SC No.90/22
State Vs. Ashish @ Deva & Ors.
FIR No.358/20
PS : Kanjhawala
U/s.3(1), 3(2) and 3(4) MCOC Act

16.01.2024

Present: Sh. Sanjay Jindal, Ld. Addl. Public Prosecutor for the State.
All five accused produced from JC.
Sh. Ajay Kr. Pipaniya and Sh. Harjas Pratap Singh, Ld. Counsels for accused Ashish @ Deva.
Sh. Abhay Kumar and Sh. Krishan Arora, Ld. Counsel for accused Deepak Dabas @ Titar.
Sh. Gaurav Kumar, Ld. Counsel for accused Suraj Pal @ Bhagta.

1. Arguments on the point of charge heard.
2. One of the accused charge-sheeted herein namely Deepak Dabas @ Titar was repeatedly involving himself in criminal activities of serious nature. A group of some persons was assisting and cooperating him in execution of his criminal activities. Accordingly, an enquiry was initiated by the police to ascertain the exact modus operandi of accused Deepak Dabas @ Titar. The initial enquiry revealed that accused Deepak Dabas @ Titar was repeatedly involving him in criminal activities, including extortion, robbery, murder, attempt to murder and he was being cooperated by accused Suraj Pal @ Bhagta, Ashish @ Deva, Pradeep Jaglan and Ajay Dabas. Further enquiry revealed that accused Deepak Dabas @ Titar, the kingpin alongwith his associates was running an interstate crime syndicate in a well organised manner. Finding sufficient evidence to show the existence of organised crime syndicate of proposal for invoking provisions of MCOC Act

was initiated against accused Deepak Dabas @ Titar and his associates. After evaluating the material placed before it, the concerned Joint Commissioner of Police, Northern Range granted the requisite sanction u/s.23(1) of MCOC Act to prosecute the accused under said law. After obtaining the sanction, the present case FIR u/s.3(1), 3(2) and 3(4) MCOC Act 1999 was registered against the crime syndicate of accused Deepak Dabas @ Titar.

3. During investigation, Investigating Officer collected the details of the cases registered against the accused persons. The details of the cases revealed that accused Deepak Dabas @ Titar and his associates were repeatedly involving themselves in unlawful activities and were working as a unit. The investigation further revealed that a total 24 cases for committing offence of murder, attempt to murder, robbery, extortion and Arms Act were registered against accused Deepak Dabas @ Titar. Out of those cases, 13 cases were such, where his co-accused (who have been charge-sheeted here) were charge-sheeted alongwith him.

4. Accused Suraj Pal @ Bhagta was also found involved in many criminal cases. Out of those cases, he was charge-sheeted alongwith his associates namely Deepak Dabas @ Titar, Pradeep Balraj and Ajay Dabas.

5. Accused Ashish @ Deva was also found involved with kingpin Deepak Dabas @ Titar in two criminal cases. Apart from the

two criminal cases with accused Deepak Dabas @ Titar, he was also found involved in other criminal activities of extortion, robbery, kidnapping and assault with his other associates.

6. Accused Pradeep Jaglan was also found involved in 11 criminal cases with his associates namely Deepak Dabas @ Titar, Suraj Pal @ Bhagta, Ajay Dabas and Ashish @ Deva.
7. Similarly, accused Ajay Dabas was also found involved in criminal activites with other members of organised crime syndicate run by accused Deepak Dabas @ Titar. Details of the cases shall be discussed in the later part of this order.
8. On completion of investigation, police has filed the charge-sheet accusing accused Deepak Dabas @ Titar, Ashish @ Deva, Suraj Pal @ Bhagta, Pradeep Jaglan and Ajay Dabas for the offences u/s.3(1), 3(2) and 3(4) of MCOC Act.
9. During the course of arguments on charge, Ld. Counsels appearing on behalf of the accused persons have argued that the accused persons have been acquitted in most of the cases registered against them. Their acquittal indicates that the accused persons had not committed the offences, which were subject matter of previous charge-sheets filed against them. Argued that, after filing of charge-sheet, if the case ultimately ends up into the acquittal of the accused, that filing of charge-sheet cannot be recognised as evidence of unlawful activity in terms of Section 2(D) of the MCOC Act.

