

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CRL.P.No.7963/2023

BETWEEN:

SRI. MOHAN NAYAK N
S/O N. VASUDEVA NAYAK
AGED ABOUT 51 YEARS
R/AT "SREE" NIVASA
MUNDADKA, SAMPAJE
SULLIA TALUK
D.K. DISTRICT - 574 239. ...PETITIONER

(BY SRI AMAR CORREA, ADV.)

AND:

STATE OF KARNATAKA
BY RAJARAJESHWARI NAGAR
POLICE STATION
BENGALURU - 560 098
REP BY STATE PUBLIC PROSECUTOR/HCGP
HIGH COURT OF KARNATAKA
BENGALURU - 560 001. ...RESPONDENT

(BY SRI ASHOK A NAIK, SPP)

THIS CRL.P. IS FILED U/S.439 CR.P.C PRAYING TO ENLARGE THE PETITIONER ON BAIL IN SPL.C.C.NO.872/2018, (CR.NO.221/2017) OF RAJARAJESHWARI NAGAR P.S.,) BENGALURU CITY FOR THE OFFENCE P/U/S 302,120B,114,118,109,201,203,204,35 OF IPC AND SEC.25(1)25(1B),27(1) OF INDIAN ARMS ACT AND SEC.3(1)(i),3(2),3(3), 3(4) OF KOCA ACT ON THE FILE OF THE PRL.CITY CIVIL AND SESSIONS JUDGE, BENGALURU

THIS PETITION HAVING BEEN HEARD AND RESEVED, COMING ON FOR PRONOUNCEMENT THIS DAY,THE COURT MADE THE FOLLOWING:

ORDER

1. Accused no.11 in Spl.C.C.No.872/2018 pending before the Court of Prl. City Civil & Sessions Judge, Bengaluru, arising out of Crime No.221/2017 registered by Rajarajeshwari Nagar Police Station, Bengaluru City, for the offences punishable under Sections 302, 120B, 118, 203, 35 IPC, Sections 25(1) & 27(1) of the Indian Arms Act, 1959, and Sections 3(1)(i), 3(2), 3(3) & 3(4) of the Karnataka Control of Organized Crimes Act, 2000 (for short, 'COCA'), is before this Court in this successive bail petition filed under Section 439 Cr.PC.

2. Heard the learned Counsel for the parties.

3. Facts leading to filing of this petition as revealed from the records are as follows:

Based on the complaint filed by CW-1, the Station House Officer of Rajarajeshwari Nagar Police Station, Bengaluru, had registered FIR in Crime No.221/2017

against unknown persons for the offences punishable under Section 302 IPC and Section 25 of the Arms Act.

4. Complainant - Kavitha Lankesh - CW-1 had averred in the complaint that deceased Gouri Lankesh who was her sister was a journalist and a progressive thinker and was residing alone in a house at Rajarajeshwari Nagar. She was often visiting the house of the complainant to meet her mother Indira Lankesh. A week prior to the date of the complaint, deceased Gouri Lankesh had come to the house of the complainant and informed her that someone was moving around her house in a suspicious manner. On 05.09.2017 at about 2.00 p.m., complainant had gone to the office of the deceased at Gandhi Bazaar and had met her. At about 8.26 p.m. on 05.09.2017, when the complainant and her mother Indira Lankesh were at home, somebody telephoned her and informed that something had happened to Gouri Lankesh in her house. Immediately, complainant went near the house of Gouri Lankesh and saw that her car bearing registration No.KA-05-MR-3782 was parked in front of the gate which was partially open. Complainant saw that her sister was

lying in a pool of blood and besides her body, cartridge pieces were also found. She suspected that somebody had shot dead her sister and escaped. Accordingly, she approached the police at about 10.00 p.m. on 05.09.2017 and lodged a complaint which had resulted in registering FIR in Crime No.221/2017 against unknown persons.

