2026:DHC:6247

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 28.07.2026

Judgment Delivered on: 03.08.2026

\+ CRL.A. 1676/2025 & CRL.M.(BAIL) 1302/2025

**SHRI NARESH BALYAN** .....Appellant

versus

**STATE OF NCT OF DELHI** .....Respondent

**Memo of Appearance:**

**For Appellant:** *Ms. Rebecca M. John, Mr. Vivek Jain, Mr. Rohit Kumar, Mr. Sadiq Noor and Mr. Pravir Singh, Advocates.*

**For Respondent:** *Mr. Amit Prasad, Sr. Advocate, Mr. Akhand Pratap Singh, SPP for State and Mr. Ayodhya Prasad, Mr. Hritwik Maurya, Mr. Utkarsh Singh, Advocates with ACP Bhagwati Prasad, Insp. Krishan Kumar and SI Narender Kumar.*

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**JUDGMENT**

**MANOJ JAIN, J**

1. Appellant Naresh Balyan is in custody in a case related to FIR No. 165/2024 registered on 28.08.2024 by PS Crime Branch for commission of offences under Sections 3 and 4 of MCOCA[1].

2. He was arrested on 04.12.2024.

3. He takes exception to order dated 27.05.2025 passed by learned Trial Court whereby he has been denied bail.

4. It will be worthwhile to mention here that, initially, a bail application had been filed before this Court which was, eventually, permitted to be converted into an appeal under Section 12 of MCOCA.

5. Before the learned Trial Court, he had pleaded for bail while contending that he had been falsely implicated and that MCOCA did not get

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[1] *Maharashtra Control of Organised Crime Act, 1999*

attracted. His bail *pleas* did not find favour. His first such application was rejected on 15.01.2025 and second on 27.05.2025 by the learned Trial Court.

6. The case is at initial stage as charges are yet to be ascertained.

7. In fact, arguments on charge are being heard by the learned Trial Court.

## FACTUAL BACKGROUND

8. Let me narrate the facts, in brief.

9. As per prosecution, *Kapil Sangwan @ Nandu* and his gang members were involved in committing *organized crime* and multiple cases had been registered against them in Delhi and NCR[2]. Kapil Sangwan was heading a syndicate and his criminal activities were within the purview of "*organized crime*". He was carrying his such activities with the help of his old associates i.e. his real brother *Jyoti Prakash Baba*, *Sachin Chikara* and others. He obtained passport on forged/fake documents and, eventually, fled the country. One other FIR (*FIR 163/2019, PS Special Cell)* had already been registered against him, in which he had even been charge-sheeted but despite that he continued to indulge in criminal activities unrelentingly, thereby creating menace and panic. He was the brain behind planning and execution of various criminal activities and was also recruiting others, thereby gaining enormous monetary wealth to strengthen his crime syndicate.

10. A proposal dated 19.08.2024 was, accordingly, submitted by ACP, Crime Branch before the *competent authority* for according approval for registering another case under MCOCA against him and his gang members

[2] National Capital Region

and the *competent authority*[3] accorded such approval. It, while doing so, took note of the fact that there were four other FIRs[4], in which cognizance had already been taken.

11. Approval was accorded on 27.08.2024 and FIR in question was registered on 28.08.2024.

12. FIR is a comprehensive one and as per crux of FIR, Kapil Sangwan and his associates were running *organized crime syndicate* and their syndicate was involved in series of serious crimes, thereby becoming a terror in the area. It refers to several incidents in which several businessmen and property dealers were threatened to pay extortion money and even shooters were sent at their premises. Besides the abovesaid four FIRs, reference was made to several other cases in order to demonstrate the *modus operandi* of their *syndicate*. Names of several associates of Kapil Sangwan were also mentioned in FIR, which included *Rohit Sharma @ Anna, Sunil @ Silla, Sachin Chhikara, Ritik @ Peter, Ankesh Lakra*.

13. As per the allegations made in FIR, there were many other associates, who were also part of the *crime syndicate* and were carrying out activities on the directions of Kapil Sangwan and other gang heads. There were repeated shootouts in the area which had created a reign of fear and terror and since general public was not ready to utter anything against them, the gang members were indulging in extortion from property dealers and businessmen. These gang members also used to prepare false documents of vacant plots and used to take possession of such plots and then used to

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[3] Additional Commissioner of Police (ACP), Crime Branch

[4] **FIR No.14/22** dated 11.01.2022 u/s 336/34 IPC & 25/27 Arms Act, **FIR No.40/22** dated 30.01.2022 u/s 387/440/506/120B/34 IPC, PS Jafarpur Kalan, Delhi, **FIR No.60/23** dated 22.02.2023 u/s 387/336/506/507/120B/34 IPC r/w 25/27 Arms Act, PS Mohan Garden, Delhi & **FIR No.265/23** dated 14.04.2023 u/s 302/201/120B/34 IPC r/w 25/27 Arms Act, PS Bindapur, Delhi

coerce the owners to either surrender the plot or to sell it at throwaway price.

14. After registration of the abovesaid FIR, *accused Ritik @ Peter* was arrested on 05.10.2024 while *Rohit Sharma @ Anna* and *Sachin Chhikara* on 29.11.2024.

15. The appellant herein was arrested on 30.11.2024, *albeit*, in another FIR i.e. 191/2023, PS Mohan Garden.

16. Such other FIR had been registered on the basis of complaint made by one Gurcharan Singh, who claimed that he had received a call from an international number, followed by a *whatsapp voice note*, whereby he was asked to pay Rs. one crore as protection money and was threatened that in case the money was not paid, he would meet the same fate as that of Surender Matiala.

17. Appellant was granted bail in such other case i.e. FIR No.191/2023 on 04.12.2024 and same day, Investigating Agency arrested him in the instant case i.e. FIR No.165/2024, PS Crime Branch.

18. Chargesheet[5] has been filed.

19. Learned Trial Court, after perusal of the main chargesheet, took cognizance on 24.02.2025. It observed that there were series of FIRs which revealed a pattern in commission of offences of extortion and murder. These offences had been committed by the members of *organized crime syndicate* with sole object to create terror in the minds of innocent people and to gain pecuniary and undue economic benefit.

