IN THE COURT OF ADDITIONAL SESSIONS JUDGE – 04 & SPECIAL JUDGE (NDPS) SOUTH EAST: SAKET COURTS: DELHI

1 **Ashwani Aggarwal @ Tinku (A-1)**
2 **Amit Gupta (A-2)**
3 **Ajay Goyal (A-3)**
4 **Babu Sunil Chander Saxena (A-4)**
5 **Bhupender Nagar (A-5)**
6 **Chandresh Patel (A-6)**
7 **Dipit Garg @ Lov (A-7)**
8 **Kiran Dhole @ Munna (A-8)**
9 **Manan Upendra Bhatt (A-9)**
10 **Mohammed Yahiya @ Yusuf (A-10)**
11 **Nitin Jain @ Susu (A-11)**
12 **P. Jiju Janardhanan @ Jiju (A-12)**
13 **Ramakant Agarwal (A-13)**
14 **S. Sreesanth (A-14)**
15 **Syed Durry Ahmed @ Sohaib (A-15)**
16 **Vikas Chaudhary (A-16)**
17 **Vinod Sharma (A-17)**
18 **Ankit Chauhan (A-18)**
19 **Manish Mathukarao Guddewar (A-19)** **Vs.** **State**
20

FIR No. 20/2013
PS : Special Cell, Lodhi Colony
U/s. 420/120-B/409 IPC and Section 3 / 4 of MCOCA

10.06.2013

O R D E R

Present : Sh. Rajiv Mohan, Special PP for the State.

Sh. Pinaki Misra & Sh. Rama Kr., Senior Advocates with Sh.Vishal Gosain, Sh. B. Chauhan, Sh. Krishna Menon, Sh. Abhishek Batra and Sh. Harsh, Counsels for the applicant/accused S. Sresanth (A-14).

Sh. R. P. Kasana,Counsel for applicants/accused Nitin Jain(A-11) & Vikas Chaudhary (A-16).

Sh. Neeraj Chandhari alongwith Sh. P. N. Upadhayay, Counsels for applicant/accused Ashwani Agarwal @ Tinku (A-1).

Sh. Akshay Chandra,Counsel for applicant Ramakant Agarwal(A-13)

Sh. Sundeshwar Lal, Counsel for applicant/accused Ajay Goel (A-3), Dipit Garg (A-7) and Amit Gupta (A-3).

Sh.B. S. Jakhar, Counsel for applicant/accused Mohd. Yahiya @ Yusuf (A-10), Syed Duray @ Shoib (A-15) and Sunil Chandra Saxena (A-4).

Sh.M.K.Arora, Counsel for applicant/accused Kiran Dhole @Munna(A-8).

Sh. Pavan Narang with Sh. Anish Dhingra, Counsels for the applicant/accused P. Jiju Janardhan @ Biju (A-12).

Sh. Rajiv Shankar Dwivedi with Sh. Kishore Gaikwad, Counsel for the applicant/accused Ankit Chauhan (A-18).

Sh.R. K. Thakur with Sh. B. Mishra, Counsel for the applicant/accused Manan Upendra Bhatt (A-9).

Sh.D. P. Singh with Sh. Ravi Vyas, Counsel for the applicant/accused Chandresh Patel (A-6).

Sh. Rajat Wadhwa with Sh. Nikhil Mehta, Counsels for the applicant/accused Vinod Sharma (A-17).

Sh.Jitender Tyagi, Counsel for the applicant/accused Bhupender Nagar(A-5). +6

Sh. Gaurav Dua, Counsel for the applicant/accused Manish Mathukarao Guddewar.

IO/ACP Manishi Chandra.

Heard arguments on nineteen separate bail applications filed on behalf of above mentioned applicants/accused arising out of case FIR No. 20/2013, Police Station Special Cell, Lodhi Colony.

1. Case of the prosecution is that in April, 2013, a secret information was received by the New Delhi Range Special Cell, Lodhi Colony Delhi to the effect that some members of the '**underworld**' were involved in match fixing in the Indian Premier League Cricket Tournament with the active participation of some unidentified conduits/bookies/players, some of whom were based in Delhi/NCR. Suspects were kept under watch. It was revealed that match fixers and bookies from Delhi, Gujarat, Maharashtra, Punjab and some players, who were participating in IPL were conspiring to indulge in '**spot & session fixing**'. FIR No. 20/2013 was registered on 09.05.2013 at Police Station Special Cell for the offences u/s 120-B/420 IPC. FIR notes that matter was taken up for in depth investigation.

2. During investigation, it was revealed that the spot/session fixing activities were going on in a well organized manner. Rates of the bets were conveyed to the major bookies from abroad. Large number of persons from India as well as abroad were placing their 'bets' with these '**mega bookies**' and their several subsidiary chains of bookies resulting in the generation of huge amounts of money on a daily basis. Settlement of accounts was allegedly being done using illegitimate hawala channels.

3. It is further alleged that as per the electronic surveillance, fixing of the players (essentially bowlers) by asking them to give away 'pre-decided number of runs' was being adopted. Players were being paid or promised handsome money for joining and executing the conspiracy. Players were required to either give a pre-decided signal in advance before proceeding with the '**fixed over**' to identify in advance, as to, which over of his 'spell' will be the fixed 'over' to enable the bookies, who were in exclusive knowledge of this 'fixed over' to accept bets at their rates from public at large through the chain of bookies. These pre-decided signals were being given with the help of players sporting accessories like wrist watches, wrist bands, neck chains, towels etc. just before starting of the over. On receipt of the signal from the bowler, the bookies used to start 'quick action' by betting heavily for making huge gains.

4. It is alleged that one Ashwani Agarwal @ Tinku (A-1) and a 'major bookie' (unnamed) based in Delhi were in constant touch with one Doctor @ Dr. Javed @ Javed Choutani, who, as per confirmation received from a Central Intelligence Agency, was a close associate of the underworld's Dawood Ibrahim Kaskar – Shaikh Shakeel @ Shakil Babu Mohiddin Shaikh @ Chhota Shakeel syndicate, who were operating in India and against India even after their escape, following 1993 Mumbai serial blasts. At present, both of them are learnt to be stationed in Pakistan with their associates in the entire Middle and South East Asian countries and were continuing with activities of organized crime through their henchmen and associates based in India.