10. Ld. defence counsels appearing on behalf of accused Ashish @ Deva has strongly argued that the accused Ashish @ Deva was found involved in two criminal cases alongwith accused Deepak Dabas @ Titar. One is the case FIR No.110/12, u/s.365/392/394, PS South Rohini and another is case FIR No.270/16, U/s.186/353/307/34 IPC & U/s.25/27/54/59 Arms Act, PS Begum Pur. Ld. Counsel has submitted that to invoke the provisions of MCOC Act, the prosecution has to show that accused was previously involved in unlawful activity, which is a cognizable offence punished with imprisonment of three years of more, undertaken either singly or jointly as a member of organised crime syndicate and on behalf of such syndicate in respect of which, more than one charge-sheet has been filed before the competent Court within preceding period of ten years and that Court has taken cognizance of such offence. Ld. Counsel has further submitted that as per statutory definition, organised crime includes an unlawful activity committed by the members of organised crime syndicate or on behalf of organised crime syndicate. That crime must includes use of violence, or threat of violence with objective of gaining pecuniary benefit or gaining undue economic benefit, or other advantage for himself or any other person, or promoting insurgency. In light of the statutory definitions, Ld. Counsel has argued that accused Ashish @ Deva was involved only in one case alongwith accused Deepak Dabas @ Titar, which

qualifies the definition of organised crime contained u/s.2(E) of the MCOC Act. The second FIR registered against accused Ashish @ Deva is u/s.186/353/307/34 IPC and U/s.25/27/54/59 Arms Act. The allegations against accused in that case are that he alongwith accused Deepak Dabas @ Titar, Pradeep and one Sunil fired upon the police party. Ld. Counsel has raised the contention that the offence invoked in the said FIR by their very nature, could not have provided any pecuniary benefit to the accused persons. Thus, the offence in the second FIR, as noted above, does not qualify the definition of organised crime. Ld. Counsel has further argued that since the case against accused Ashish @ Deva lacks one of statutory pre-condition of filing of two charge-sheets for the unlawful activity involving the offence of violence for gaining pecuniary benefit, therefore charges for the offence under MCOC Act cannot be legally framed against him. Ld. Counsel has further argued that the transactions in the bank account of accused Ashish @ Deva were analysed by the IO, however no suspicious entry was found recorded. Thus, the allegations of possessing unaccountable wealth on behalf of the members of organised crime syndicate will also not stand against him.

11. On the other hand, Ld. Addl. PP for the State has submitted that all the accused persons, who have been charge-sheeted in this case were found involved in multiple cases. In many of the cases, they have been charge-sheeted alongwith other members

of the syndicate. The conduct of repeatedly committing criminal activities in association and with assistance of each other, evidence that all the accused persons were acting as members of an organised crime syndicate.

12. To deal with the arguments made by Ld. Counsel for accused Ashish @ Deva that he was found involved in unlawful criminal activities alongwith other members of crime syndicate only in two cases, Ld. Addl. PP has submitted that once totality of evidence establishes existence of a crime syndicate, it is not necessary that two charge-sheets during preceding ten years must have been filed against each member of the crime syndicate. Atleast two charge-sheets have to be filed against the crime syndicate and not against its each and every member. It is not possible that each and every member will participate in every offence and unlawful activity committed by the crime syndicate. To support this argument, Ld. Addl. PP has invited the attention of this Court towards the statutory language employed u/s.2(D) of MCOC Act, wherein the expression used impression is 'in respect of which', Ld. Addl. PP for the State has interpreted this expression and has argued that had the filing of two charge-sheets against every member been the statutory mandate, the expression which would have been used by the legislature would have been 'against whom' and not the expression 'against which'. Continuing with this argument, Ld. Addl. PP has further submitted that Sections 2(D) and 2(E) of

MCOC Act, both are clear on the aspect that continuing unlawful activity can be committed by any member or members of a crime syndicate either singly or jointly. But the essential condition for invoking the provisions of MCOC Act against a particular offender is that the activity is committed on behalf of the organised crime syndicate. Returning to the role of accused Ashish @ Deva, Ld. Addl. PP for the State has submitted that although, the accused Ashish @ Deva was found involved in two criminal cases alongwith other members of the crime syndicate, but his involvement in the two cases is sufficient to show his connection with organised crime syndicate run by accused Deepak Dabas @ Titar. There is no legal mandate that he should be involved in each and every criminal activity committed by the syndicate he was associated with.