5. During the course of investigation, some of the accused persons were arrested and on 29.05.2018, charge sheet was filed for the offences punishable under Sections 302, 114, 118, 120B, 35 IPC and Sections 3 & 25 of the Arms Act, and further investigation under Section 178 Cr.PC was continued.

6. Petitioner was arrested on 18.07.2018 and his voluntary statement was recorded. On 14.08.2018, approval was granted for invoking the provisions of COCA against the accused persons in Crime No.221/2017. Thereafter, additional charge sheet was filed on 23.11.2018 and in the said charge sheet, petitioner was arrayed as accused no.11. Subsequently, on 25.06.2020

second additional charge sheet was filed by the Special Investigation Team, Bengaluru, citing additional witnesses and documents.

7. Petitioner had filed bail application before the Special Court, which was dismissed on 25.10.2018. Thereafter, he had approached this Court in CrI.P.No.8325/2018 which was dismissed by a coordinate bench of this Court on 11.02.2019. Subsequently, the petitioner filed an application seeking statutory bail under Section 167(2) of Cr.PC and the Special Court dismissed the same on 07.02.2019. The petitioner had, therefore, approached this Court in CrI.A.No.505/2019 and a coordinate bench of this Court dismissed the said appeal on 13.07.2021. Subsequently, once again, the petitioner had filed bail application before the Special Court citing inordinate delay in completion of trial and the said bail application was dismissed on 06.07.2023. Therefore, the petitioner is before this Court in this petition.

8. Learned Counsel for the petitioner submits that the petitioner is in custody for more than five years. There

are totally 527 charge sheet witnesses and only 90 witnesses have been examined till date. The chances of trial being completed in the immediate near future is not there. The allegation against the petitioner is that he had conspired along with the other accused persons to commit the murder of Gouri Lankesh. The material on record would go to show that the petitioner was not a party to the alleged conspiracy to commit the murder and in the meetings which were held by the other accused persons, in furtherance of such conspiracy, the petitioner was not present. The confession statement of the accused persons have been recorded in violation of the requirement of COCA, and therefore, the same is not admissible. The Hon'ble Supreme Court in the case of **KAVITHA LANKESH VS STATE OF KARNATAKA - (2022)12 SCC 753**, has observed that Section 3(1) of the COCA would not be applicable to the petitioner. Even the offences under Sections 3(2) & 3(3) of the COCA would not be applicable against the petitioner since there is no material evidence against him except the voluntary statements. He submits that though this Court while

disposing of earlier bail petition in CrI.P.No.8325/2018 by order dated 11.02.2019 had directed the Trial Court to expedite the trial, there is no much progress in the trial, and therefore, petitioner may be enlarged on bail. In support of his argument, he has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **UNION OF INDIA VS K.A.NAJEEB - (2021)3 SCC 713**, and in the case of **MOHD. MUSLIM ALIAS HUSSAIN VS STATE (NCT OF DELHI) - 2023 SCC OnLine SC 352**.

9. Per contra, learned Special Public Prosecutor appearing on behalf of the respondent, has seriously opposed the petition. He submits that the earlier bail petition filed by the petitioner has been already dismissed by this Court. There is no change in the circumstances or in law, and therefore, the petitioner cannot argue the case on merits afresh. The voluntary statement of the petitioner and the other accused persons were recorded prior to invoking the provisions of COCA, and therefore, there is no merit in the contention urged by the learned Counsel for the petitioner that the requirement of Section 19 of the COCA are not complied.

