IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 17.06.2025

\+ **CRL.A. 713/2023 & CRL.M.A. 23717/2023**

STATE OF NCT OF DELHI ..... Appellant

versus

NEERAJ KUMAR @SUNIL ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Akhand Pratap Singh, Special Counsel with Ms. Samridhi Dobhal, Mr. Krishna Mohan Chandel & Mr. Hrithik Maurya, Advs.
Inspector Rakesh Kumar, PS- Special Cell

For the Respondent : Ms. Tanya Agarwal, Mr. Kamlesh Kumar Mishra, Ms. Arpita Singh & Mr. Ahsan Sanjar, Advs.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present appeal is filed challenging the order dated 01.06.2023 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ')**, New Delhi District, Patiala House Courts, Delhi, whereby the respondent was admitted on bail in FIR No. 16/2018 dated 12.02.2018, registered by Special Cell, for the

offences under Sections 3/4 of the Maharashtra Control of Organised Crime Act, 1999 ('**MCOCA**').

2. The brief facts of the case are that on the basis of secret information, on 23.07.2017, a raid was conducted and the co-accused Rajesh Kumar was apprehended with 3 Kg of Heroin, which led to registration of FIR No. 51/2017 by Police Station Special Cell. At the time of apprehension, co-accused Rajesh Kumar was travelling in a car that was registered in the name of co-accused Deepak (kingpin), who is allegedly a notorious criminal with 20 involvements under the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**'). During investigation, co-accused Rajesh Kumar allegedly disclosed that he used to supply Heroin to co-accused Deepak and the respondent in Delhi. Co-accused Rajesh Kumar also allegedly disclosed about the involvement of co-accused Babu. On 24.07.2017, co-accused Deepak and the respondent were apprehended and a recovery of 2 Kg and 100g of Heroin was recovered from them respectively. Co-accused Babu was apprehended from his rented accommodation on 24.10.2017 and 200g of Heroin was recovered at his instance. The association of co-accused Sajan, who is the brother of co-accused Deepak, was allegedly disclosed by the arrested accused persons.

3. It is the case of the prosecution that the criminal profile of co-accused Deepak indicates that he has indulged in committing various offences, particularly drug trafficking, in association with the other accused persons, including the respondent. It is further alleged that the

accused persons have multiple antecedents. It is alleged that the accused persons were running an organised crime syndicate and carrying out unlawful activities for pecuniary gain. A proposal was put before the competent authority to accord sanction for registration of case under MCOCA and approval was granted on 29.01.2018. Pursuant to the same, on 12.02.2018, FIR No. 16/2018 was registered by Special Cell for offences under Sections 3 and 4 of MCOCA.

4. During investigation, it was found that the co-accused Deepak had purchased several properties, vehicles and other things by paying huge amounts in cash, however, he had no legitimate source of income. It was found that co-accused Babu also had huge transactions of money in his accounts. It was further found that the respondent had direct mobile connectivity with the co-accused Deepak, who is the kingpin, and the respondent was living a lavish life, however, he had no legal source of income. Investigation of the bank account of the respondent reflected frequent transactions of huge money.

5. The respondent preferred a bail application. By the impugned order, the learned ASJ allowed the same and enlarged the respondent on bail by taking note of the fact that the respondent had not misused the liberty when granted interim bail and the time spent by him in custody. It was also observed that the respondent had been enlarged on bail in the other NDPS Case and he had no other criminal involvements. It was noted that while there were certain statements of witnesses against the respondent, however, the respondent may not be ultimately be found guilty in the trial.

6. The learned counsel for the petitioner submitted that the learned ASJ has granted bail to the respondent erroneously on the basis of conjectures and surmises. He submitted that even after framing charges under Sections 3/4 of the MCOCA against the respondent and other accused persons, the learned Trial Court failed to appreciate the embargo against grant of bail under Section 21(4) of the MCOCA. He submitted that no witness was examined after framing of charge and there was no occasion for the learned ASJ to revisit the evidence as all facts had been appreciated at the time of arguments on charge.