20. A bare reading of charge-sheet and supplementary charge-sheets would indicate that there are in all 13 accused persons i.e. A-1 Ritik @

[5] Main charge-sheet has been filed on 26.12.2024. Thereafter, five supplementary charge-sheets were filed on 24.02.2025, 01.05.2025, 14.07.2025, 20.09.2025 and 24.12.2025, respectively.

Peter, A-2 Rohit Sharma @ Anna, A-3 Sachin Chikara, *A-4 Naresh Balyan*, A-5 Vijay Gahlot, A-6 Sahil @ Popli, A-7 Jyoti Prakash @ Baba, A-8 Vikash Gahlot, A-9 Veenita, A-10 Amar @ Amardeep Lochab, A-11 Kapil Sangwan @ Nandu (already declared *proclaimed offender* on 15.05.2025) and A-12 Manoj Yadav @ Kaira. Accused Umed Singh, mentioned in column No.12, was shown 'absconding'.

21. Appellant was, though, named in the main chargesheet, investigation about his complicity was under scrutiny and, therefore, he was not immediately chargesheeted.

22. He was, eventually, sent up to face trial through second supplementary chargesheet wherein his role has been dealt with extensively.

23. The Evidence Matrix against him, as mentioned therein, is extracted as under: -

*i. His voice recording with Kapil Sangwan @ Nandu has been seized which revealed that his activities are covered under the definition of continuing unlawful activities, organized crime syndicate as defined and described under section 2(1)(d)(e) and (f) of MCOC Act 1999, as extended to the NCT of Delhi.*

*ii. Voice recording indicated that he was directly linked with Kapil Sangwan/Nandu and indulged in unlawful activities of grabbing property by making these a disputed property, providing the potential targets and by making mediation. Voice sampling of accused Naresh Baliyan has been done and sent to CFSL, Lodhi Colony Delhi for matching with the voice recording which was viral on Facebook and downloaded from Facebook links and the voice recording obtained from Times Now Bharat between accused and Kapil Sangwan Nandu.*

*iii. Following disputed property has been identified on his instance, he has invested ill gotten money in the properties in cash:-*

*a). One built up property in the name of Vishal Mega Mart Near Kakrola*

*More on main Najaf Garh Uttam Nagar Road was shown by him is in the name of his wife. It is built up property and running a mall in the same premises basement, ground floor and Ist floor and stated that this is the property which he procured in 2020- 21 and the cash amount received through illegal means has been invested in the same.*

*(b) One property at main Uttam Nagar to Najafgarh Road, Piller No. 766 was identified by accused Naresh Balyan identified and known as "Nursery Wala Plot" which was earlier under law full ownership/possession of owner of the property and now one Sudhir illegally occupied this property with the connivance of accused Naresh Balyan and Kapil Sangwan @ Nandu.*

*(c) One disputed property at Guru Harkishan Nagar Extension Part-I Mansa Ram Nanhe Park Road, Bindapur, Delhi. This property is also known as dust land. The said property is in the name of owner of the land (witness). The accused ropped syndicate head to purchase the same land in very much low price and when the deal was denied by the owner, he received extortion call of Rs one crore from Kapil Sangwan @ Nandu and given life threat on non payment hence he paid Rs. 20 Lakh through the accused.*

iv. *He was found involved in following cases:-*

*a) FIR No. 191/2023 u/s- 387/506/120B/34 IPC PS- Mohan Garden.*

v. *The statements of independent witnesses and police officials u/s 180 BNSS as well as u/s 183 BNSS have been recorded which proves his role in the syndicate as facilitator/ member. Accused was active member of Kapil Sangwan@Nandu Gang as he was found assisting committing extortion and providing the potential targets for illegally grabbing of land/plot of victims.*

vi. *He was named as facilitator and associate of Kapil Sangwan@Nadu Gang in the confessional statements of accused persons namely Sachin Chikkara and Rohit @ Anna @ Gollu recorded u/s 18 of MCOC Act. As per section 18 of*

*MCOC Act, it is admissible evidence before the court of law.*

vii. *There is technical connectivity between accused Naresh Balyan with Kapil Sangwan@Nandu and also with gang members as revealed during investigation as even after taking precautions sometimes he had connected with the IPs of UK from where the syndicate head operating.*

viii. *He had procured all the mobile numbers in the name of knowns to avoid the responsibility and used IP hider Apps and VPN Apps to make himself safe from the tracking of law enforcement agencies.*

ix. *During investigation the bank account details of accused his wife and the institutions run by his wife obtained and found that huge cash has been invested in construction of Vishal Mega Mart. The analysis of the accounts has been done and queries have been made from the wife of accused.*

x. *The ITRs of accused have been received and discrepancies have been noticed in the same and the ITRs of wife of accused are awaited, when the same will receive it will clear which amount the accused mentioned in ITRs and which is the cost used in construction of the building.*

xi. *One property bearing khasra no 43//12/3/2 (1-3), 19 (4-16), 20 (4-16), 21/1 (4-12), and 44//25/3 (1-12), undivided property of four legal hears situated at revenue estate of Najafgarh, Goyla Dairy Delhi was found purchased on the name of Umed Singh conspired with accused Naresh Balyan involving Kapil Sangwan @ Nandu and purchased in low price, exerted pressure on witness to sell his share at the same rate at which his brother had sold his portion. However, witness intended to sell his share at a higher price.*

24. The bail has been declined, *inter alia*, observing that there is ample material on record against the appellant and, therefore, the Bar provided under Section 21 (4) of MCOCA stands attracted. Learned Special Court also relied upon the fact that the presumption under Section 22 of MCOCA is also *prima facie* applicable and the factual matrix indicated criminal nexus. It also relied upon the statements of the witnesses, including

protected witnesses, confessional statements, audio recordings and came to the conclusion that there was nothing to indicate that the approval given by the *Competent Authority* was mechanical or that the material produced before such Authority was insufficient. It also held that there was no *double jeopardy* involved and prosecution was able to show the crucial element of "*continuous unlawful activity*".

