

***IN THE COURT OF SH. VIRENDER BHAT: ASJ-03
NORTH-EAST DISTRICT: KARKARDOOMA COURTS: DELHI***

Sessions Case No. 56/18

FIR No. 1224/15

PS Bhajanpura

U/s 3/ 4 of MCOCA and 174 A IPC

State

Versus

- 1. Salman @ Dant Toota
s/o late Chaman Khan
r/o D 233, Gali no.5, Noor E-Illahi,
Bhajanpura, Delhi.**
- 2. Imran @ Sohaib @ Amrood
s/o Late Yakoob
r/o D 88, Gali no.2, Noor E-Illahi,
Bhajanpura, Delhi.**
- 3. Tanvir
s/o Mainuddin
r/o D 75, Main Yamuna Vihar Road, Noor E-Illahi,
Bhajanpura, Delhi & B-424, Gali no.4, Subhash
Mohalla, Bhajanpura, Delhi.**

ORDER ON CHARGE:-

1. The above named four accused have been charge-sheeted by the police for having committed various offences under Maharashtra Control of Organized Crime Act, 1999 (MCOCA in short).

2. The case of the prosecution in brief is that accused Salman @ Dant Toota got involved in criminal activities in the year 2003 and thereafter formed a dedicated team of associates including accused Imran @ Sohaib @ Amrood and accused Tanvir. It is alleged that all the accused have been involved in commission of various serious crimes like attempt to murder, dacoity, robbery, criminal intimidation, possession of illegal arms etc. and have a long criminal record. It is stated that they have been arrested in a number of criminal cases within the jurisdiction of various police stations in Delhi. It is also alleged that accused are living in a lavish life style without having any legitimate source of income. It is further alleged that the accused Salman had traveled from Goa to Delhi on 27.12.2016 by Spicejet flight for which he had made a payment of Rs.17070/- and had also purchased a m/cycle bearing registration no.DL 13SB 1307 in the name of his mother namely, Darakshan. It is alleged that accused Salman alongwith the other co-accused had built a syndicate to work in an organized manner and had established such terror in the area that

the every common man got terrified only on hearing the name of either of the accused. It is stated that accused Salman @ Dant Toota is the head of this crime syndicate and has amassed huge wealth in his crime journey from rags to riches.

4. Accused Salman @ Dant Toota is stated to have been involved in following criminal cases registered in various police stations in Delhi:-

S. No.	FIR No.	Under Section	Police Station	Status
1.	277/03	380/454/511 IPC	Bhajanpura,	Released
2.	459/08	324/506 IPC	Bhajanpura,	Pending trial
3.	410/10	356/379/411 /34 IPC	Jyoti Nagar	Pending trial
4.	58/11	392/34 IPC	Shakarpur	Acquitted
5.	97/11	25/54/59 Arms Act and 411/34 IPC	Gazipur	Acquitted
6.	127/11	379 IPC	Bhajanpura,	Acquitted
7.	128/11	379 IPC	Bhajanpura	Discharged
8.	137/11	379/356/34 IPC	Shakarpur	Disposed
9.	307/12	379/411 IPC	Zafrabad	Pending trial.
10.	366/12	327/379/34 IPC	Bhajanpura	Pending trial.
11.	56/131	356/379/34	Seelampur	RR

		IPC		
12.	79/13	356/379/34 IPC	New Usmanpur	Pending trial
13.	85/13	356/379/34 IPC	Bhajanpura	Discharged
14.	131/13	356/379/34 IPC	Shahdara	Pending trial
15.	104/14	307/34 IPC	Bhajanpura	Pending trial
16.	312/14	25 Arms Act	Zafrabad	Pending trial
17.	627/14	392/397/34 IPC	Bhajanpura	Pending trial
18.	1236/ 14	356/379/34 IPC	Bhajanpura	Pending trial.
19.	1298/ 14	25/54/59 Arms Act	Bhajanpura	Pending trial
20.	810/15	25/54/59 Arms Act	Gokalpuri	Pending trial
21.	06/17	435/427 IPC	Bhajanpura	Pending trial
22.	07/17	324/34 IPC	Bhajanpura	Pending trial
23.	98/17	392/397/34 IPC	Bhajanpura	Pending trial
24.	315/17	25/27 Arms Act	Zafrabad	Pending trial