5. It is further alleged that the network of their activities was spread in Delhi, also where four cases were registered against 'those **henchmen**' for their organized crime/criminal activity through their henchmen and associates based in India. In all these cases, Shaikh Shakeel @ Shakil Babu Mohiddin Shaikh @ Chhota Shakeel was one of the wanted accused. It is stated that these cases were relating to offences which were cognizable in nature having punishment of three years or above and the concerned courts of competent jurisdiction had taken cognizance in more than one case in preceding 10 years.

6. It is submitted that during the course of investigation, it has come on record that accused Dawood Ibrahim Kaskar had been declared as an 'International Terrorist' and was facing stringent United Nations' Security Council's Sanctions and running organized criminal activities against strategic and economic security of India and its citizens, he plays a pivotal role. Accused Ashwani Agarwal @ Tinku (A-1) was found to be in close and direct association with the syndicate member Dr. @ Javed @

Chutani during whole of this season of the IPL. He was also found in touch with one Salman (an unconfirmed identity) allegedly a close associate of Dr. Javed Chutani, based in Pakistan. Another bookie namely Ramesh Vyas was also found in touch with Dr. Javed Chutani and Salman. Accused Ashwani Agarwal @ Tinku & Ramesh Vyas were also in touch with each other. The communication network was not limited to this extent only. Ashwani Agarwal @ Tinku was also in touch with one Chandresh Jain @ Jupiter (who was absconding) and name was reflected during conversations between Salman and Ashwani Agarwal @ Tinku on one hand and Salman & Ramesh Vyas on the other. It has come on record, that accused Sunil Bhatia, Kiran Dhole and Manish were close associates of accused Ashwani @ Tinku.

7. It is submitted that basic feature of the case is that, IPL matches were being played in India by the teams franchised by BCCI-IPL. In these teams, national & International players were participating. Players had to perform as per their best capabilities in the matches without indulging in any **malpractice**. Object of organized criminal activity could be achieved only by fixing the players performing in the matches, because it was the only way to gain money to the tune of crores illegally and to achieve this ultimate objective, accused Ashwani Agarwal @ Tinku (A-1) was found fixing the performance of the players through co-accused persons namely Kiran Dhol, Sunil Bhatia, Baburao Yadav (ex-player) and Manish Guddewar. It is submitted that in these transactions, the name of accused Ajit Chandella had cropped up as the central figure because on one hand, he was found talking about this fixing and settling of the amounts with aforesaid persons on the other hand, he was found persuading and luring other players namely Ankeet Chauhan etc. to perform in a particular pre-decided manner against the promise of easy and huge money apart from supply of 'gifts' and 'girls'. It is stated that accused Sreesanth, through co-accused Poken Jiju Janarshnan and Amit Kumar Singh was found dealing in spot fixing alongwith Chandresh Jain and Mannant Bhatt.

8. According to the prosecution, nature of evidence against applicant broadly consists of statement of Siddharth Trivedi u/s 164 Cr.P.C, disclosure statements, presence of friends involved in betting in hotel, intercepted calls, wherein they were talking to each other and with Ashwani Aggarwal @ Tinku (A-1) and Sunil Bhatia and other bookies.

9. It is submitted that Dr. M. M. Oberoi, Joint Commissioner of Police, Special Cell, vide his order dated 03.06.2013, granted **approval** u/s 23(1) of Maharastra

Control of Organized Crime Act, 1999 (to be referred herein after as MCOCA) for invoking the provisions of this act. Thus, during the ongoing investigation of this case, Section 3 & Section 4 of MCOCA were added.

10. Sh. Pinaki Misra, Ld.Senior Counsel appearing for applicant/accused S. Sreesanth argued that none of the IPL match in which alleged spot fixing took place had taken place at Delhi, it was at Mumbai, Jaipur or Mohali therefore, situs of offence was not at Delhi. He argued that there is nothing fishy or unusual about the fast bowler's second over in Rajasthan Royals's on 09th May, 2012 in IPL game against Kings XI Punjab, which is alleged to be spot fixed. It is argued that Delhi police arrested S. Sreesanth of colluding with bookies to bowl a fixed over in which he agreed to concede 14 runs or more. According to the police, who booked S. Sreesanth under MCOCA, bowler allegedly signaled for bets to be taken by '**tucking a towel**' in his trouser before beginning the over. It is submitted that S. Sreesanth conceded one run less than the agreed minimum of 14. It is argued that applicant/accused S. Sreesanth tends to give away 8 to 10 runs (an over) and has a high economy rate and because of his higher economy rate S. Sreesanth played only 7 out of 15 games for Rajasthan Royals this season. Sh. Pinaki Misra. Learned Counsel contended that it was not unusual that Sreesanth would give runs. He submits that applicant/accused S. Sreesanth gave only 5 runs in the first four balls of that over and out of four balls, two of which were dot balls and will a bowler, who has agreed to spot fix, like the police is claiming, give away just 5 runs in his first four balls? That means, he had to ensure that he gets hit for at least one six in the last two deliveries if he had to concede 14 runs because even two fours would not do. Learned Counsel argued that there was nothing suspicious about the fifth delivery, that Kings XI captain Adam Gilchrist pulled for a four. It is submitted that particular delivery was bowled at around 135 kilometres per hour. Only a bats man of the calibre of Gilchrist, who was an excellent puller and hooker of the cricket ball was able to score a four off that ball. He argued that the last ball of the over was bowled according to the field and that ball was around off stump and a packed off side field was in place and it is once again the skill and experience of Gilchrist that made that particular four possible. Learned Counsel argued that applicant/accused S. Sreesanth didn't bowl a wide or a no ball or a bouncer that could have been called wide.