**SUBMISSIONS OF APPELLANT**

25. Ms. Rebecca M. John, learned Senior Counsel for the appellant submits that the appellant is a law-abiding citizen, with deep social roots and enjoys unblemished reputation in society. He is actively engaged in public service and social work. He began his public service by becoming a Municipal Councillor in the year 2012 and, thereafter, became MLA[6] from Uttar Nagar, Vidhan Sabha Constituency in two consecutive assembly elections held in Delhi in 2015 and 2020. She submits that in order to prevent him to seek a third consecutive term as MLA, the appellant was falsely implicated in FIR Nos.191/2023, PS Mohan Garden and, thereafter, in the instant FIR i.e. FIR 165/2024. Her prime contentions can be enumerated as under: -

(i) *The present case is a glaring example of abuse of MCOCA. Approval, purportedly given under Section 23 of MCOCA, does not satisfy the basic threshold requirement as there is complete absence of any fresh activity which is sine qua non for invoking MCOCA. Moreover, there is no application of mind while according approval under Section 23(1)(a) of MCOCA. The Investigating Agency had misconstrued the connotation of offence of organized crime and*

[6] Member of the Legislative Assembly

*though the police had made reference to 15 previous FIRs but there was nothing to indicate any fresh act in the present FIR to show the continuance, as mandated in MCOCA whereas as per Section 2(d) of MCOCA, there is obligatory requirement of having evidence of a fresh Act, demonstrating continuity in order to qualify it to be an organized crime and, therefore, mere reliance of past FIRs and charge-sheets, without any fresh incident or criminal activity, would be insufficient to invoke MCOCA.*

*(ii) The arrest and cognizance for stringent provisions under MCOCA is non est and illegal for the reason that there was nothing to indicate that there was more than one charge-sheet filed against the appellant within the preceding period of ten years in which the Court had also taken cognizance.*

*(iii) There is no material to indicate that the appellant is member of an organized crime syndicate and he has been roped in on the basis of unverified and unauthenticated audio clips.*

*(iv) Reliance on the alleged confessional statements of co-accused is completely misplaced. Firstly, because of the fact that these were obtained belatedly; secondly, because these confessional statements were immediately retracted by the makers; and thirdly, the confessional statement of co-accused has no evidentiary value and cannot form the basis of conviction. Since there is no other independent corroborating material against the appellant, the case cannot be proceeded further merely on the basis of retracted confessional statements.*

*(v) The statements of protected witnesses, code name "GAMMA-*

*3" and "GAMMA-4" also do not indict or implicate the appellant. These statements lack probative value and cannot be utilized to deny bail to the appellant.*

*(vi) The appellant himself had been a victim of threats, which he received from none other than Kapil Sangwan @ Nandu himself. The appellant sent written complaints to the police on 19.12.2022, 03.07.2023 and 05.07.2023, clearly detailing the danger to his life and sought police protection as he apprehended serious threats from him and his associates. The threats were found to be genuine and, therefore, the appellant was, even, provided security. However, ignoring the same, he has now been maliciously and vexatiously implicated as member of the same very organized crime syndicate. The complaints made by him which were prior in time, clearly, divulged that he himself had been receiving threats from Kapil Sangwan @ Nandu and, therefore, there was no reason or occasion for him to have associated himself with such a gangster.*

*(vii) There is nothing to suggest that appellant had acquired any immoveable property or accumulated any cash which could be branded as 'proceeds of crime'. The acquisition of immoveable property is consequent upon sale of one property. The sale proceeds were transferred by him in the account of his wife and his wife, on the basis of such consideration, had acquired other property. The construction cost was incurred by her brother and, therefore, there is no material which may indicate that he had any unaccounted property or cash.*

26. Reliance has been placed upon *Madan vs. State of Maharashtra*[7], *Sachin Bansal Ghaiwal vs. State*[8]; *Prafulla Uddhav Shende vs. State of Maharashtra*[9]; *Darasing and Others vs. State of Maharashtra*[10]; *Bharat Shantilal Shah vs. State of Maharashtra*[11]; *State of Maharashtra vs. Bharat Shantilal Shah*[12]; *John D'Souza vs. ACP, Mumbai*[13]; *Amitbhai Anil Chandra Shah vs. Central Bureau of Investigation*[14]; *TT Anthony vs. State of Kerala*[15]; *State of Maharashtra vs. Lalit Somdutta Nagpal*[16]; *Ranjitsing Bharamjeetsing Sharma vs. State of Maharashtra*[17]; *Prem Prakash vs. Union of India*[18]; *Bhuboni Sahu vs. The King*[19]; *Haricharan Kurmi vs. State of Bihar*[20]; *Suresh & Anr. vs. State of Haryana*[21]; *Yedala Subba Rao vs. Union of India*[22]; *Siddhant vs. State of Maharashtra*[23]; *Rajesh Kumar vs. State (NCT of Delhi)*[24]; *Arun vs. State of (NCT of Delhi)*[25]; *Manish Sisodia vs. Directorate of Enforcement*[26]; *Satender Kumar Antil vs. Central Bureau of Investigation*[27]; *Kashmira Singh vs. State of Punjab*[28]; *Javed Gulam Nabi*

[7] Crl. Appeal No.308/2022
[8] 2014 SCC OnLine Bom 725
[9] 2008 SCC OnLine Bom 1848
[10] 2021 SCC OnLine Bom 1538
[11] 2003 SCC OnLine Bom 1361
[12] (2008) 13 SCC 5
[13] 2007 SCC OnLine Bom 1621
[14] (2013) 6 SCC 348
[15] (2001) 6 SCC 181
[16] (2007) 4 SCC 171
[17] (2005) 5 SCC 294
[18] 2024 SCC OnLine 2270
[19] 1949 SCC OnLine PC 12
[20] AIR 1964 SC 1184
[21] (2018) 18 SCC 654
[22] (2023) 6 SCC 65
[23] 2024 SCC OnLine SC 3798
[24] 2025 SCC OnLine Del 3256
[25] 2025 SCC OnLine Del 2211
[26] 2024 SCC OnLine SC 1920
[27] (2022) 10 SCC 51
[28] (1977) 4 SCC 291

*Shaikh vs. State of Maharashtra*[29]; *Gudikanti Narasimhulu vs. Public Prosecutor, High Court of Andhra Pradesh*[30] and *Jitender Dixit vs. State (NCT of Delhi)*[31].