Though there are 527 witnesses, the prosecution does not intend to examine all the said witnesses. The delay in trial cannot be attributed to the prosecution, and on the other hand, because of repeated applications filed by the accused persons, there is a delay in completing the trial. Out of twenty three charge sheet witnesses who have spoken about the role of the petitioner in the crime, only one witness has been examined before the Trial Court till date. The other 22 witnesses are yet to be examined. The accused persons are involved in committing the murder of several other journalists and intellectuals. If the petitioner is enlarged on bail, there is a threat to the society and he is also likely to tamper with the prosecution witnesses. The charge sheet witnesses have identified the accused persons including the petitioner herein. Accused nos.2 & 3 who murdered Gouri Lankesh by shooting her near her house were harbored by the petitioner in a rented premises at Ramanagara for the said purpose. There is sufficient material to show that the petitioner is a member of the syndicate involved in committing organized crimes. He submits that inspite of

the Trial Court being overburdened with the work, the Trial Court has been accommodating a week in every month for the trial of this case. He submits that most of the material witnesses have been examined in the case and trial of the case can be concluded within one year. Accordingly, he prays to dismiss the petition.

10. According to the prosecution, the allegation against the petitioner is that he had conspired with the other accused persons to commit the murder of deceased Gouri Lankesh and in furtherance of such conspiracy, he had taken a house for rent at Ramanagara in an isolated place and had given shelter in the said house to accused nos.2 & 3 who are the actual assailants in the present case. To establish the role of the petitioner in the present case, the prosecution has recorded the statements of 23 witnesses under Section 161 Cr.PC.

- CW-225 - Sardar @ Sardar Basha is the owner of the house situated at Kumbalagodu who speaks about letting his house to the petitioner in the month of August 2017.

- CW-226 - Salma also speaks about letting the house to the petitioner-accused no.11 in the month of August 2017.
- CW-227 - Salman Pasha speaks about advance amount and rent paid to CW-225 by the petitioner-accused no.11.
- CW-376 is the neighbour of the house at Kumbalagodu in which the petitioner was staying as tenant between August 2017 to October 2017. He has identified the petitioner during test identification parade.
- CW-215 - Archana has stated that she had taken acupuncture treatment from the petitioner in his house at Tagachaguppe, Kumbalagodu, and she had visited the said house for nearly five to six times.
- CW-216 - Madetira Timmaiah has stated that he was introduced to the petitioner-accused no.11 by accused no.8 - Rajesh Bangera in the year 2013 and in the month of February 2014, accused no.8 - Rajesh Bangera had informed him that petitioner-accused no.11 and two of his friends were coming to Madikeri to discuss regarding an important issue.
- CW-306 - Balagangadhara speaks about letting a room to CW-216.

- CW-206 - Rajendra Kumar and CW-207 - Lokesh are the panch witnesses for recovery of articles as per P.F.No.34/2018.
- CW-208 - Balasubramani and CW-209 - Manju speak about petitioner-accused no.11 facilitating other accused to keep the articles required to commit the offence in his rented house at Tagachaguppe at the instance of accused no.1 - Amulkhale.
- CW-210 - Shivakumar speaks about petitioner-accused no.11 taking a house on rent from CW-225 at Tagachaguppe in Kumbalagodu.
- CWs-211 & 212 - Sunil and Kumar, respectively, speak about accused nos.1 & 8 and another person conspiring to murder Gouri Lankesh. They also speak about handing over of a SIM Card to accused no.11/petitioner.
- CW-213 - Bheemanagowda speaks about drawing of portrait of the persons who were involved in the murder of Gouri Lankesh.
- CW-237 - Raghuveer and CW-238 - Ravi Kanth speaks about imparting air pistol training to accused no.11 by accused no.8.

- CW-315 - Shivananda Prabhu speaks about accused no.11 along with accused nos.1, 5 & 8 searching for a house in the outskirts of Bengaluru during the last week of May 2017.
- CW-504 - Mohan speaks about accused no.11 traveling in his nano car in the guise of opening a clinic at Tagachaguppe near Kumbalagodu, Bengaluru. He also speaks about accused no.8 visiting accused no.11's clinic in the house at Tagachaguppe near Kumbalagodu.
- CWs-506 & 507 - Kumudaksha and Yathishmogra, respectively, speak about accused no.11 making friendship with them and others for the purpose of inspiring them for dharmakarya.
- CW-508 - Chandrashekar.K.P. speaks about giving 10 SIM Cards to accused no.11 - Mohan Naik which he had allegedly distributed to other accused persons.
- CW-509 - Dharmapala speaks about introducing CWs-504, 505, 506 & 507 to accused no.8 - Rajesh Bangera and accused no.11 - Mohan Naik.
- CW-127 - J.C.Raju speaks about apprehending accused no.11 and producing him before the Investigation Officer.