11. He submits that the so-called 'signal', which, according to prosecution Sreesanth gave to bookies of 'tucking the towel' and 'taking time to warm up' were not really unusual and submitted that the pictures of other players on the field, show towels

tucked in. He argued that S. Sreesanth had paid the bills for all the parties he hosted during the tournament with a "gold debit and credit card. He submits that applicant/accused S. Sreesanth's bank statement show over 25 transactions, including one in which he spent Rs.1,58,000 on a party at the Team Hotel.

12. In support of his submissions, that MCOCA was not attracted against applicant, he relied upon "*Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra & Anr. (2005) 5 Supreme Court Cases 294*", wherein it was observed that interpretation clauses contained in Sections 2(d), 2(e) and 2(f) are interrelated. An "organized crime syndicate" refers to an "organized crime", which in turn refers to "continuing unlawful activity". It was not considered necessary to consider whether the words "or other unlawful means" contained in Section 2(e) should be read "ejudem generis"/ "noscitur a sociis" with the words (i) violence, (ii) threat of violence, (iii) intimidation, or (iv) coercion. It was noticed that the word "violence" has been used only in Sections 146 and 153-A of the Indian Penal Code. The word "intimidation" alone has not been used therein but only Section 506 occurring in Chapter XXII thereof refers to "criminal intimidation". The word "coercion" finds palce only in the Contract Act. If the words "unlawful means" are to be widely construed as including any or other unlawful means, having regard to the provisions contained in Sections 400, 401 and 413 IPC relating to commission of offences of cheating or criminal breach of trust, the provisions of the said Act can be applied, which prima facie does not appear to have been intended by Parliament".

13. He drew attention of the Court towards Statement of **Objects and Reasons** which clearly states as to why the said Act (MCOCA) had to be enacted. Thus, he argued that it will be safe to presume that the expression "any unlawful means" must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control. In other words, an offence falling withing the definition of organized crime and committed by an organized crime syndicate is the offence contemplated by the Statement of Objects and Reasons. There are offences and offences under the Indian Penal Code and other penal statutes providing for punishment of three years or more and in relation to such hereinbefore, only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA. Furthermore, '**mens rea**' is a necessary ingredients for commission of a crime under MCOCA.

14. Sh. D. P. Singh, Learned Counsel appearing for the applicant/accused Chandresh Patel argued that no case was made out under the provisions of MCOCA. He submits that the basic ingredient to invoke the provisions of MCOCA is that there must be an 'organized crime' as defined under section 2(e) of MCOCA and an organized crime means any continuing unlawful activity, which has been defined u/s 2(d) of the said act. He submits that none of the ingredients are present in this case.

15. It is submitted that the activity alleged as an offence as per the FIR is not prohibited under the law and rather the Law Minister himself in a public statement stated that there is no law in the country prohibiting or regulating match fixing. He argued that even from the contents of the FIR, no case is made out against the applicant/accused u/s 420/409 IPC and for Section 420 IPC, there must be a complaint by the victim regarding alleging a wrongful loss and a consequent wrongful gain to the applicant/accused. It is submitted that no offence is made u/s 409 IPC as there is no entrustment of property nor is there any dishonest misappropriation and thus the contents of the FIR, fall short of the ingredients for the offence of Criminal Breach of Trust. He argued that Section 409 IPC was added by the police later on and there is no mention of the same in the FIR and it is not attracted. It is submitted that police has taken voice samples of the applicants/accused persons to substantiate its case about the voice recording and FSL will take time to ascertain the voice of the applicant/accused.

16. Learned Counsel submits that no recovery is to be effected from the applicant/accused and that the other accused persons, who have been charged for a similar offence, have already been released on bail by the competent court in Mumbai. It is argued that the said accused persons have been charged for a similar activity and no provision of MCOCA has been invoked against them. He argued that it is a settled position of law that **bail is the rule** and jail is an exception.

17. In support of his submissions, he relied upon "*Sanjay Chandra Vs. CBI*" reported in (2012) 1 SCC, wherein it was observed that the Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and dully found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demand that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial, but in such cases; '**necessity' is that operative test**. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person

should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty only upon the belief that he will tamper with the witnesses", if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial **punitive** content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson".

18. Sh. Kishore Gaikwad, Learned Counsel for the applicant/accused argued that co-accused Abhishek Shukla was granted bail by the Court of Learned CMM in connection of the same FIR. He submits that the prosecution slapped offences u/s 3 and 4 of MCOCA to the applicants/accused, however, if prima facie, allegations leveled against applicants/accused are considered, there is absolutely no evidence of their being involved in an organized crime. He submits that it is alleged that the applicant/accused Ankit gave more then 13 runs in the a over and the same was pre-decided between the co-accused Ajit Chandella and the bookies Chandresh and Manan. He argued that the batsman facing the applicant in the said over was Mr. Glenn Maxwell, who is the highest bid player of this edition of the tournament and an accomplished batsman and in this situation to allege that deliberately easy ball has been thrown was a misnomer. It is submitted that cricket is a group game and no one person can decide how many runs would be scored in an over, because of sheer presence of innumerable improbabilities.

19. He submits that a bowler has to ball, the said ball has to be hit by the batsman, and 11 fielders have the option to save the same from crossing the boundary. Ld. Counsel argued that there was no nexus of the applicants with alleged international terrorists and that even if the case of the prosecution is taken up as gospel truth i.e. A is talking to B, who is talking to C, C in turn talks to D, who in turn talks to one Salman or Dr. Javed in Pakistan, in that case, the provisions of the MCOCA can be easily **misused** by the Police and then any person can be booked under MCOCA. Learned Counsel referred to the CBI report Part-III regarding alleged match fixing in the year 2000, in which it was observed that "howsoever, **reprehensible**, the act of (Match Fixing) may be, it cannot be brought within the preview of cheating".

20. Learned Counsel contended that the league matches were like club matches and were not between two nations and they could not affect the nation, in any

manner. He wondered that, it is not clear, **who cheated whom**? It is submitted that the public persons or the punters were betting through the bookies and it was they, who might have lost the money and IO cannot be said to be holding a brief for the person, who lost money or for the bookies. It is submitted that it is strange that MCOCA is the brain child of Maharastra and Mumbai police has not invoked 'MCOCA'. Alleged activity is not covered by the MCOCA and other accused against whom there are similar allegations were granted bail in Mumbai.