**CONTENTIONS OF STATE**

27. All such contentions have been refuted by Sh. Amit Prasad, learned Senior Advocate and Special Counsel for State.

28. He submits that the appellant is an active member of *syndicate* in question and the material collected during the investigation is sufficient to demonstrate that he was in direct contact with Kapil Sangwan, who headed such syndicate. The appellant used to provide information about *potential extortion targets* to the head of the syndicate so that they can be threatened by Kapil Sangwan @ Nandu and his associates. The appellant used to make *agreement to sell* in the name of accused *Umed Singh* to portray such properties to be disputed and thereafter on the basis of threats, the *bonafide* sellers used to be compelled to sell the same, at a throwaway price. He contends that the appellant is part of the *organized crime syndicate* and his role is to be evaluated from the point of view of his association and nexus with the syndicate, and not individually. He submits that there is no requirement in law that more than one charge-sheet should be against the same individual. The pre-requisite is that charge-sheet should be against the *'organized crime syndicate'* engaged in "*continuing unlawful activity*". He states that the requirement of law is not *individual-centric* but *syndicate-centric*. He submits that, though, the stringent provisions of MCOCA could have been added in any existing FIR, there is no *double jeopardy* involved

[29] 2024 SCC OnLine SC 1693
[30] (1978) 1 SCC 240
[31] 2025 SCC OnLine Del 3445

here as fresh FIR under provisions of MCOCA can be independently registered, if upon assessment of the prior criminal activities and on-going unlawful acts, the Investigating Agency determines that the statutory threshold for invoking MCOCA is met. He also contends that for invocation of MCOCA, it is not mandatory that each member of the syndicate should have a direct role to play in the foundational crime and even if, anyone, as a member facilitates the commission of offence or abets the offence, such act of facilitation and abetment would also, clearly, attract the penal provisions of MCOCA.

29. Sh. Prasad further contends that there is no retraction of any confession. He supplements that confessional statements, even if assumed to have been retracted, continue to be admissible and the aspect of retraction can be gone into appropriately during the trial only and thus, the alleged retraction cannot be made basis for seeking bail. He also submits that the approval granted under Section 23(1)(a) and sanction accorded under Section 23(2) of MCOCA are separate and distinct and the validity thereof can be gone into at post-trial stage only. He asserts that there is strong evidence to indicate that the appellant had possession of extorted money which he invested in acquiring other properties and that unexplained entries and acquisition have been rightly taken as unaccounted money constituting '*proceeds of crime*'.

30. Lastly but most importantly, Sh. Prasad highlights that as per Section 21(4) of MCOCA, the Court has to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and is not likely to commit any offence, while enlarged on bail. He submits that the appellant does not fulfil the abovesaid *twin-conditions*. He reiterates that

MCOCA is applied only when any such *organized crime* becomes a menace and threat to the society and cannot be prevented by taking recourse to existing legal framework, meant for general offences. He states that when the members of syndicate are found involved in organized crime, there is a serious adverse effect on the society and, therefore, no case for grant of bail is made out. He submits that 12 accused persons have already been charge-sheeted. The head of syndicate i.e. Kapil Sangwan @ Nandu has been declared '*proclaimed offender*' and *qua* him, there is a request to hold trial *in absentia*. He submits that since the offences are having serious implications, the delay itself cannot earn any compassion to the appellant as the societal interest is also required to be balanced out. He submits that the case is at the stage of consideration of charge and every effort would be made to ensure that there is no unnecessary delay in the matter.

31. He also relies upon *Kavitha Lankesh v. State of Karnataka and Others*[32], *Prasad Shrikant Purohit Vs. State of Maharashtra*[33], *Zakir Abdul Mirajkar Vs. State of Maharashtra & Ors*[34], *Vinod G Asrani Vs. State of Maharashtra*[35], *Praveen Venkatesh Takalki Vs. National Investigation Agency*[36], *Mohd. Farooq Abdul Gafur Vs. State of Maharashtra*[37], *Kamlesh Kothari v. State (NCT of Delhi)*[38], *Sachin Bansilal Ghaiwal Vs. State of Maharashtra*[39], *Tasleem Ahmed Vs. State of NCT of Delhi*[40], *Leena Paulose*

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[32] (2022) 12 SCC 753
[33] (2015) 7 SCC 440
[34] 2022 SCC OnLine SC 1092
[35] (2007) 3 SCC 633
[36] (2013) SCC BOM 2088
[37] (2010) 14 SCC 641
[38] 2023 SCC OnLine Del 3984
[39] 2014 SCC OnLine Bom 725
[40] Crl. M. Bail No. 2168/2024

*Vs. State of NCT of Delhi*[41], *State of Maharashtra Vs. Vishwanath Maranna Shetty*[42], *Jayshree Kanabar Vs. State of Maharashtra*[43], *Mujahid S/o Ibrahim Pathan Vs. The State of Maharashtra*[44] and *Digvijay Saroha Vs. State*[45].

## ANALYSIS OF RIVAL CONTENTIONS

32. Before adverting to the contentions raised at the Bar, this Court needs to remind itself about three imperative aspects.

33. *Firstly*, the contentions are in context of seeking bail.

34. At such initial stage, it, therefore, will not be appropriate for the Court to enter into minute and extensive discussion about the material collected during the investigation. The analysis, therefore, has to be a *surface-level analysis* in order to satisfy *i) whether the material collected by the prosecution is sufficient to invoke MCOCA and ii) whether all the requisite threshold requirements for invocation of MCOCA have been met or not.*

35. *Secondly,* the Court also has to be cognizant of the fact as per one of the mandatory requirements given under Section 21 of MCOCA, any such person cannot be released on bail unless 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.*

36. As has been rightly observed in *Ranjitsing* (supra), Section 21(4) of MCOCA is to be construed reasonably so as to maintain a delicate balance between *a judgment of acquittal or conviction* and *an order granting bail* much before commencement of trial and, therefore, the restrictions on the power of the Court, as aforesaid, should not be pushed too far. Although,

[41] Bail Appln. 1802/2024
[42] (2012) 10 SCC 561
[43] (2025) 2 SCC 797
[44] 2014 SCC OnLine BOM 4048
[45] 2019 SCC OnLine Del 10324

comprehensive examination may not be required, the Court, indeed, must satisfy itself whether the material placed on record is, so to say, sufficient to attract invocation of relevant provisions of the MCOCA or not. In-depth analysis may not be desirable but basic satisfaction needs to be accorded. Thus, the duty of the Court at such initial stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities.

37. A caveat, right here. The test for the purposes of coming to the abovesaid satisfaction at the stage of bail is milder *vis-à-vis* the scrutiny which is undertaken at the time of consideration of charge.

