedite the trial and to conclude the same within a period of six months of the first listing of the case before it, post this judgment.

***Conclusion:***

86. For the reasons stated hereinabove, I find no merit in the present application. The same is, accordingly, dismissed.

87. However, the learned Trial Court is requested to expedite the trial and make an endeavour to conclude the same within a period of six months of the first hearing of the case, post this judgment.

88. Needless to state, any observation touching upon the merits of the case is purely for the purposes of deciding the question of grant of Bail and shall not be construed as an expression on the merits of the case.

89. Let a copy of this judgment be sent to the learned Trial Court for information and ensuring compliance.

**NAVIN CHAWLA, J**

**MAY 30, 2024**
**RN/RP/AS**

*Click here to check corrigendum, if any*