21. Learned Counsels further submitted that the applicants/accused persons had clean antecedents. It is submitted that the betting comes within the preview of Delhi Public Gambling Act and carries maximum punishment of three months. It is submitted that Section 2(1)(a) MCOCA defines abetting and actual knowledge or reasons to belief are required to cover the applicants/accused within the net of the alleged organized betting syndicate.

22. It is submitted that applicant/accused Amit Gupta, Ajay Goel and Dipit Garg are the employees of Ashwani Aggarwal @ Tinku at his office. They were getting salary. They were maintaining rates & account and giving it to their employer. They have no mens rea or any personal knowledge. It was submitted that none of the applicants were involved in extortion or terrorism or any unlawful activity. It is submitted that MCOCA was invoked for just buying time of 180 days and denying bail to the accused persons. It is submitted that MCOCA was slapped in a **malafide** manner by Delhi Police on the applicants/accused only after the co-accused Abhishek Shukla was granted bail by the Court of Learned CMM and at 10:30 am on 04.06.2013, bail was granted to co-accused Vindu Dara Singh, Mayapan and others by the Mumbai Court.

23. In addition, on behalf of Ramakant, it was submitted that he was running a rice mill and was a social worker and was innocent. On behalf of Nitin Jain and Vikas Chauhary, it was submitted that they were young boys having clean antecedent and were **not involved** with any cricketer and they were just having acquaintance with Bhupender Nagar.

24. On behalf of accused Vinod Sharma, Learned Counsel argued that the Court has to be satisfied as to whether each one of the accused was a member of, or conspired or abetted in any continuing unlawful activity undertaken by the accused either singly or jointly and that two charge sheets with respect to an offence punishable for three years or more and in respect of which cognizance has been taken were filed against applicants. It was submitted that the prosecution has failed to show any detail of

the alleged Hawala Channel and which charge sheet has been filed against whom in which Court. It is submitted that according to the prosecution Ashwani Aggawal @ Tinku, who was a major Bookie was in touch with the syndicate. He was arrested on 16.05.2013. In view of this fact and his underworld connection had already come in the notice of the investigation agency, there was no satisfactory reasons as to why MCOCA was invoked only on 03.06.2013.

25. Learned Counsel submitted that allegedly only Rs. 50,000/- was recovered from accused Bhupender Nagar. There is nothing to show that the said amount was his share received through other co-accused as alleged. It is submitted that at best, applicant/accused are punter and bettors, who were placing bet. They cannot by any bizarre stretch of imagination be said to have any **link** with organized crime syndicate. Learned Counsel argued that the prosecution has to establish that the applicants/accused were aware i.e they had the knowledge that they were part of the organized crime syndicate or had the requisite 'mens rea'. It was submitted that it is un-beliable and ridiculous that such a big and notorious organized crime syndicate of 'Dawood' will 'spot-fix' only two overs, as alleged by the prosecution out of about 1500 overs played in the IPL Matches.

26. It was brought to the notice of the Court that many **on-line betting** and gambling web sites pertaining to cricket and other sports exists, which are widely used by the people at large including Indians and there is in-flow and out-flow of money. It was argued that in case, it is found that those sites have some connection with underworld, in that case, all those persons (who are participating in such betting, which is illegal in India but legal in other countries), could be easily booked under MCOCA, if the submission advanced by Learned Special PP for the State, were to be accepted.

27. Per Contra, Sh. Rajiv Mohan, Learned Special PP for the State argued that evidence for organized crime cannot be collected like a instant crime and it is a continuing unlawful activities. Therefore, no instant FIR can be registered and it is required to satisfy that the activities of the accused are the activities of organized crime syndicate, which can be done only after evaluating the whole past of the syndicate. He submits that not only the evidence of commission of organized crime is made punishable, but all the means by which an individual can associate himself with commission of organized crime or any act preparatory to commission of organized crime have been dealt u/s 3 of MCOCA. Abetment, conspiracy and facilitation are some of Acts, by which this association can be maintained.

28. Learned SPP submits that to establish conspiracy, it is not required that each and every conspirator may know the ultimate object of the conspiracy. It is only required that, in pursuance of agreement, someone has performed the act illegally. He contended that the prosecution in this case, is having the intercepted conversation between the bookies namely Sanjay Aggarwal @ Chottu Nagpur, Chandresh Jain @ Jupiter, Ashwani Aggarwal @ Tinku Mandi, Ramesh Vyas, Firoze and Jitendra Jain @ Jeetu. These persons were found associated in crime with the members of 'D' Company namely Dawood Ibrahim Kaskar, Chotta Shakeel, Dr. Javed Choutani and Salman and all these main members of the Syndicate are sitting Abroad, who are continuing with their unlawful activities through their conduits posted in Indian. He submits that in recent past i.e. in last preceding 10 years, the charge sheets in the cases registered against Chotta Shakeel and members of the crime syndicate have already been filed relating to their organized crime activities and offences were cognizable in nature punishable with imprisonment of three years or more.

29. Learned Special PP contended that the commission of any individual offence was not required to invoke the provisions of MCOCA and in this case, there was money flow by the illegal activities committed by different persons at different levels, but all this was being done to further the facilitators, the object of activities of organized crime syndicate raised by above mentioned persons based abroad or were having based in India and that, in this process, players played a dual role of conspirator as well as facilitator, as per the wishes of the syndicate, players were in touch either with bookies, who were recognized by syndicate stationed abroad. It is argued that in the intercepted calls between Ajit & Manish Guddewa, the name of one Vicky appeared on one hand, whereas on the other hand in the conversation between Bhupender Nagar and Ajit also there was reference of Vicky. He argued that in this matter, Ajit performed as per the wishes of his handlers. Associates of the syndicate were demanding back the money. Similarly, in conversation, Ankit Chauhan was in touch with Ajit. As per the wishes of Chandresh Patel, Manan and Amit Kr. Singh, this group of Chandresh Patel and Manan through Amit Kr. Singh and Jiju were in touch with S. Sreesanth, the recorded conversation of these persons is on record.