5. It is alleged that in the month of August 2010, accused Salman @ Dant Toota met accused Tanvir and both formed a Syndicate and started committing snatching and robbery etc. They became famous among other criminals in a short span of time and used to spend lots of money on liquor and their girl

friends. It is alleged that in the month of August 2010, accused Salman @ Dant Toota introduced accused Imran @ Sohaib @ Amrood in his gang with the intention to step up the Syndicate. Both accused Salman @ Dant Toota and Tanvir trained Imran @ Sohaib @ Amrood and all of them became good associates. It is stated that accused Salman @ Dant Toota used to steal m/cycles for crime with the help of other associates and then the vehicle was handed over to Tanvir to hide it in an abandoned place so that it could be used in future. Accused Tanvir is stated to have been involved in following criminal cases registered against him in various police stations in Delhi:

S. No.	FIR No.	Under Section	Police Station	Status
1.	21/06	379/34 IPVC	Bhajanpura	Pending trial
2.	23/06	379/34 IPC	Bhajanpura	Pending trial
3.	34/06	411/34 IPC	Seemapuri	
4.	203/07	25/54/59 Arms Act	Bhajanpura,	Pending trial
5.	74/08	457/380 IPC	Bhajanpura,	Discharged
6.	122/08	457/380 IPC	Bhajanpura,	Discharged
7.	185/08	457/380 IPC	Bhajanpura	Discharged
8.	214/08	379 IPC	Bhajanpura	Discharged
9.	218/08	457/380 IPC	Bhajanpura	Discharged
10.	234/08	457/380/34 IPC	Bhajanpura	Discharged

11.	246/08	457/380	Bhajanpura	Pending trial
12.	249/08	380 IPC	Bhajanpura	Discharged
13.	---/10	457/380/411 /34 IPC	Timarpur	Pending trial
14.	75/10	379/411/34 IPC	Timarpur	Pending trial
15.	187/10	379/411/34 IPC	Geeta Colony	Pending trial
16.	202/10	379/411 IPC	Krishna Nagar	Pending trial
17.	311/10	379 IPC	Jyoti Nagar	Untraced
18.	345/10	411/468/471 /482/34 IPC and 25 Arms Act	Jyoti Nagar	Pending trial.
19.	384/10	379/411/34 IPC	Bhajanpura	Pending trial
20.	474/10	379 IPC	Mayur Vihar	Pending trial
21.	609/10	379/411/34	Shakarpur	Settled in Lok Adalat
22.	27/11	392/34 IPC	Gazipur	Pending trial
23.	34/11	397 IPC	Mandawali	Pending trial
24.	57/11	392/397/34 IPC	Kalyanpuri	Pending trial
25.	58/11	392/34 IPC	Shakarpur	Acquitted
26.	59/11	392/569/34 IPC and 25/54/59 Arms Act	Mandawali	Pending trial
27.	97/11	411/34 IPC and 25 Arms	Gazipur	Pending investigation

		Act		
28.	127/11	379 IPC	Bhajanpura	Acquitted
29.	128/11	379 IPC	Bhajanpura	Discharged
30.	137/11	379/356/34 IPC	Shakarpur	Disposed
31.	360/13	392/397/34 IPC	Mayur Vihar	Pending trial
32.	469/13	394/411/34 IPC	Gazipur	Pending trial
33.	513/13	392/397/411 /34 IPC	New Ashok Nagar	Pending trial
34.	630/13	482/34 IPC and 25 A.Act	Karawal Nagar	Pending trial

6. Accused Imran @ Sohaib @ Amrood is stated to have been involved in following criminal cases registered against him in various police stations in Delhi:

S. No.	FIR No.	Under Section	Police Station	Status
1.	76/10	379/356/411 /34 IPC	Bhajanpura	Pending trial
2.	241/10	356/379 IPC	G.T.B Enclave	Discharged
3.	391/10	379/411 IPC	Bhajanpura	Acquitted
4.	410/10	356/379/34 IPC	Jyoti Nagar	Pending trial
5.	421/10	379/356/411	Bhajanpura	Pending trial

		/34 IPC		
6.	450/10	379/411/34 IPC	Malviya Nagar	Pending trial
7.	590/10	327/379/411 /34 IPC	Bhajanpura	Pending trial
8.	209/12	379/411 IPC	New Usmanpur	Pending trial
9.	366/12	327/379/34 IPC	Bhajanpura	Pending trial
10.	377/12	379/411/34 IPC	Bhajanpura	Pending trial
11.	163/14	224 IPC	Darya Ganj	Pending trial
12.	298/14	25/54/59 Arms Act	Bhajanpura	Pending trial
13.	758/15	25/27/54/59 Arms Act	Darya Ganj	Pending trial
14.	542/17	392/397/34 IPC	Shakarpur	Pending trial