- CW-128 - Prashanth Babu speaks about submission of technical report regarding inter-connection of mobile numbers which had contact with accused no.11 - Mohan Naik.

11. The coordinate bench of this Court had considered the bail application of the petitioner in Crl.P.No.8325/2018 after the charge sheet was filed and in paragraph 18 of the said order, it has been observed as under:

"18. From the above proposition of law, on close scrutiny of papers made available, present factual matrix as discussed above is tested with the touch stone of the principle laid down by the Hon'ble Apex Court. Prima facie it satisfies the above said test and thereby it can safely be held that the petitioner is a member of the conspiracy, no doubt that is a matter which has to be considered and appreciated at the time of trial. But at this juncture, to consider the bail application, prima facie, there is sufficient material as against the petitioner. In that light, the said contention is also not acceptable and the same is rejected.

For myriad reasons aforestated, this Court is of the considered view that the contentions raised by the learned counsel for the petitioner are not acceptable so as to release the petitioner

on bail and as such the petition is liable to be dismissed.

Accordingly, the petition stands dismissed.

Since the petitioner is in custody for long time, the trial Court is directed to expedite the trial."

12. Though this Court while disposing of Crl.P.No.8325/2018 vide order dated 11.02.2019 had directed the Trial Court to expedite the trial, the grievance of the petitioner is that till date there is no sufficient progress in the trial and in the near future there is no likelihood of the trial being completed.

13. The prosecution has altogether cited 527 charge sheet witnesses in the present case and out of them, only 90 charge sheet witnesses have been examined till date as PW-1 to PW-90. The Hon'ble Supreme Court in the case of **ANGELA HARISH SONTAKKE VS STATE OF MAHARASHTRA - (2021)3 SCC 723**, wherein the accused persons were charged for the offences under the provisions of Unlawful Activities (Prevention) Act, 1967, having considered the seriousness of the charges and the

period of custody suffered by the accused, had granted bail to the accused notwithstanding the rigor under Section 43-D(5) of the said Act considering the fact that the accused had suffered five years incarceration.

14. In the case of **SAGAR TATYARAM GORKHE VS STATE OF MAHARASHTRA - (2021)3 SCC 725**, considering the fact that the accused persons were in jail for a period of four years, and there were 147 witnesses who were still to be examined, the Hon'ble Supreme Court had enlarged the accused on bail.

15. In K.A.Najeeb's case supra, considering the fact that the accused were in jail for a period of more than five years and there were 276 witnesses left to be examined, the Hon'ble Supreme Court had refused to interfere with the order granting bail to the accused by the High Court on the ground of delay in trial and long period of incarceration suffered by the accused. In paragraphs 15, 17 & 18 of the said judgment, it has been observed as under:

"15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III

of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional

jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."

16. In Mohd. Muslim alias Hussain's case, the Hon'ble Supreme Court while considering the rigor under Section 37 of the NDPS Act, for granting bail to the accused, has observed that grant of bail on undue delay in trial cannot be said to be fettered by Section 37 within the imperative of Section 436A which is applicable to the offences under the NDPS Act. In the said judgment, at paragraphs 22 to 24, it has been observed as under:

"22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country²⁰. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict

Prisoner v. State²¹ as "a radical transformation" whereby the prisoner:

"loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."

24. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"²² (also see Donald Clemmer's 'The Prison Community' published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

17. In the present case, out of 527 charge sheet witnesses, only 90 witnesses have been examined. This Court in Crl.P.No.8325/2018 disposed of on 11.02.2019, had directed the Trial Court to expedite the trial. Though charges were framed in the present case on 30.10.2021, for the last more than two years, only 90 witnesses have been examined. There are more than 400 charge sheet witnesses who are yet to be examined in the case. Even if it is assumed that all the witnesses who are cited in the charge sheet may not be examined in the case, considering the fact that only 90 witnesses have been examined for the last more than two years, it can be safely presumed that any time soon, the trial of the case may not be completed.

18. Petitioner as against whom the allegation is about conspiring with the other accused persons to commit the murder of Gouri Lankesh has been in custody from 18.07.2018. Though he is alleged to be a member of the syndicate committing organized crime, the material on record would go to show that he is not arrayed as co-

accused in any of the cases registered against the other accused persons for committing organized crimes.

19. The Hon'ble Supreme Court in Kavitha Lankesh's case supra has observed that the material collected by the Investigating Agency as against the petitioner herein was not sufficient to invoke Section 3(1) of the COCA against the petitioner. In paragraphs 29 & 30 of the said judgment, the Hon'ble Supreme Court has observed as under:

"29. We may hasten to add that the fact that the investigating agency was unable to collect material during investigation against the writ petitioner Mohan Nayak N. for the offence under Section 3(1) of the 2000 Act, does not mean that the information regarding commission of a crime by him within the meaning of Sections 3(2), 3(3) or 3(4) of the 2000 Act cannot be recorded and investigated against him as being a member of the organised crime syndicate and/or having played role of an abettor, being party to the conspiracy to commit organised crime or of being a facilitator, as the case may be. For the latter category of offence, it is not essential that more than two charge-sheets have been filed against the person so named, before a competent

court within the preceding period of ten years and that court had taken cognizance of such offence. That requirement applies essentially to an offence punishable only under Section 3(1) of the 2000 Act.

30. As regards offences punishable under Sections 3(2), 3(3), 3(4) or 3(5), it can proceed against any person sans such previous offence registered against him, if there is material to indicate that he happens to be a member of the organised crime syndicate who had committed the offences in question and it can be established that there is material about his nexus with the accused who is a member of the organised crime syndicate. This position is expounded in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* [*Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057] which has been quoted with approval in para 85 of the judgment in *Prasad Shrikant Purohit* [*Prasad Shrikant Purohit v. State of Maharashtra*, (2015) 7 SCC 440 : (2015) 3 SCC (Cri) 138] . The same reads thus:

“85. A reading of para 31 in *Ranjitsing Brahmajeetsing Sharma case* [*Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057] shows that in order to invoke

MCOCA even if a person may or may not have any direct role to play as regards the commission of an organised crime, if a nexus either with an accused who is a member of an "organised crime syndicate" or with the offence in the nature of an "organised crime" is established that would attract the invocation of Section 3(2) of the MCOCA. *Therefore, even if one may not have any direct role to play relating to the commission of an "organised crime", but when the nexus of such person with an accused who is a member of the "organised crime syndicate" or such nexus is related to the offence in the nature of "organised crime" is established by showing his involvement with the accused or the offence in the nature of such "organised crime", that by itself would attract the provisions of MCOCA.* The said statement of law by this Court, therefore, makes the position clear as to in what circumstances MCOCA can be applied in respect of a person depending upon his involvement in an organised crime in the manner set out in the said paragraph. In paras 36 and 37, *it was made further clear that such an*

analysis to be made to ascertain the invocation of MCOCA against a person need not necessarily go to the extent for holding a person guilty of such offence and that even a finding to that extent need not be recorded. But such findings have to be necessarily recorded for the purpose of arriving at an objective finding on the basis of materials on record only for the limited purpose of grant of bail and not for any other purpose. Such a requirement is, therefore, imminent under Section 21(4)(b) of the MCOCA."