38. *Thirdly*, the objective behind enactment of MCOCA is to tackle with the menace of criminal activities by organised crime syndicate. The *Statement of Objects and Reasons* of MCOCA also records that organized crime is serious threat to our society as it knows no national boundaries and is fuelled by the illegal wealth generated by target killing, extortion, smuggling, kidnapping for ransom, collection of protection money etc., and all such activities have serious adverse effect on our economy. The need arose because the existing legal framework was looking inadequate and inept to deal with the same. Thus, enactment is, therefore, with a special purpose to tackle the menace of such serious offences which are committed in an organized manner. The Act, in order to achieve the abovesaid objective has, therefore, stringent and deterrent provisions - both penal and procedural. Needless to say, the consideration of the present appeal has to be also in synchronisation with the abovesaid objective behind incorporation of MCOCA. *Leena Paulose (supra*) also declares that the bail provisions under MCOCA provide stricter regime as compared to the one provided under *Unlawful Activities (Prevention) Act, 1967* (UAPA) and, therefore, degree of

satisfaction is also required to be much stronger.

39. I may also, right here, make reference to *Abhishek v. State of Maharashtra*[46] In said case, related to MCOCA, Hon'ble Supreme Court elaborated about the applicability of rule of strict construction by observing as under:-

> *"So far as the applicability of the rule of strict construction qua MCOCA is concerned, it being a special penal statute, this much is clear that no one is to be made subject to this law by implication or by presumption; and all doubts concerning its application would, ordinarily, be resolved in favour of the accused. However, the rule of strict construction cannot be applied in an impracticable manner so as to render the statute itself nugatory. In other words, the rule of strict construction of a penal statute or a special penal statute is not intended to put all the provisions in such a tight iron cast that they become practically unworkable, and thereby, the entire purpose of the law is defeated. At this juncture, we may profitably refer to a decision of this Court in the case of Balram Kumawat v. Union of India & Ors.: (2003) 7 SCC 628, that the purpose of law is not to allow the offender to sneak out of the meshes of law."*

40. I have given anxious consideration to the rival contentions and perused the precedents cited at the Bar. These precedents would be referred to, wherever so required.

41. The appreciation would be essentially based on two broad aspects - whether the threshold mandatory requirements are met or not and whether allegations suggest commission of any offence under MCOCA or not.

42. Let me consider all these technical and factual aspects.

43. The prime-most contention coming from the side of appellant is that the invocation of the MCOCA is unjustifiable and without any basis as there

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[46] 2022 SCC OnLine SC 678

is complete absence of any fresh "*continuing unlawful activity*" on the part of the appellant and, therefore, the approval is also without application of mind**.** It is argued that registration of FIR under stringent provisions of MCOCA must be predicated on a *fresh act* and FIR cannot be registered solely on the basis of earlier incidents, without disclosing any recent activity attributable to any such accused. In this regard, learned Senior Counsel for the appellant strongly relies upon *John D'Souza* (supra) and *Bharat Shantilal Shah* (supra). She also contends that the registration of fresh FIR on the same facts or cause of action is impermissible.

44. According to her, the prosecution has, merely, referred to and relied upon prior chargesheets and has not bothered to disclose any distinct recent act of organised crime. She submits that the two chargesheets cited by the prosecution which, allegedly, formed the basis of the present proceedings, are pending trial and these matters are being adjudicated independently and these cannot be re-clubbed or re-characterised under present FIR, branding the same as part of MCOCA offence. Doing so, according to her, would amount to double jeopardy and would violate the principle of finality and judicial propriety. In this regard, she relies upon *Amitbhai Anil Chandra Shah* (supra) and *TT Anthony* (supra).

45. There is no requirement of reiterating the definitions of '*continuing unlawful activity'*, *'organised crime'*, *'organised crime syndicate' and 'abet'* as specifically elaborated and clarified in Section 2 of MCOCA. The Constitutional validity of the definitions as existing under Sections 2(1)(d), (e) and (f) of MCOCA have been upheld as would be evident from *State of Maharashtra v. Bharat Shantilal Shah and Others; (2008) 13 SCC 5*, wherein it has been held that there is no vagueness therein and these do not

suffer from *vice* of class legislation and are not violative of Article 14 of the Constitution of India.

46. In context of any such person, who has been chargesheeted for committing an offence of organised crime, the prosecution is required to first show the existence of continuous unlawful activity i.e. i) he is engaged in an activity which is prohibited by law ii) such activity is in relation to a cognizable offence punishable with imprisonment for three years or more iii) such activity is undertaken by any such person, individually or jointly or as a member of an organised crime syndicate or on behalf of such syndicate and iv) there are more than one chargesheet filed before a Competent Court within the preceding period of ten years in which cognizance has been taken.

47. The abovesaid crucial pre-requisite of *there being more than one chargesheet in the preceding ten years* is not to be taken in context of an individual only. It has to relate to the activity of the *concerned organised crime syndicate.* Thus, the role of any such individual, who has been sent up to face trial, has to be examined from a broader and wider angle. The determining and governing aspect would be whether activity is '*as a loner with no nexus to syndicate'* or '*as member or on behalf of such syndicate'*. Therefore, the requirement of the law of there being more than one previous chargesheet cannot be limited against the individual member, named therein. Rather, it has to be understood from the perspective of activities of syndicate. It, therefore, would be of no substantial consequence even if appellant is not specifically named in the previous chargesheet(s). His nexus, in whatever capacity, with the *organized crime syndicate* would be enough. Reference, on this score, be made to observations made by Hon'ble Bombay High Court in *Sachin Bansilal* (supra) which read as under:-

*"38. Thus, according to us and in our humble opinion and after giving our earnest consideration, the expression 'member' as has been termed in Section 2(1)(d) of the MCOC Act can be interpreted and defined as, a person who participates in the crime either actively or passively or a person who facilitates the commission of the crime committed by the organized crime syndicate or on behalf of the organized crime syndicate, automatically becomes the member of the said crime syndicate which commits the offence or on whose behalf the offence in question is committed, as contemplated under Sec. 2(1)(d), 2(1)(e), Section 3 and other provisions of the MCOC Act.*

*39. The said intention of the legislature can further be gathered from the expression which is used in sub section (2) of Section 3 of the MCOC Act i.e. "any act preparatory to organised crime" has direct bearing with the expression 'member' which appears in Section 2(1)(d) of the MCOC Act and therefore taking into consideration the intention of the legislature, widest possible meaning has to be given to the expression 'member' as is appearing in Sections 2(1)(d), 2(1)(e), Section 3 and other provisions of the MCOC Act"*

48. In said judgement, it is observed that it is settled position of law that *singular unlawful activity* would attract the provisions of ordinary law and if it is the continuing one, and to wit, third offence of specified type which fulfils the requirement of the provisions of the MCOCA, it becomes *organized crime* to be registered as an offence under the MCOCA. There cannot be any difference on opinion about said proposition and in a given case, if prosecution is unable to show any nexus, the previous chargesheets may not be of any relevance. Therefore, the principle needs to be applied after analyzing and marshalling the facts.