7. In view of the above noted criminal activities of accused , the then SHO PS Bhajanpura moved a proposal on 14.10.2015 for invoking the provisions of MCOCA against the said accused. The proposal was laid before the Joint Commissioner of Police, Eastern Range, Delhi who, after being satisfied with the proposal, granted requisite permission u/s 23 (1) of MCOCA for registration of the case against the accused. Accordingly, FIR No. 1224/15 was registered at PS Bhajanpur on 26.11.2015 u/s 3 / 4 of MCOCA. Thereafter, the investigation was commenced.

Intensive search for accused Salman @ Dant Toota was made at all of his possible hideouts but he could not be traced. Accordingly, NBWs were obtained against him from the concerned court on 06.06.16 but the same also could not be executed. Thereafter, process u/s 82/83 Cr.PC was got issued and published against him which also was of no avail. Ultimately, he was declared proclaimed offender(PO) in the month of October, 2016 and a reward of Rs.50,000/- was declared for his arrest.

8. Accused Salman is stated to have been arrested by the Staff of AATS/NE district, Delhi in the month of August 2017. After obtaining requisite permission from the concerned court, he was arrested in this case on 26.08.2017. Thereafter, search for other members of the syndicate was made.

9. Accused Tanvir and Imran @ Sohaib @ Amrood are stated to have been arrested in this case on 25.09.17. It is stated that confessional statements u/s 18 of MCOCA were made by all the three accused separately which were recorded by the then DCP, East District, Delhi.

10. During the course of investigation, statements of witness Hasan Raza as well as two protected witnesses A & B were recorded, who have described in detail the criminal activities of the accused and the manner in which those criminal activities were undertaken.

11. The prosecution, thus, alleges that the accused were involved in continuous unlawful activities as members of a organized crime syndicate of which accused Salman @ Dant Toota was the kingpin and resorted to violence, intimidation, coercion and other unlawful means with the objective of gaining pecuniary benefits or other advantage. Therefore, their prosecution has been sought for the offences u/s 3 /4 of the MCOCA. Additionally, their prosecution has also been sought for the offence u/s 174 A IPC.

12. Elaborate arguments on the point of charge were advanced by the Ld. Addl. PP and the Ld. Defence counsel. Written submissions have also been filed by the Ld. Defence Counsel which are perused.

13. Ld. Addl. PP argued that several cases of extortion, murder, attempt to murder had been registered against the accused prior to registration of FIR in this case and in all those cases, cognizance had been duly taken by the concerned courts. He pointed out that the approval of the Joint Commissioner of Police, Eastern Range, Delhi had been duly sought and obtained u/s 23 (1) of MCOCA before registering the FIR and the charge-sheet too has been filed after obtaining requisite sanction u/s 23 (2) of the Act. It is his submission that the statements of the

protected witnesses as well as the confessional statements of the accused themselves, which are admissible u/s 18 of the Act, clearly indicate that the accused were running a crime syndicate and were involved in continuous criminal activities of serious nature on account of which they had obtained immense financial gains. According to the Ld. Addl. PP, charges are liable to be framed against all the accused.

14. Per contra, Ld. Counsel for the accused argued that the instant false case has been registered upon them in order to keep them in custody for a long period. He would submit that there is no evidence on record to show that these accused were involved in continuous unlawful activities or that they had gained unlawful wealth. He argued that there is no valuable asset or any bank account in the name of any of the accused. According to the Ld. Counsel, the sanction orders u/s 23 (1) and 23 (2) of MCOCA are non speaking orders and hence no reliance can be placed upon those. It is also his submission that these orders have been passed in a mechanical manner without applying mind to the facts and circumstances of the case. The Ld.Counsel vehemently urges this court to discharge the accused.

15. I have considered the rival submissions made on behalf of prosecution as well as the accused and have perused the entire material on record.