7. He submitted that the learned ASJ failed to appreciate the material against the respondent, including the statement of witness Rakesh, connectivity between the respondent and the main accused Deepak and transfer of money from the account of the respondent to accused Babu Khan. He submitted that there is sufficient material to show the complicity of the respondent in the operation of the organized crime syndicate and to prosecute him under MCOCA.

8. He submitted that the learned ASJ had given undue weightage to the grant of bail to the respondent in FIR No. 51/2017, which was granted to him on account of procedural non-compliance of Section 50 of the NDPS Act. He submitted that even an acquittal or discharge in a particular matter has no consequence with respect to Section 2(1)(d) of the MCOCA as long as the requisite ingredients for attracting MCOCA are otherwise satisfied.

9. He submitted that the learned ASJ has wrongly emphasized on the fact that the respondent is not involved in any other criminal case

as the role of an individual as a member of an organized crime syndicate is to be evaluated from the point of view of his nexus with the syndicate. He submitted that after being enlarged on bail, the possibility of the respondent continuing to indulge in the offence of the organized crime syndicate cannot be ruled out.

ANALYSIS

10. It is trite law that an order granting bail ought not to be disturbed by a superior court unless there are strong reasons to do so. The party seeking setting aside of an order granting bail must establish a compelling case and demonstrate that the said order was illegal, unjust or improper. The Hon'ble Apex Court in ***Mahipal vs. Rajesh Kumar @ Polia and Anr*** **: (2020) 2 SCC 118** has opined as under :

> *"12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system.* ***Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.***
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> *13. The principles that guide this Court in assessing the correctness of an order [**Ashish Chatterjee v. State of W.B., CRM***

No. 272 of 2010, order dated 11-1-2010 (Cal)*] passed by the High Court granting bail were succinctly laid down by this Court in* ***Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765]*** *. In that case, the accused was facing trial for an offence punishable under Section 302 of the Penal Code. Several bail applications filed by the accused were dismissed by the Additional Chief Judicial Magistrate. The High Court in turn allowed the bail application filed by the accused. Setting aside the order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] of the High Court, D.K. Jain, J., speaking for a two-Judge Bench of this Court, held : (SCC pp. 499-500, paras 9-10)*

> *"9. … It is trite that this Court does not, normally, interfere with an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:*
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> *(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
> *(ii) nature and gravity of the accusation;*
> *(iii) severity of the punishment in the event of conviction;*
> *(iv) danger of the accused absconding or fleeing, if released on bail;*
> *(v) character, behaviour, means, position and standing of the accused;*
> *(vi) likelihood of the offence being repeated;*
> *(vii) reasonable apprehension of the witnesses being influenced; and*
> *(viii) danger, of course, of justice being thwarted by grant of bail.*
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> *10.* ***It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants***

bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal.*"*

14. ***The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail.*** *However, where the discretion of the High Court to grant bail has been exercised* ***without the due application of mind*** *or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.*

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16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. ***The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified.*** *On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted…"*

(emphasis supplied)

11. The law is well settled through catena of judgments by the Hon'ble Apex Court that the considerations for granting bail and for

its cancellation are fundamentally different. In the present case, order granting bail is challenged not on account of misuse of liberty by the respondent, but rather, the petitioner State has challenged the correctness of the order granting bail.

12. It is pertinent to note that the respondent has been implicated for offences under MCOCA and one of the primary grievances agitated by the State is that the rigors of Section 21(4) of MCOCA have not been duly appreciated by the learned ASJ.