49. The requirement of law is not 'individual-centric' but is 'syndicate-centric' and the prosecution is, thus, fully justified in relying upon *Kavitha Lankesh* (supra) where it has been, categorically, held that the requirement of more than one chargesheets is in reference to the "*continuing unlawful activities"* of the organised crime syndicate and not *qua* individual member

thereof. *Zakir Abdul Mirajkar* (supra) also reiterates the same and, therefore, if there is a clear-cut nexus and the previous chargesheets are in relation to the unlawful activities carried out by the same syndicate, any such individual cannot raise grievance that since he has not been specifically named in the previous chargesheet, the pre-condition is not met. Participation of any such individual even as facilitator or abettor, when the activities are carried out as member thereof, is sufficient for invocation of MCOCA.

50. There cannot be, therefore, any qualm with respect to crucial prerequisite and pre-conditions in invocation of offence under MCOCA. The definitions are already amply clear and there is no scope for any discussion or debate particularly when the constitutionality of the relevant definitions has already been upheld.

51. Undoubtedly, continuing of unlawful activity, in itself, would not constitute an offence.

52. It is only one of the essential pre-requisites for invocation of MCOCA.

53. Substantive offences under MCOCA are *offence of organized crime* and *offence for possessing unaccountable wealth*. These are provided under Sections 3 and 4, respectively of the MCOCA.

54. The offence of *organized crime* has been defined under Section 2(1)(e) of MCOCA, which makes it clear that such offence would come into existence when there is any continuing unlawful activity, *coupled with use of violence or threat of violence or intimidation or coercion or other unlawful means with objective of gaining pecuniary benefit*. Thus, continuing unlawful activity, simpliciter, would not be enough. Evidently,

organized crime, in itself, is a substantive offence and, therefore, it will not be appropriate to contend that any FIR registered only for commission of offences under Sections 3 & 4 of MCOCA without there being any other substantive offence, is impermissible in law. The observations in *Darasing (supra)* were in an appeal where the accused had already been held guilty by the learned Trial Court. While acquitting him, Hon'ble Bombay High Court observed that he could not have been convicted and sentenced for offences under MCOCA in the absence of any substantive crime so as to constitute an organized crime. In the aforesaid case, quite clearly, the other important ingredients of *offence of organized crime* were found to be missing and, therefore, the case, eventually, resulted in acquittal. Without doubt, there is no proposition of law that if a person is charge-sheeted only for the substantive offences under MCOCA, he cannot be convicted at all. Reason is obvious - offences prescribed under MCOCA are substantive offences, in themselves.

55. Nonetheless, it is core duty of the prosecution to bring on record clear material suggesting not only the continuing unlawful activity but other essential ingredients of said substantive offence of organized crime. Same is true for offence related to possession of unaccountable wealth.

56. It will be also apposite to mention here that several precedents relied upon by the appellant are where the concerned accused had been held guilty. Obviously, findings, in those cases, had been given after comprehensive trial and after scrutiny of the testimony of the witnesses, whereas in the case in hand, no automatic advantage can be dug out from such precedents as the trial has yet not begun. *Prafulla Uddhav (supra)* deals with a situation where accused was held guilty after comprehensive trial, *albeit*, was acquitted in

appeal. The fact-situation in said case was different as would be evident from observations appearing in para 63 which read as under:-

> *"To sum up, in these cases, conviction of the appellants is based upon only filing of chargesheets in the past. There is no overt act or omission, which would amount to continuation of unlawful activity carried out by use of force for the purpose of pecuniary gain, with which the appellants are charged. The only overt acts attributed to and only to, the gang leaders, is possession of arms at their houses, when they were in custody, and after offences were registered under MCOCA. For these offences the learned Judge, Special Court has acquitted them. Crime Nos. 37 and 38 of 2001 in which MCOCA was sought to be applied, ended up in filing charge-sheets without applying MCOCA and eventual acquittal of the accused therein. This leaves a big question mark or rather question marks, not only about application of mind while granting approval and sanction under Section 23, but also about mindlessness in pursuing the whole matter. Conviction of the appellants cannot therefore be sustained."*

57. In *Madan S/o. Ramkisan Gangwani (supra)* also, the accused had been held guilty and convicted. In appeal, it was, *inter alia*, contended that previous charge sheets, unrelated to offences for pecuniary or other gain, were not relevant and that evidence in respect of previous charge sheets may, at worst, prove involvement in continuing unlawful activity, but not organised crime. Such contention was upheld by Hon'ble Bombay High Court as it noted that the evidence tendered did not suggest commission of offence of organised crime. It also observed that what was made punishable under Section 3 is "organised crime" and not "continuing unlawful activity. There cannot be any qualm with the above proposition.

58. There is also no requirement in law that once approval is granted under Section 23(1)(a) of MCOCA, the relevant Sections of MCOCA need to be added in some existing FIR only. There is no question of there being any kind of *double jeopardy* when a separate FIR is registered.

59. Investigating Agency has both the options, open and available to it.

60. It is better left to them to decide as to which to choose - whether after seeking requisite approval the penal offences of MCOCA be incorporated in the pending FIR or whether to record a fresh FIR.

61. Merely because Investigating Agency chooses to record fresh FIR would not, *ipso facto,* amount to *double jeopardy*.