30. It is argued that when S. Sreesanth was arrested on 16.05.2013, he was with brother-in-law of Jiju. After the arrest of S. Sreesanth, accused Jiju and Abhishek Shukla went to his hotel room and removed Rs. 5.5 Lacs and that there wa CCTV footage of this act. Accused Ramakant, Ajay, Amit and Dipit Garg were employed in the

office of Ashwani @ Tinku. At that time, Amit, Ajay and Dipit were betting for accused Bhupender Nagar whereas Ramakanr was booking for accused Chottu Nagpur. It is submitted that accused Sunil, Kiran & Manish found in conversation with each other as well as with Ajit. It is submitted that accused Vinod, Nitin & Vicky were the **punters**. They were not only betting, but played crucial role in match fixing through Ajit Chandila. Accused Babu Rao Yadav, Ex-Ranji Player was in touch with Sunil Bhatia on the other hand, he was in touch with Ajit, discussing about the fixing and its procedure. Telephonic conversation between Chandresh Patel and Yahaiya was recorded, in which they were found discussing flow of money, fixing of players. Besides this, statement of Sidharth Trivedi, who was associate with several players was recorded u/s 164 Cr.P.C. He further argued that at this stage, the evidence collected so far, atleast establishes that, these accused persons were working as abettor, conspirator or facilitator.

31. In support of his submissions, Learned Prosecutor for the State relied upon *"Zameer Ahmed Latifur Rehman Sheikh Vs. State of Maharastra & Ors., MANU/SC/0289/2010", "Govind Sakharam Ubhe Vs. The State of Maharashtra, June 2009, ALL MR (CRI) 1903","Manoj Ramesh Mehta Vs. State of Maharashtra, Criminal Appeal No. 1868/2008.* He referred "*Mohd. Farrukh Abdul Gaffur & Ohters Vs. State of Maharashtra, JT 2009(11) SC 47*" to show that in this case accused played an active and important role in the conspiracy even though he did not participate in actual shoot out and that he had the knowledge of conspiracy and in that view of the matter, the contention of learned counsel that he had not played any active role in the shootout was found to be baseless".

32. He relied upon "*Jain Singh Asharfi Lal Yadav Vs. State of Maharashtra, 2003(0) All M. R. (Crl.)1506*", and submitted that "undoubtedly, for the purpose of organized crime, there has to be a continuing unlawful activity and there cannot be continuing unlawful activity unless at least two charge sheets are to be found to have been lodged in relation to the offence punishable with three years' imprisonment during the period of previous ten years. In other words, it provides that the activities which were offences under the law in force at the relevant time and in respect of which two charge sheets have been filed and the Court has taken **cognizance** during preceding ten years, it will be treated continuing unlawful activity. It nowhere by itself declares any activity to be an offence under the said Act prior to commencement of MCOCA. It also does not convert any activity done prior to commencement of MCOCA to be an offence under the said Act. It merely considers two charge sheets in relation to the acts, which

were already declared as offences under the law in force to be once of the requisites for the purpose of identifying continuing unlawful activity and/or for the purpose of an action under the said Act".

33. Next, he relied upon "*State of Maharashtra Vs. Bharat Shanti Lal Shah & Ohers, JT 2008(10) SC77*", wherein it was observed that the word "other unlawful means' appearing in Section 2(e) of MCOCA must not be **esjudem generis** to violence or coercion but it must relate to the activity, prevention for which the MCOCA was implemented. He relied upon "*Mahipal Singh Vs. CBI, WP (Crl.P 1555/2011)*", wherein it was observed that in view of the aims and objects of MCOCA, though cases of simpliciter cheating and forgery may not come under the 'unlawful means' however, if the same are committed in the manner of an organized crime, particularly affecting the results of the examination and thus, de-stabilizing the education system, the said activity would certainly fall within the ambit of 'unlawful means' as required in 'organized crimes'. The said 'unlawful activity' has some resemblance to coercion, intimidation etc. as the same is performed by manipulation at an extensive level.

34. He submits that if we go by this definition, any unlawful activity which is committed in an organized manner to generate wealth or undue economic advantage will fall withing the scope of organized crime as defined under MCOCA. He further submits that in the light of the proposition laid down in Govind Sakharam Ubhe's case, the only requirement is to see whether the gang or syndicate is continuing with its unlawful activities as defined under Section 2(d) of the MCOCA. Dawood Ibrahim Kaskar and Chhota Shakeel are wanted accused in different charge sheet filed by the CBI in connection with serial Mumbai blasts of 1993. Both of them left India and have so far remained out of reach of the law enforcement agencies in India. It is further submitted that in these type of cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material. He submits that from interpretations given by the Hon'ble Supreme court, it is not required for each and every conspirator to know the identities of his counterparts or that the person joining the conspiracy must be aware of the ultimate object of the conspiracy.

35. Learned SPP argued that apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the

charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do so, so long as it is known that the collaborator would put the goods of service to an unlawful use. He argued that so far as the mental state is concerned, two elements required by conspiracy are the intent to agree and the intent to promote the unlawful objective of the conspiracy. It is the intention to promote a crime that lends conspiracy its criminal cast. It is further submitted that the actus reus in a conspiracy is the agreement to execute the illegal conduct and not the execution of it. It is also not however necessary that each conspirator should have been in communication with every other. Therefore, the essence of conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both. The direct evidence is rarely available, therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. In support, he place reliance upon "*State of Maharashtra and Others Vs. Som Nath Thapa and Others*".