13. This Court considers it apposite to refer to the judgment in the case of ***Jayshree Kanabar v. State of Maharashtra*** **: (2025) 2 SCC 797**. In the said case, the Hon'ble Apex Court had set aside the order granting bail and remanded the matter for fresh consideration to the High Court of Bombay. One of the factors that led to the remand was that the order granting bail did not reflect any consideration to the rigors of Section 21(4) of MCOCA. The relevant portion of the said judgment is reproduced hereunder:

> *"**9.** There cannot be any doubt with respect to the position that since Mcoca is involved in this case on hand, the accused/Respondents 2 and 3 could not have sought for bail in exercise of the discretion available under Section 439CrPC, in the matter, in view of the rigours under Section 21(4)Mcoca…**At the same time, it is a fact that the impugned order did not reflect such consideration as has been required in respect of matter involving offences under Mcoca in terms of the provisions thereunder as also the decisions rendered by this Court in respect of grant of bail.***
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> ***10. When there is an embargo put in by a specific provision under a special enactment in the matter of grant of bail in respect of offences allegedly committed thereunder, the power to grant bail should necessarily be subject to satisfaction of the conditions mentioned in such specific provision.** In the case on hand, such a*

specific provision is contained under Section 21(4)Mcoca. The learned counsel for the petitioners would submit that bail was granted to Respondents 2 and 3 herein sans considering their entitlement in view of the decision of this Court in Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana [Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana, (2021) 6 SCC 230 : (2021) 2 SCC (Cri) 722] .

***11.** At the same time, the learned counsel appearing for the respondent would submit that even in the case of offences under the Prevention of Money Laundering Act (for short "PMLA") which carries similar rigour in the matter of grant of bail under Section 45(1) PMLA, this Court held that such stringent provisions for the grant of bail would not take away the power of Constitution of Courts to grant bail on grounds of violation of Part III of the Constitution of India.*

***12. But we may hasten to add that a critical examination of the impugned order would reveal that bail was granted to Respondents 2 and 3 in the case on hand not on the ground of violation of Part III of the Constitution of India and instead, the High Court has considered the sufficiency or otherwise of the evidence against them available on record.** There can be no doubt with respect to the position that materials collected during the investigation would not mature into evidence at the stage of consideration of an appeal and as such, the admissibility and evidentiary value are matters to be decided during the trial and are not matters for consideration at the present stage of the proceedings.*

13. In the light of the core contention raised by the appellant that the High Court had transgressed into impermissible area inasmuch as the question of sufficiency or otherwise and correctness of the prosecution case were considered while passing the impugned order instead of confining the consideration in regard to the question of satisfaction or otherwise of the stringent conditions in the matter of grant of bail where the offences under Mcoca are involved. As noted above, grant of bail to Respondents 2 and 3 by the High Court is not on the ground(s) of violation of Part III of the Constitution of India.

***14.** A mere glance at the impugned order would go to show that there is substance in the contentions of the appellant. No serious effort is required to pick out such observations in the form of findings made in the impugned order by the High Court in regard*

> *to the role of the accused persons involved in the crime in question, including that of Respondents 2 and 3….*
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> ***21. In view of the observations tantamounting to findings, as referred above and in the absence of consideration in the required manner, the application for bail moved by Respondents 2 and 3 ought to have been considered in view of the involvement of the allegation of commission of offences under Mcoca in view of Section 21(4)Mcoca, the impugned order invites interference. As noted hereinbefore, it is a fact that the grant of bail was not in exercise of power of the High Court as a constitutional court on the ground of violation of Part III of the Constitution.*** *It is also a fact that the case on hand involves allegation of commission of offences of murder punishable under Section 302IPC."*
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> (emphasis supplied)

14. A bare perusal of the impugned order reflects that it had been argued by the prosecution that the respondent was not entitled to bail in view of the threshold laid down under Section 21(4) of MCOCA as the degree of assessment of evidence at the stage of bail is far lower than that at the time of consideration of charge. The learned ASJ observed that the degree of assessment is different and observed as under:

> *"**So it must be understood that degree of assessment of material, evidence at the stage of bail application and state of charge is different.***
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> *No doubt this court already concluded that there is sufficient material for framing of charge. But once question of bail is to be decided, the consideration would not be that deep and detailed as required for deciding the question of charge. In other words, finding on framing charge, cannot be final words for declining relief of bail.* ***There can be a situation that even court frame charge, can still consider grant of bail if facts and evidence of case so warrants.*** *Question of bail more particularly when in the peculiar facts of present case accused being involved in only one criminal case, should be decided with larger principle of the fact that bail is a rule and denial is an exception. Even if court comes to*

the conclusion for framing of charge, to my mind does not close the door for the accused to ask for bail despite the bar provided u/s 21(4) of the Act. Therefore when this court consider the fact that even if there is sufficient material for framing of charge, court can still be open on the question of bail taking into consideration peculiar situations qua the accused/ applicant.