62. As noted above, any such offence under MCOCA comes into existence, primarily, because of the pending matters and continuing unlawful activity but it, in itself, would not mean that registration of fresh FIR would amount to *double jeopardy*. Reference be made to *Sachin Bansilal Ghaiwal (supra)* wherein Hon'ble Bombay High Court made reference to availability of such two options in Para-19. It reads as under: -

> *"It is the settled position of law that the singular unlawful activity would attract the provisions of ordinary law and if it is the continuing one, and to wit, third offence of specified type which fulfills the requirement of the provisions of the MCOC Act, it becomes organized crime to be registered as an offence under the MCOC Act. In such situation there are two options available to the prosecution/Investigating Agency, that is, either they can separately record the information about the commission of an offence of organized crime after successive unlawful activity of the specified type have been committed, for and on behalf of the organized syndicate, which has been done in the present case, or invoke the provisions of the said enactment to the unlawful activity already reported which is the successive in point of time that is to say the provisions of the MCOC Act can be invoked or applied to an existing CR/FIR. …….."*

63. The approval given under Section 23(1)(a) of MCOCA clearly records that there are sufficient grounds that Kapil Sangwan @ Nandu is the mastermind in planning and execution of the nefarious activities of syndicate in question. It also records that he is not only depending upon his old accomplices but also recruiting new members by diverting their minds towards criminal activities. It also took note of the four previous FIRs which had been registered against Kapil Sangwan @ Nandu and/or his accomplices

in which the cognizance had already been taken. It was in that context that the approval was granted.

64. FIR, in hand, has been registered on the basis of the abovesaid approval and it is no longer *res integra* that FIR is not the encyclopedia of the entire prosecution story.

65. It is just the beginning of the investigation.

66. Moreover, the FIR is always registered in context of offence and during investigation, the police can reach out to the concerned offenders. Merely, because the name of the offender is not mentioned in the FIR would not mean anything substantial. Even in *Zakir Abdul Mirajka* (supra), Hon'ble Supreme Court has observed that an order of approval under Section 23(1)(a) of MCOCA need not name every accused person at the outset. It observed that often limited information is available to the Investigating Agency at the time of recording information about the commission of an offence and the involvement of others may come to light, during the course of the investigation only. It observed that the very purpose of investigation is to determine whether a crime has been committed and if yes, to shed light on the details of the crime, including the perpetrators thereof. It also observed that in context of organized crime syndicate in particular, such syndicate may consist of scores of persons involved in unlawful activities in different capacities and *held that Section 23(1)(a) of MCOCA speaks about recording information about the commission of offence of organized crime, and not of recording information about the offender(s).* Moreover, the fact whether the material considered by the Competent Authority was adequate or not and whether there is due application of mind or not can be answered appropriately during the trial

only. In *Digvijay Saroha (supra)*, this Court has observed that at the stage of consideration of bail, the Court is not required to go into the facts in detail and to give a finding that sanction is in accordance with law or not, while also supplementing that such exercise is required to be undertaken during the trial only. Reference be also made to *Vinod G. Asrani (supra), Abhishek (supra), Farman Imran Shah @ Karu Vs. State of Maharashtra*[47] *and Anil Sadashiv Nanduskar Vs. State of Maharashtra*[48].

67. Of course, appellant proclaims that he, himself, is also a victim of threats emanating from same gangster Kapil Sangwan. He contends that in view of such threats, he had approached the police and was, in fact, given protection and now all of a sudden, for totally inexplicable reasons and on account of some political vendetta, such a vital fact has been brushed aside and he has been, instead, projected as close associate of Kapil Sangwan. Merely because the appellant had lodged complaints against Kapil Sangwan in past, the material collected by the Investigating Agency cannot be negated and annulled, particularly when the conversation between him and Kapil Sangwan demonstrates an active criminal nexus between the two. Whether these complaints are genuine or not; or whether these are clever ploy to create a false illusion; or whether the threats existed but of late, there is tacit association between them would become clearer only during the trial. These complaints, at this juncture, would not absolve him, also keeping in mind the other incriminating material. Of course, the appellant is a political figure but the *plea* of political vendetta is, merely, in the air and completely unsubstantiated.

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[47] (2014) SCC OnLine Bom 408
[48] (2007) SCC OnLine Bom 1702

68. The evidence matrix, as against the appellant herein, has already been extracted. However, in order to assess whether invocation of MCOCA is justified and whether the threshold parameters are met or not, this Court has gone through the allegations appearing in the charge-sheet, very carefully.

69. In the first supplementary charge-sheet, it was mentioned that after obtaining permission for interrogation from the designated court, Naresh Balyan was interrogated as during the relevant time, he was in custody in other case. Such interrogation indicated that he was instrumental in facilitated money to the organized crime syndicate in question. Investigation *qua* him remained underway and, therefore, he was not immediately charge-sheeted. After comprehensive investigation, he was, eventually, charge-sheeted as would be manifest from the second supplementary charge-sheet.

70. Prosecution relied upon confessional statements of Rohit @ Anna and Sachin Chhikara who, besides admitting their own involvement, revealed about the complicity of appellant in the syndicate. Confessional statements have been placed on record and these do indicate a clear-cut nexus among all the members of the syndicate and these confessional statements go on to show that Nandu (Kapil Sangwan) had told them that he was having good contact with MLA Naresh Balyan, who would help them in everything, including extortion, money-settlement and investing money on their behalf. These confessional statements were recorded by the concerned DCP of Special Cell on 02.12.2024 and 03.12.2024. On 03.12.2024 itself, they both were produced before the Court of learned Addl. Chief Metropolitan Magistrate in compliance of Section 18(5) of MCOCA and inquiry was made by the Court as per Section 18(6) MCOCA. During such proceedings, learned Trial Court apprised both of them, separately and individually, that

confessional statements made by them had been received. These were also read over to them and they were asked whether they wanted to make any statement or not. They, in response, merely claimed that they were not aware as to what was mentioned in their confessional statements. They, at the same time, claimed that there was no use of force "*mere sath koi jor jabardasti nahi hui thi"*. Of course, they pleaded their ignorance about such statements but fact remains that they never claimed that whatever had been read out to them, purported to be their confessional statements, was false and wrong. Be that as it may, fact remains that factum of retraction can be appropriately answered during the trial only and at this stage when the Court is merely considering bail *plea*, such confessional statements cannot be, outrightly, discarded. Reference be made to *Praveen Venkatesh Takalki (supra)* and *Kamlesh Kothari (supra).*

71. Investigation also reveals that appellant has been continuously facilitating members of the crime syndicate headed by Kapil Sangwan in commission of organized crime; and the appellant, in particular, facilitated his co-accused Rohit @ Anna, member of same syndicate in the acts of extortion and murder. All such instances were in the knowledge of police as these resulted in registration of FIR No. 60/2023, PS Mohan Garden, FIR No. 191/2023, PS Mohan Garden and FIR No. 265/2023, PS Binda Pur. FIR No. 191/2023 was registered on the basis of complaint of Mr. Gurcharan Singh who had received threats from Kapil Sangwan and when said Mr. Gurcharan Singh made a supplementary statement on 30.11.2024, he revealed that after he had received ransom call from Kapil Sangwan, he had a conversion with appellant who told him (Gurcharan Singh) that Nandu was his brother and if he wanted to settle anything with him, he may be apprised

as Nandu would never refuse his request and would also reduce ransom-amount.