36. Learned SPP submits that applicants namely Ashwani Aggarwal @ Tinku Mandi, Ramesh Vyas, Sunil Bhatia and four absconders namely Feroze, Chandresh Jain @ Jupiter, Jitender Jain 2 Jeetu and Sanjay Aggarwal @ Chotu Nagpur joined this core syndicate of Dawood Ibrahim – Chhota Shakeel and started committing certain unlawful acts with the sole objective of furthering the organized crime activities of the syndicate in India. He further submitted that but, if the activity being committed in furtherance of the objectives of the syndicate comes withing the purview of Money Laundering, than certainly the activity will fall in the category of other unlawful means' and the provisions of MCOC Act will have their applicability. It is pertinent to note here that under the 'PML Act', 'proceed of crime' is defined as the property or its value generated by commission of the predicate offence as mentioned in the Schedule of the Act. It is submitted that Section 120-B, 420 of IPC are the predicate offences under Prevention of Money Laundering Act.

37. It is further argued that continuing the argument of the defence that the number of runs promised by accused Sreesanth to be given away were never scored, it would suffice to state that there are post match intercepted conversations where the fixers i.e. Chandresh Patel and Mannan Bhatt have spoken to Jiju Janardan and allaying Jiju's apprehension that the remaining money may not be paid (as the requisite performance was not delivered), they promised him that, if not the actual promised amount, at least a handsome further amount will be paid as Sreesanth had, in the

estimation of the fixers, attempted his best to see that he delivers on his promise, as a result of which fixers/bookies had made huge monetary gains from illegal betting and thus, in this case according to Learned Prosecutor culpability, demolishes all technical arguments forwarded by the defence.

38. Ld. Special PP further submitted that a tri-partied agreement was entered into between BCCI , franchise (who in the present case was M/s Jaipur IPL Pvt. Ltd.) and the players. The players had to perform in accordance with the agreement and according to the BCCI guidelines. It is stated that the applicants/accused , who are players, had breached the agreement by committing dishonest practice and by under performing in collusion with the bookies and they also cheated the public persons who paid money for buying tickets and that therefore, offence punishable u/s 120-B r/w 420 and also u/s 409 IPC are attracted against all the applicants/accused.

39. After hearing arguments advanced by the parties at length, perusal of the material on record brought to the notice of the Court and the cases relied upon by the parties and giving my thoughtful consideration to the matter, I am not persuaded by the arguments advanced by Learned Prosecutor.

40. At the outset, before I consider the merits of the present case, it would be appropriate to note provisions of the MCOCA, in particular Sections 2(d), 2(e) and 2 (f) of the MCOCA. "Sec. 2(d) reads as "**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 sheets have been filed before a competent court within the preceding period of ten years and that Court has taken cognizance of such offence".

41. As per "Sec. 2(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". According to "Sec.2(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." (emphasis supplied)

42. Therefore, under Section 2(d) of MCOCA "continuing unlawful activity"

means an activity prohibited by law for the time being in force which is a cognizable offence punishable with imprisonment for three years or more, undertake either singly or jointly, as a member of the organized crime syndicate or on behalf of such syndicate in respect of which more than one charge sheets have been filed. It is, therefore, clear that one or more charge sheets, containing allegations that the alleged offence was committed either singly or jointly as a member of the organized crime syndicate or on behalf of such syndicate, **is sine qua non for** invoking stringent provisions of MCOCA. This follows that mere filing of more than one charge sheets within the preceding period of ten years, alleging commission of cognizable offence punishable with imprisonment of three years or more, is not enough.

43. It is pertinent to note that the Statement of Objects and Reasons for enacting the said Act. It reads *"Organized crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering etc. The illegal wealth and black money generated by the organized crime being very huge, it has had serious adverse effect on our economy. It was seen that the organized criminal syndicates made a common cause with terrorist gangs and foster* ***terrorism*** *which extend beyond the national boundaries. There was reason to believe that organized criminal gangs have been operating in the State and thus, there was immediate need to curb their activities. It was also notice that the organized criminals have been making extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission would be an indispensable aid to law enforcement and the administration of justice".*

44. "The existing legal framework i.e. the penal and procedural laws and the the adjudicatory system were found to be rather inadequate to curb or control the menace of organized crime. Government, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organized crime. It is the purpose of this Act to achieve these objects".

45. *In "Ranjitsing Brahmajeetsing Sharma Vs State of Maharashtra & Anr. (2005 ALL MR (Crl) 1538 (S.C.)",* Hon'ble Supreme Court observed that the statement of Objects and Reasons clearly states as to why the said Act had to be enacted. Thus it will

be safe to presume that the expression any 'lawful means' must refer to any such act, which has a **direct nexus** with the commission of a crime which the MCOCA Act seeks to prevent or control. In other words, an offence falling within the definition of organized crime and committed by an organized crime syndicate is the offence contemplated by the Statement of Objects and Reasons. There are offences and offences under the Indian Penal Code and other penal statutes providing for punishment of three years or more and in relation to such offences more than one charge sheet may be filed. As we have indicated hereinbefore, only because a persons cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA".

46. In order to constitute "continuing unlawful activity" following requirements of law should be satisfied:-

i) more than one charge sheet, alleging commission of cognizable offence punishable either singly or jointly by the accused;

ii) a charge sheet should consists of averments, alleging unlawful activity undertaken either singly or jointly by the accused;

iii) as a member of organized crime syndicate or on behalf of such syndicate;

iv) the cognizance of such offence is taken by the competent court.

47. In order to bring an alleged act within the ambit of the MCOCA, the aforementioned requirements are mandatory. The word "**in respect of which**" occurring in the definition clause of "continuing unlawful activity" connotes that it is not a normal charge sheet, alleging commission of cognizable offence punishable with imprisonment of 3 years or more. For charging a person of organized crime or being a member of organized crime syndicate, it would be necessary to prove that the persons concerned have indulged in:

(i) an activity,

(ii) which is prohibited by law,

(iii) which is a cognizable offence punishable with imprisonment for three years or more,

(iv) undertaken either singly or jointly,

(v) as a member of organized crime syndicate i.e. acting as a syndicate or a gang, or on behalf of such syndicate.

(vi) (a) in respect of similar activities (in the past)more than one chargesheets have been filed in competent court within the preceding period of ten years, (b) and

the court has taken cognizance of such offence,

(vii) the activity is undertaken by :

a) violence, or b) threat of violence, or intimidation or c) coercion or d) other unlawful means.