In the present case as noted above accused is involved only in one criminal case ie FIR No.51/2017, wherein accused was allegedly found in possession of 100 grams of heroin. Ld Counsel for the accused has drawn the attention of this court to order dated 05.12.2018 of ld. ASJ passed in same FIR No.51/2017 wherein the accused/applicant has already been granted bail… Therefore, this aspect of non-compliance of notice u/s 50 of NDPS Act, may not be relevant for the purpose of charge but be taken into consideration atleast for deciding the question of bail at this stage. ***Important to note that beside that case accused has admittedly been not involved in any other criminal case.***

Ld. SPP for the State has also pressed into service provision of section 2(1)(a) of MCOC Act and also referred to statement of one witness Rakesh to submit that accused/applicant was assisting the objects of organized crime syndicate. ***This court having considered the statement of witness as well as provision of section 2(1)(a), certainly find that such material may be sufficient for framing of charge but taking into consideration period of incarceration of accused i.e. six years of more and the fact that accused is not involved in any other criminal case****, finds that despite availability of such statement of witness which of course would be examined and assessed at the appropriate stage of trial finds that for the purpose of bail* ***it can be safely observed that accused may not be ultimately find to be guilty after ultimate trial of the matter****."*

(emphasis supplied)

15. The only observation made by the learned ASJ in relation to circumstances particular to the respondent apart from the time spent by him in custody is regarding the status of his other involvements. It has also been observed that the respondent had already been enlarged on bail in the NDPS case and he had no other antecedents. As rightly

pointed out by the prosecution, it is settled law that even if the accused is not involved in any other criminal case, the same has no bearing over implication under MCOCA as long as the requisites of invocation of MCOCA are met. The same, however, does assist the Court in ascertaining the likelihood of the accused that he would commit any offence while on bail. One of the other factors that rightly weighed the learned ASJ in this regard was that the respondent had not misused the liberty when he had been enlarged on interim bail.

16. Although it is correct that despite framing of charges, an accused may be enlarged on bail by a Court, it is also imperative to note that Section 21(4)(b) of MCOCA provides that the Court has to record if there are *reasonable grounds* for believing that the accused is not guilty of the offence. The same was more so important as the bail was granted to the accused after framing of charges before any witnesses had been examined. In the present case, the learned ASJ has vaguely noted that despite availability of witnesses against the respondent, the respondent may ultimately not be found guilty after trial. No deference has been paid to the material against the accused and no particular reason has been attributed for the said observation. While considering grant of bail, the Court should refrain from making any remarks on sufficiency of evidence for conviction or acquittal. Although it is noted at the end of the impugned order that the observations are only for the purpose of deciding the bail application, in the opinion of this Court, the said observation cannot be sustained. Moreover, the rigours of Section 21(4)(b) of MCOCA in relation to

satisfactory reasonable grounds cannot be overcome by nonchalant observations in a blasé manner.

17. This Court thus finds merit in the argument of the prosecution that the twin conditions under Section 21(4) of MCOCA were not duly considered by the learned ASJ.

18. At the same time, it is important to note that the petitioner State essentially seeks rejection of bail granted to the respondent. It has been held in a catena of cases that despite the stringent requirements imposed on the accused under Section 21 of MCOCA for the grant of bail, these requirements do not preclude the grant of bail on the grounds of undue delay in the completion of the trial. Various courts have recognized that prolonged incarceration undermines the right to life and liberty, as has been guaranteed under Article 21 of the Constitution of India, and therefore, conditional liberty must take precedence over the statutory restrictions under Section 21 of MCOCA and override the bar therein. In the case of ***Jayshree Kanabar v. State of Maharashtra*** (*supra*), though the order granting bail was set aside, the Hon'ble Apex Court while dealing with non-consideration of the rigors of Section 21(4) of MCOCA emphasized that the bail was not considered on account of violation of Part III of the Constitution of India.