72. The chargesheet makes reference to various previous incidents which resulted in registration of around 17 FIRs and as per the case of prosecution, these relate to the members of same syndicate headed by Kapil Sangwan. As noted above, the appellant is also alleged to be a key member of the same syndicate. These FIRs have clear relevance and go on to constitute vital foundational material; and validate continuity of the criminal activity of the syndicate in an organized manner. The contention of the appellant that the FIR in question is, merely, a reiteration and repetition of the previous FIRs and that there is no material showing any *continuance of unlawful activity* or any act suggesting commission of offence under MCOCA, is liable to be rejected.

73. Statement of appellant Naresh Balyan was also recorded in which he admitted his complicity.

74. During course of the investigation, audio-video recording, which had gone viral on social media platform which, purportedly, captured a telephonic conversation between appellant and Kapil Sangwan, was taken into possession and was meticulously examined. This Court does not have to evaluate the aforesaid conversation, threadbare. Suffice it to say that it divulges strong and intense nexus between appellant and other caller (purported to be Kapil Sangwan @ Nandu). Such conversation goes on to suggest that they were, jointly, engaged in threatening local businessmen and extorting money in an organized manner. The specimen voice sample of appellant was obtained at CFSL, Lodhi Colony with due permission from the designated court and the forensic report raises accusing finger towards

appellant as his specimen voice matched with the viral audio-voice sample. Admittedly, there is not complete clarity with respect to the identity of the caller at the other end but such fact, *ipso facto,* would not mean anything substantial, particularly, in light of the other incriminating material. Moreover, the Court is also conscious of the fact that such caller is syndicate-Head, who is absconding and still at large.

75. Statements of protected witnesses are also, very clearly, suggesting complicity of the appellant as they have revealed about active involvement of appellant with the organized crime syndicate headed by Nandu, for pecuniary and other undue advantage.

76. During course of investigation, it also stood revealed that appellant, along with his absconding associates, was involved in commission of organized crime with intent to create disputes over the *bonafide* properties of witnesses. It was with the objective of obtaining pecuniary gain and securing undue economic or other advantages, by involving syndicate-head Kapil Sangwan@ Nandu, to issue life-threats to the bonafide owners of such properties. They are stated to be witnesses in the present case. Naresh Balyan used to get *Agreements to Sell* executed in the name of co-accused Umed Singh. After execution of such agreements, Naresh Balyan used to deliberately project such properties as "disputed" and then to involve Kapil Sangwan @ Nandu to threaten them, thereby compelling them to sell their properties at a price much lower than the amount mentioned in the original agreement(s). Several such properties have already been identified which have been described in the chargesheet.

77. The mobile numbers, which the appellant had been using, were scrutinized and it came to fore that some such numbers were showing

internet calls, connected with servers of United Kingdom, where the *Head of Syndicate* is stationed and operating his syndicate. Internet Protocol Detail Records (IPDRs) have been extensively evaluated and the analysis report is given in the chargesheet.

78. Thus, a broad assessment of the material as collected by Investigating Agency would lay bare that there is discernible nexus between appellant and other members of syndicate as well as head of such syndicate. The element of "*continuing unlawful activity*" is also, palpably present and since such activity is also by use of threat and intimidation with objective to gain pecuniary advantage, it cannot be said that invocation of MCOCA was unjustifiable.

79. Learned Senior Advocate for the appellant contends that the pre-trial custody is high and since charges have yet not been framed, there is violation of his fundamental right to have a speedy trial. Indubitably, there is no scope of any dispute or debate with respect to the invaluable right of having a speedy trial as enshrined and recognized under Article 21 of the Constitution of India but fact remains that in such type of sensitive and serious matters where stringent provisions of MCOCA are invoked, mere long incarceration cannot be taken as governing and decisive factor for grant of bail. MCOCA is a special statute, intended to deal with organized crime syndicate operating through continuing unlawful activities over a period of time. The Investigation in such type of matters is a mammoth task. The Syndicate-Head has absconded and there is already a request made by the prosecution to the learned Trial Court to conduct trial *in absentia* qua such absconding accused. The arguments on charge are being advanced and this Court expects that the learned Trial Court shall make best endeavour to

proceed further with the matter, as expeditiously as possible.

80. A careful perusal of the impugned order dated 27.05.2025 would not reveal any illegality, necessitating any interference. Learned Trial Court observed that there were as many as 17 FIRs lodged against the syndicate, few of those just prior to approval, and all these FIRs from 2021 onwards till obtaining of approval in August 2024, if reviewed, would not suggest that there was lack of any continuous unlawful activity. It also made reference to *John D'Souza (supra)* and held that invocation of MCOCA based on the continuous unlawful activities under the third FIR was, thus, justifiable. It also rightly observed that there was no case of *double jeopardy* or infraction of Article 20 of Constitution of India for the simple reason that in the earlier FIRs, MCOCA had not been invoked. It also made reference to statutory presumption provided under MCOCA. Presumption is, though, rebuttable but such rebuttal can take place during the trial only.

81. In view of foregoing discussion, this Court does not find any merit in the appeal and, resultantly, while dismissing the same, the *plea* for grant of bail stands turned down.

82. Needless to emphasis, the observations made hereinabove are tentative in nature and would not prejudice the mind of the learned Trial Court at the stage of arguments of charge or at any subsequent stage.

**(MANOJ JAIN)**
**JUDGE**

**AUGUST 3, 2026**/*st/dr/sw/sa*