13. Ld. Addl. PP for the State has further submitted that the condition precedent contained u/s.2(D) is only limited to the extent of filing of two charge-sheets and consequent cognizance by the Court having jurisdiction within preceding ten years. The statute nowhere mandates that a trial initiated in the form of those charge-sheets must result in conviction. Thus, the acquittal of the accused persons in some of the charge-sheets shall not affect the merit of this case under MCOC Act.

14. Ld. Addl. PP for the State has concluded his arguments with the submission that purpose of this special legislature is to discourage and to break the network of organised crime. Here in this case, all the accused persons who have been charge-sheeted, were found involved in multiple criminal cases. They have been jointly charge-sheeted in many cases. The modus operandi which is reflected from the charge-sheets filed against the accused persons is sufficient to indicate that they are members of the crime syndicate, which is being run by accused Deepak Dabas @ Titar and also that this crime syndicate is actively involved in the criminal activities, including extortion, robbery, kidnapping, attempt to murder, murder and other heinous offences. The charge-sheet is annexed with the details of the previous cases and the copy of charge-sheets. The material placed before the Court is sufficient to show the existence of a crime syndicate run by accused Deepak Dabas @ Titar and other co-accused persons, who are its members and are repeatedly committing unlawful activities either singly or jointly on behalf of the crime syndicate. With these submissions, Ld. Addl. PP has concluded his arguments stating that the material collected by the IO is sufficient to frame charges against all the accused persons for the offences under MCOC Act.

15. Arguments heard. Record perused.

16. In case titled as ***Prafulla s/o. Udhav Shinde Vs. State of Maharashtra***, Hon'ble Bombay High Court has held that for charging a person of organised crime or being a member of crime syndicate, it would be necessary to prove that the person concerned have indulged in (i) an activity ; (ii) which is prohibited by law ; (iii) which is cognizable offence punishable with imprisonment with three years or more ; (iv) undertaken either singly or jointly ; (v) as a member or organised crime syndicate i.e. acting as a syndicate or gang or on behalf of syndicate ; (vi) (a) in respect of similar activity (in the past), more than one charge-sheets have been filed in the competent Court within preceding period of ten years (vi) (b) and the Court has taken cognizance of such offence ; (vii) (a) the activity is undertaken by violence (vii) (b) threat of violence of the intimidation (vii) (c) coercion (vii) (d) other unlawful means ; (viii) (a) with the object of gaining pecuniary benefit or gaining undue advantage for himself or any other person (viii) (b) with object of promoting insurgency.
17. In this case, accused Deepak Dabas @ Titar was previously found involved in total number of 24 cases of murder, attempt to murder, robbery, extortion, Arms Act etc. Out of these 24 cases, a total number of 13 cases are registered against him as well as members of his cartel who are charge-sheeted here in this case. So, out of 24 cases registered against accused

Deepak Dabas @ Titar, in 13 cases, he was found involved alongwith other co-accused persons.

18. Similarly, accused Suraj Pal @ Bhagta was found involved alongwith kingpin Deepak Dabas @ Titar, Pradeep and Ajay Dabas in four criminal cases of robbery, murder, extortion and assault.

19. Accused Ashish @ Deva was also involved in two FIRs alongwith accused Deepak Dabas @ Titar and Pradeep Balraj.

20. Accused Pradeep Jaglan was found involved in 11 criminal cases with accused Deepak Dabas @ Titar, Ashish @ Deva, Ajay Dabas, Suraj Pal @ Bhagta and others. The cases registered against accused Pradeep Jaglan also involved the offences of robbery, murder, extortion and Arms Act.