(viii) (a) with the object of gaining pecuniary benefits or gaining undue or other advantage or himself or any other person, or (b) with the object of promoting insurgency.

48. In *State of Maharashtra Vs Vishwanath Maranna Shetty, Criminal Appeal No. 1689 of 2012 (arising out of SLP (Crl.) No. 1522 of 2012)* Hon'ble Supreme Court quoted with approval observations made in *Ranjitsing Brahmajeetsing Sharma Vs State of Maharashtra & Anr. (2005) 5 SCC 294,* where accused was a public servant and wherein following questions were posed and answered :-

> 36. "Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is **not guilty** of such offence? Is it necessary for the court to record such a finding? Would there be any machinery available to the court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?"
>
> 38. "We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under section 279 of the Indian Penal Code may debar the court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead **absurdity**. What would further be necessary on the part

of the court is to see the culpability of the accused and his involvement in the commission of an organized crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision."

41. "Every act of negligence or carelessness by itself may not be a misconduct",

42. "The provisions of the Act, therefore, must receive a strict construction so as to pass the test or reasonableness".

43. "Each case, therefore, must be considered on its own facts. The question as to whether he is involved in the commission of organised crime or abetment thereof must be judged objectively. Only because some allegations have been made against a high ranking officer, which cannot be brushed aside, may not by itself be suficient to continue to keep him behind the bars although on an objective consideration the court may come to the conclusion that the evidences against him are not such as would lead to his conviction. In case of circumstantial evidence like the present one, not only culpability or mens rea of the accused should be prima facie established, the court must also consider the question as to whether the circumstantial evidence is such whereby all the links in the

chain are complete".

44. "The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in future must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence."

46. "The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of **broad probabilities**. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have

any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby".

49. Thus, the legal position which emerges is, that the provisions of 'MCOCA' are stringent and deterrent in nature, therefore, require strict interpretation and its interpretation should not lead to absurdity. **Presumption of innocence** is a human right and in view of Article 21 of the Constitution, Liberty of a person cannot be interfered with unless there exist cogent grounds. As far as, 21(4)(a) MCOCA is concerned, there is no difficulty as public prosecutor is generally always given an opportunity by the Court to oppose a bail application moved by an accused, but provision of clause (b) of sub-section (4) of Section 21 poses actual difficulty in practice, as at the stage of hearing bail application, which may be at the initial stage (when the investigative and prosecuting agencies say that, they are at the stage of collecting evidence) and trial Court has to be satisfied about the reasonable grounds of belief that he (i.e. Applicant) is not '**guilty**' of such offence and secondly that he is not likely to commit any offence while on bail. These findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on record only for grant of bail and for no other purpose.

50. Now, according to the principle laid down in ***Ranjit Singh's*** Case (Supra), Court hearing bail has to be satisfied that in all probability applicants may not be ultimately convicted for an offence under MCOCA. The culpability of the accused and his involvement (direct or indirect) in the commission of organized crime. Court (at the time of consideration of bail application), has to consider whether applicant possessed requisite 'mens rea'. Court has to keep in mind the broad principles of law and broader probability of the case and at this stage, Court **has not to weigh the evidence** meticulously and Court has not to arrive at a positive finding that applicant for bail has not 'committed' an offence under the Act. In Short, Court has to maintain a delicate balance between the conflicting interest of community and individual's liberty and has to uphold constitutional values.

51. In order to accomplish the aforesaid task, Court had to very cautiously scrutinize the material brought to its notice, or on record and has to probe deeper. Court has to comprehend the role played and the nature of evidence against each of the applicant and then has to cull out and identify, whether applicant is a **real hardcore**

criminal or member of the syndicate (organized crime) and or whether any 'mens rea' or actual knowledge can be imputed to him, which would show that he is a conspirator, abettor or facilitator and Court has to separate them from others, who do not belong to aforesaid category. Bail provisions are required to be applied strictly to the hardcore criminals and member of the syndicate, but have to be construed liberally with respect to latter class, who are not so covered.

52. With this end in view, this Court had to look for some material or admissible evidence on record as to how they are placed and had to comprehend their exact role. If, they are too close in proximity to hardcore criminal and the applicants, who have direct nexus with such hardcore criminals, in that case 'guilty mens rea' may be imputed or inferred, but if they are lower down the chain and/or the link is too remote, then no requisite **knowledge** or **reasons to believe** can be imputed to them. To my mind, if this exercise is not undertaken by the Court, at this stage of hearing bail applications, the stringent provisions of MCOCA and definitions of 2(d), 2(e) & 2(f), which are **intertwined** in a cyclic order, are prone to be 'misused' by the investigative and prosecuting agencies. Court hearing the bail application has to guard against it and has to perform a profound role of 'gate keeping' and as a 'guardian'. Court cannot sit as a moot spectator and accept the story of prosecution as 'gospel truth'.

53. During arguments, this Court put many queries to both the parties and considered material on record to satisfy itself. This Court could not defer aforesaid 'solemn' function on the ground that evidence is yet to be 'gathered' or case is at the initial stage, as argued by Learned Prosecutor, since a high rank police officer had already granted approval for invoking 'deterrent' provisions of MCOCA, having serious consequences against the liberty of individuals. Police officer, who is of the rank of Add. Commissioner of Police, is required to apply his mind before invoking 'MCOCA' and it should so reflect in the approval order.