19. It is also important to take note of the case of ***Ranjana Tanaji Wanve*** **v.** ***State of Maharashtra*** **: Special Leave to Appeal (Crl.) No. 12740/2024**, wherein the Hon'ble Apex Court had granted bail to an accused implicated for offences under MCOCA on

account of charges not being framed and there being more than 100 witnesses which were to be examined.

20. In the present case, the respondent was arrested on 15.02.2018 and granted bail after more than five years on 01.06.2023. While the learned ASJ has not made any specific reference to the fundamental rights as enshrined in Part III of the Constitution of India, however, the considerable period of incarceration of the respondent has been duly taken into account, although it is erroneously noted that the respondent had spent more than six years in custody.

21. It is pertinent to note that this Court by order dated 08.05.2025, in BAIL APPLN. 2986/2023, had granted bail to co-accused Rajesh on account of delay in trial after taking note of the period spent by him in custody. It was further observed that speedy trial does not seem to be a possibility and the trial is likely going to take long. It was also noted that since the activities of the alleged syndicate did not lead to death, therefore, the minimum sentence for the alleged offences will be only 5 years. Certain orders were placed on record to show that lesser sentence has been awarded for the alleged offences to accused in other cases post-conviction. Reference was made to certain precedents in respect of stringent requirements against grant of bail not precluding the same where there is undue delay in completion of trial. The relevant portion is as under:

> *"15. In the present case, the applicant has sought bail essentially on the ground of delay in trial and his period of incarceration…*
> *16. It is pointed out that the applicant has spent more than six years in custody, despite which, the matter is still at the stage of*

examination of prosecution witnesses and only 11 out of 100 witnesses have been examined till now…

17. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeeb : AIR 2021 SC 712****, while dealing with an application for bail under Unlawful Activities (Prevention) Act, 1967, has held that 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.*

18. Recently, in the case of ***Arun v. State of NCT of Delhi : BAIL APPLN. 3348/2023****, a Coordinate Bench of this Court granted bail to an accused charged for offences under MCOCA, who had spent more than 8 years in custody. It was observed that right to a speedy trial is entrenched under Article 21 of the Constitution of India and the same cannot be whittled down merely because the case arises under a special statute such as MCOCA. Reliance was placed on precedents in a number of cases, including,* ***Mohd. Muslim v. State (NCT of Delhi): (2023) 18 SCC 166****, where while dealing with the analogous provision of Section 37 of the NDPS Act which envisages a similar bar, the Hon'ble Apex Court had held that if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 of the NDPS Act will receive a jolt.*

19. The Hon'ble Apex Court in ***Rabi Prakash v. State of Odisha : 2023 SCC OnLine SC 1109****, while granting bail to the petitioner therein who was accused of offences under the NDPS Act, had held as under :*

> *"4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard…So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody.* ***The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."***
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> (emphasis supplied)

22. In the present case, as noted in the aforesaid order, the trial has

proceeded at a very slow pace and only 11 out of 100 witnesses have been examined till now after close to two years of grant of bail to the respondent in the year 2023. Thus, grant of bail to the respondent on account of delay in trial and period spent by him in custody was warranted. Thus, even though the twin conditions in Section 21(4) of MCOCA had not been properly considered, the said embargo does not come in the way of the liberty already granted to the respondent. The only fault in the impugned order was in relation to certain overarching observations which have already been dealt with.

23. It is not the case of the prosecution that Respondent No. 2, after being released, at any stage, has misused the liberty granted to him or flouted any of the conditions of the bail. It is further not the case of the prosecution that the evidence in any manner has been tampered with by Respondent No.2. It is to be borne in mind that detention is not supposed to be punitive or preventive.

24. In view of the above, this Court does not consider it apposite to interfere with the impugned order.

25. The appeal is, therefore, dismissed.

AMIT MAHAJAN, J

JUNE 17, 2025