16. In order to appreciate the contentions raised on behalf of both the sides, it would be apt to reproduce the Clauses 'd', 'e' and 'f' of sub-section (1) of Section 2 of MCOCA. These read as under:-

(d) “continuing unlawful activity” means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheet have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;

(e) “organized crime” means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;

(f) *“organized crime syndicate” means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organized crime;*

17. Bare perusal of these provisions would indicate that an 'organized crime syndicate' is a gang comprising of two or more persons found to be indulging in 'continuing unlawful activity' i.e. the activities which are prohibited by law and constitute a cognizable offence punishable with imprisonment of three years or more. The members of the syndicate or the gang may be acting singly or collectively. The activities of the gang would come within the ambit of “continuing unlawful activity” only when at least two charge-sheets are filed against the members of the gang before competent court either individually or jointly within the preceding ten years and the court has taken cognizance of the offences mentioned in those charge-sheets. It also needs to be established that such unlawful activity was undertaken by the gang members with the object of gaining pecuniary benefits or undue economic/other advantages for themselves or any other persons or for promoting insurgency or coercion or other unlawful means.

18. Section 23 of the MCOCA envisages that for the purpose of initiating proceedings under the Act, prior approval of a senior

police officer not below the rank of Deputy Inspector General is must for registration for the FIR, the investigation shall be carried out by a police officer not below the rank of Deputy Superintendent of Police and prior sanction of another senior officer not below the rank of Addl. Director General of Police would be a mandatory requirement before the Special Court takes cognizance of the offences under the Act. These safeguards have been provided in the Act having regard to its stringent provisions.

19. Material on record in the instant case does show that the accused were involved in several criminal activities and had been chargesheeted in various criminal cases spread over a period of ten years prior to the registration of FIR on 26.11.2015. However, it nowhere indicates that their criminal activities constituted “Organized Crime” envisaged under section 2(1)(e) of MCOCA and punishable u/s 3 of the Act.

20. One of the essential ingredients of the offence of “Organized Crime” envisaged u/s 2(1)(e) is that the criminal activities of the nature referred to in section 2(1)(d) of the Act should have been undertaken by the accused with the object of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.

21. In the instant case, no evidence has been placed on record to show that the accused had gained any such pecuniary benefit, or economic or other advantage due to their unlawful acts. The only statement contained in this regard in the entire chargesheet is that the accused were living a lavish life style. It is further stated that accused Salman had traveled from Goa to Delhi by Spicejet flight on 27.12.2016 for which he had spent Rs.17,070/- and also has purchased a Apache red colour motorcycle bearing registration no.DL-13SB 1307 in the name of his mother Mrs.Darakshan.

22. It can not be gainsaid that living a lavish life style and spending the ill gotten money on various vices like drinking, womanizing etc.would come within the purview of the expression “other advantage” occurring in section 2(1)(e). But the issue which arises herein for consideration is whether undertaking Air travel just once from Goa to Delhi at a price of Rs.17,070/- & purchase of a motorcycle would exhibit lavish life style of the members of a gang. The answer, in the opinion of this court, would be *No*.

23. A single instance of Air travel by a member of a gang and purchase of a motorcycle would, by no stretch of imagination, indicate in the present times that the person concerned is living a

lavish life style. The motorcycle is an “Apache” which is not an expensive or a luxurious one but and an average motorcycle which is affordable by any common person. Had there been history of regular Air travels by the accused or they having purchase expensive and luxurious motorcycles/cars, the conclusion might have been otherwise.

24. Thus, in the absence of any cogent material on record to indicate that the accused were indulging in the unlawful activities with the object of gaining pecuniary or economic or other advantage, their criminal acts do not tantamount to “ Organized Crime” punishable u/s 3 of MCOCA. No offence either u/s 3 or u/s 4 of the Act is made out against him.

25. Further, it is also evident that the sanction order dt.17.02.2018 passed by the then Joint Commissioner of Police, Eastern Range, Delhi has been passed mechanically and without applying mind to the facts of the case placed before him. The sanctioning officer, who was a very senior officer in the hierarchy of Delhi Police, was expected to satisfy himself as to whether or not are the ingredients of the offence “ Organized Crime” fulfilled in this case. He has nowhere recorded in the entire order that the accused were indulging in the criminal acts with the object of gaining pecuniary or economic or other advantage. It is limpid that he has accorded the sanction for prosecution of the

accused for very stringent offences under MACOCA without gaining satisfaction from the material placed before him that any such offence is prima facie made out against them. Sanction order of such nature deserves to be disregarded outrightly.

26. Hence, the prosecution has failed to make out a prima-facie case against the accused for the offences under sections u/s 3/ 4 of MCOCA. In view of the same, all the three accused are hereby discharged of the offences under MCOCA. However, it is prima facie evident that accused Salman @ Dant Toota is liable to be tried for the offence u/s 174A IPC, which is triable by a Magistrate and not by this court.

Announced through VC.
On 25.01.2022.

VIRENDER
BHAT

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