20. Petitioner's earlier bail petition filed in Crl.P.No.8325/2018 was disposed of by the coordinate bench of this Court after the charge sheet was filed against the petitioner for the offences under Sections 3(1), 3(2), 3(3), 3(4) of COCA. Subsequently, the Hon'ble Supreme Court in Kavitha Lankesh's case supra has observed that there is no sufficient material at this stage to invoke Section 3(1) of COCA as against the petitioner. For the offence punishable under Section 3(1) of COCA, the punishment provided is imprisonment for life or death penalty. The punishment provided for the

offences punishable under Sections 3(2), 3(3) & 3(4) of COCA is imprisonment for a period of not less than five years, but which may extend to life imprisonment. Since the Hon'ble Supreme Court in Kavitha Lankesh's case supra has observed that at this stage there is no material against the petitioner to invoke Section 3(1) of the COCA, it can be said that there is a slight change in the circumstances after petitioner's earlier bail application was rejected by this Court. The presumption under Section 23 of the COCA would not be applicable as against the petitioner herein because it is not the case of the prosecution that the petitioner had provided any financial assistance to the other accused in the present case.

21. From a perusal of the statements recorded under Section 161 Cr.PC of the 23 charge sheet witnesses who have spoken about the role of the petitioner in the present case, it is seen that none of these witnesses have stated that the petitioner was a part of the meeting of the accused persons, wherein the accused had conspired to murder Gouri Lankesh. Most of the aforesaid charge

sheet witnesses have only spoken about the petitioner taking a house on rent at Kumbalagodu in the outskirts of Bengaluru.

22. In addition to the statement of the aforesaid charge sheet witnesses, the confession statement of the accused persons were also recorded in the present case. However, the same was recorded prior to sanction being accorded for invoking the provisions of COCA against the accused persons. Section 19 of the COCA may therefore not be applicable to the confessions made by the accused persons. Even otherwise, the requirements of Section 19 has not be complied in the present case. The confessions have not been recorded by an officer of the rank of Superintendent of Police in the manner as provided under Section 19 of the COCA. Even if the charges against the petitioner for the offences under Sections 3(2), 3(3) & 3(4) of COCA are proved, the said offences are not punishable exclusively with death or life imprisonment and the minimum punishment for the said offences is imprisonment by five years. Petitioner has been in custody for the last more than five years. Though Section

22(4) of COCA provides for certain rigors for enlarging the accused on bail as against whom charges are made for the offences punishable under the COCA, the same cannot fetter the powers of this Court to enlarge the accused on bail when there is undue delay in trial and the material on record would go to show that the trial may not be completed any time soon. From a perusal of the order sheet maintained by the Trial Court in Spl.CC.No.872/2018, it is seen that delay in trial cannot be attributed to the accused. Under the circumstances, I am of the view that the prayer made by the petitioner in this petition needs to be answered affirmatively. Accordingly, the following order:

23. The petition is allowed. The petitioner is directed to be enlarged on bail Spl.C.C.No.872/2018 pending before the Court of Prl. City Civil & Sessions Judge, Bengaluru, arising out of Crime No.221/2017 registered by Rajarajeshwari Nagar Police Station, Bengaluru City, for the offences punishable under Sections 302, 120B, 118, 203, 35 IPC, Sections 25(1) & 27(1) of the Indian Arms Act, 1959, and Sections 3(1)(i), 3(2), 3(3) & 3(4) of the

Karnataka Control of Organized Crimes Act, 2000,
subject to the following conditions:

a) Petitioner shall execute personal bond for a sum of Rs.1,00,000/- with two sureties for the likesum, to the satisfaction of the jurisdictional Court;

b) The petitioner shall appear regularly on all the dates of hearing before the Trial Court unless the Trial Court exempts his appearance for valid reasons;

c) The petitioner shall not directly or indirectly threaten or tamper with the prosecution witnesses;

d) The petitioner shall not involve in similar offences in future;

e) The petitioner shall not leave the jurisdiction of the Trial Court without permission of the said Court until the case registered against him is disposed off.

**Sd/-
JUDGE**