21. Accused Ajay Dabas was also found involved in 12 criminal cases, out of them, he committed two criminal cases alongwith members of the crime syndicate run by accused Deepak Dabas @ Titar and 10 criminal cases are relating the offences, which were committed by him alongwith his other associates.

22. Most of the cases registered against the accused persons are for the offences, which are cognizable and punishable with imprisonment for more than three years. Most of the cases registered against them involve element of violence or threat of violence.

23. An argument can be advanced by Ld. Counsels for the accused persons that being charge-sheeted jointly with other

members/associates of the syndicate neither lead to any conclusion that the offence was committed by the accused persons on behalf of the crime syndicate nor that any syndicate was in existence. In most of the charge-sheets filed against the accused persons, they have been jointly charge-sheeted having jointly found involved in the number of FIRs, the nature of offences, which are subject matter of the FIRs and the modus operandi of the accused persons prima-facie indicates that accused Deepak Dabas @ Titar was running a crime syndicate wherein the remaining accused persons were members and committing repeated offence on its behalf.

24. All the accused persons were repeatedly involving themselves in the offences like extortion and armed robbery and other serious offences. The unlawful activities alleged in those charge-sheets show the nexus and modus operandi of the accused persons. There repeated association in criminal activities show that they were acting as a unit. Thus, the prosecution has proposed to produce sufficient material to prima-facie show the existence of crime syndicate, which was being run by accused Deepak Dabas @ Titar.

25. Another argument advanced by the Ld. Counsel for accused persons is that in most of the cases, where charge-sheets were filed against the accused persons, ultimately ended up in acquittal. In the considered opinion of this Court, the ultimate result of the previous charge-sheets where cognizance had

been taken by the concerned Court is of no relevance for framing charges against the accused under MCOC Act. The purpose of previous charge-sheets filed against the accused persons is only to show his antecedents and nothing more. In support of the aforesaid observations, reliance can be placed upon ***Jagmohan @ Mohar Singh Vs Commissioner of Police (Hon'ble Delhi High Court, 2007)***, wherein the Hon'ble High Court has made the following observations :

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

26. Thus, the condition of filing of two charge-sheets for cognizable offences within a period of preceding 10 years has been included in MCOC Act because before invocation of stringent MCOC Act, the prosecution has to show the previous

antecedents of the accused that he is repeatedly involving himself in the criminal activities, which are being carried out on behalf of the existing crime syndicate. It is not the mandate of MCOC Act that the accused must be convicted, the final outcome of the charge-sheets already filed is not relevant. Mere filing of charge-sheet and taking of cognizance any the concerned Court would be sufficient compliance of the conditions for invocation of MCOC Act.

27. Another argument, which has been advanced by Ld. Counsel for the accused Ashish @ Deva is that purpose of unlawful activity, which is being carried by the accused persons as a member of crime syndicate and on behalf of the crime syndicate, must be to obtain some pecuniary gain, or to promote insurgency. Here in this case, one of the case registered against the accused Ashish @ Deva in 2012 vide FIR No.110/12 u/s.365/392/34 IPC, wherein accused Deepak Dabas @ Titar and Ashish @ Deva were charge-sheeted to some extent, can be considered involving an activity committed for the purpose of gaining some pecuniary advantage. However, the second case which was registered against the accused Ashish @ Deva and Deepak Dabas @ Titar was u/s.186/353/307/34 IPC and u/s.25/2754/59 Arms Act. The contention raised by Ld. Counsel for the accused that since the second case which was registered against the accused Ashish @ Deva was not qualifying the category of offence for

pecuniary gain, which is required for organised crime mentioned u/s.2(E) of the Act, therefore, accused cannot be charged for the offences under MCOC Act.

28. In context of this argument, reference of relevant observations made by the Hon'ble Supreme Court of India in case titled as ***Abhishek Vs. State of Maharashtra (2022)*** can be taken. Relevant observations are as under :

> "*61. We have no hesitation in endorsing the views of Full Bench decision of Bombay High Court in the case of Jagan Gagansingh Nepali @ Jagya (supra). 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.*
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> *63. The common thread of "violence" or "threat of violence" or "unlawful means" running through all of these cases is not a matter requiring any analysis, for the same being apparent on the face of record. Significantly, the aforesaid had not been the cases involving the appellant singularly; and more significantly, the alleged team leader Roshan Sheikh is the co-accused in at least three previous cases. This is apart from the recurrence of other co-accused persons in one case or the other. It has rightly been pointed out on behalf of the respondent-State that in order to attract MCOCA, every previous case need not be of the object of gaining pecuniary benefit alone. The cases in question,*

apart from involving the offences against human body and property, also include variety of other offences including those of rioting while armed with deadly weapons; causing insult to provoke breach of peace; and criminal intimidation. They also include the offence under the Arms Act. In all the referred cases, use of violence has specifically been alleged.

64.The crime chart aforesaid, the nature of activities and the persons involved leave nothing to doubt that the involvement of the appellant in such crimes and unlawful activities which are aimed at gaining pecuniary advantages or of gaining supremacy and thereby, leading to other unwarranted advantages is clearly made out".

29. So, it is not that every previous case registered against a member of organised crime syndicate has to involve an offence committed for the object of gaining pecuniary benefit alone. If a case, which may not be directly leading to pecuniary advantage or benefit, but could be for establishing supreme hold in the society or within a syndicate itself can be considered as an advantage for purpose of this act.

30. So, accused Ashish @ Deva cannot take the benefit of the fact that only one case was registered against him alongwith other members of the alleged crime syndicate, where the offence involved was apparently committed for the purpose of obtaining some pecuniary gain and the second case registered was not involving any such offence for obtaining pecuniary gain. As has been held by the Hon'ble Supreme Court in the judgment referred above, it is not the mandate of law that

every previous charge-sheet filed against a member of the crime syndicate must involves a case for obtaining pecuniary benefit. Even if, an offence is committed to obtain some other advantage, including establishing supremacy of the syndicate may also be considered as an advantage for the purpose of MCOC Act.

31. Moreover, the statutory language used u/s.2(D) of the Act suggests that two previous charge-sheets during the preceding period of ten years should have been filed against the crime syndicate and not against each and every member of the same. The expression used u/s.2(D) of the Act is 'in respect of which' more than one charge-sheets have been filed. Had the filing of two charge-sheets against every member of the cartel been the requirement of the act, the expression used would have been 'against whom' and not the expression 'against which'. So, once the existence of the crime syndicate is shown against which two or more than two charge-sheets have been filed during the period of preceding ten years and cognizance has been taken against the same by the Court of competent jurisdiction, it is not the mandate of law that the condition of filing of two charge-sheets has to be fulfilled qua each accused. The material collected by the IO during the process of investigation evidence that accused Deepak Dabas @ Titar was repeatedly involving himself in the criminal activities by using of violence or threat of violence. There are multiple charge-sheets

filed alongwith the judicial file wherein the accused persons charge-sheeted heree under MCOC Act were generally charge-sheeted for various offences. The conduct of the accused persons reflected through the charge-sheets annexed with the present charge-sheet prima-facie show that accused Deepak Dabas @ Titar was running a crime syndicate where other accused persons were its members and committing offences on behalf of syndicate.

32. Prima-facie, there is sufficient material to frame charges for the offences u/s.3(1)(i), 3(2) and 3(4) of MCOC Act against all the accused persons.

33. It is clarified that observations made by this Court hereinabove have been made on the basis of the evidence, the prosecution has proposed to adduce during the trial and for sole purpose of this order only. None of the observation shall provide any condescension to the prosecution from its onus to prove the guilt of the accused beyond reasonable doubt during the trial.

34. To come up for formal framing of charge on **22.02.2024**.

(BABRU BHAN)
ASJ-03 (NORTH-WEST)
ROHINI COURTS
DELHI/16.01.2024