54. In my view, such order requires to be a **speaking order** and should atleast, refer or specify, the material on record which was 'considered' by him. Approval u/s 23(1)(a) MCOCA should not be a mere formality. This Court had to go through case diaries and material (made available) to the Court and had to seek answers to many queries about the alleged facts and nature of collected evidence. This Court had to searchingly look for 'material' and whether it was sufficient or satisfactory or not, in view of the fact that approval dated 03.06.2013 given in this case by Joint Commissioner of Police, Special Cell as the said order did not 'outline' any specific material for the

Court to see except vaguely narrating 'story' of the prosecution. On asking, about the complete case diaries regarding day to day investigation/proceedings, Court was informed by Learned Addl. PP that the complete case diaries cannot be made available to the Court before 18th June. On perusal of the material on record, which was made available to the Court, it appeared that the case diaries as required to be maintained u/s 172 of the Code were neither prepared and paginated nor were made readily available to the Court at the time of hearing arguments. Furthermore, no record regarding inquiry proceedings conducted prior to 9th June (as regards fact noted in FIR since third week of April) was recorded or shown to the Court. On 9th May, FIR was registered u/s 120-B r/w 420 IPC. According to prosecution, on 19th May, 2013, provision u/s 409 IPC was added and then on 03rd June, 2013 "MCOCA' was invoked.

55. As far as accused Ashwani Aggarwal @ Tinku (A-1) is concerned, application moved on his behalf was not pressed by Learned Counsel appearing on his behalf. Therefore, application on behalf of A-1 is **dismissed as withdrawn**.

56. In the instance case, as far as the second requirement of Section 21(4)(b), is concerned, it is not at all the case of prosecution that applicants are having criminal proclivities or are likely to commit similar offences again, while on bail.

57. The substance of the allegations against applicants/accused persons are that 'major bookies' (A-1) and Ramesh Vyas were in touch with one Salman of Pakistan (whose identity has not been established) and Dr. Javed @ Javed Chutani, who in turn were in touch with Dawood and Chotta Shakeel, who used to settle and fix amounts or rates of betting player Ajit Chandella and other bookies and punters were in touch with these bookies, who used to do betting. As per the story of prosecution, it was Ashwani Aggarwal @ Tinku (A-1), who was a major bookies who was in contact with Dr. Javed Chotani and with Salman, bookies of Pakistan (whose identity is not established and who is associate of Dr. Javed). Other major bookie Ramesh Vyas was also in contact with Javed and Salman. It is alleged that Tinku and Ramesh were in contact with each other and Tinku was in contact with one Chandresh Jain @ Jupiter. These persons used to allegedly 'fix' the performance of players during spells through **Sunil Bhatia**, who in turn was in touch with former cricketer Baburao Yadav, Ajit Chandella and Kiran Dhole. S. Sreesanth is alleged to be in touch with his friend Jiju and Abhishek Shukla (who was granted bail by ACMM) and Ankit Chauhan was allegedly in touch only with Ajit Chandella.

58. During argument, on asking to clarify the role of applicants, Learned SPP for the State drew attention of the Court towards a flow chart, indicating as to how the applicants were placed and linked to each other in the chain and web of their inter-se relations. Accused and suspects namely Ashwani Aggarwal @ Tinku Mandi, Ramesh Vyas, Sunil Bhatia and other accused, who are not yet arrested are shown separately in yellow colour and are marked as "**syndicate"**. Ajit Chandella was alleged to be a central figure, who co-ordinated with other persons, who are shown in other colours and are on the lower side of the flow chart and web of relations. Admittedly, none of the applicants was in touch with Salman, bookie of Pakistan or with Dr. Javed, Dawood or Chotta Shakeel.

59. On deeply probing the material pointed out by the prosecution, prima facie, it cannot be observed that applicants are members of organized crime syndicate. There is no satisfactory material on record to indicate any nexus of the applicants/accused with the 'underworld' or any organized crime syndicate and on the basis of mere conjectures and surmises, no such link between the applicant/accused and the alleged hardcore criminals can be inferred. There is nothing on record that any of applicants used violence, coercion or intimidated any other person or extorted money or was engaged in any other unlawful activity. Alleged Acts attributed to the applicants/accused prima-facie are not covered within meaning of "continuing unlawful activity" as defined u/s 2 (d) MCOCA or come within the purview of the statement of objects and reasons of MCOCA.

60. Moreover, it cannot be reasonably inferred from the factual matrix brought to the notice of the Court that acts of the applicants/accused come with the definition of 'abetment' as defined in Section 2 (1) (a) of MCOCA. No doubt mens rea has to be inferred from the surrounding circumstances and fact but in the instant case, there is no satisfactory and sufficient material on record and brought to the notice of the Court, to attribute 'actual knowledge' or 'reasons to belief' requisite and mens rea on the part of applicants to show bookies that they were assisting or were engaged in any manner with an 'organized crime syndicate'. This Court is satisfied that there are reasonable grounds for believing that applicants are not likely to be held 'guilty' of any offences u/s 3 & 4 MCOCA, on the basis of material collected so far. This Court also finds that prima facie, the acts ascribed to the applicant/accused cannot also be brought within the preview of Section 420 IPC or u/s 409 IPC.

61. It may not be out of place to note that after the emergence of faster means of communication like internet and mobile, now there are no international boundaries, therefore, law has to recognize and respond to these newly emerging realities. It requires foresightedness and a pro-active approach. There is need of a simple, and unambiguous 'legal framework' to deal with the problem of 'fixing' by players and other 'insiders' or officials and also to deal with the issue of widespread on-line betting and gambling.

62. To conclude, in addition to what has been noted above, this court of the considered opinion that, there is no possibility of applicants/accused persons of fleeing from the process of the law. Applicants/accused persons are not alleged to be habitual offenders by the prosecution. They have clean antecedents. In view of the foregoing reasons, applicants/accused persons (i.e. **A-2 to A-19)** noted above are admitted to bail on furnishing their personal bonds in the sum of Rs.50,000/- with one solvent surety in the like amount each to the satisfaction of this Court/Duty MM with the following conditions:

(i) that applicants/accused shall not directly or indirectly make any inducement threat, or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to the investigating agency.

(ii) that applicants/accused shall not tamper with the evidence in any manner,

(iii) that applicants/accused shall not leave India and shall surrender their passport, if any.

63. It is clarified that expression of any opinion, herein above may not be treated as an expression on the merits of the case and the views expressed above are tentative view formed only for the purpose of deciding the present bail applications. Copy of this order be sent to Superintendent Jail for information. Dasti.

(Vinay Kumar Khanna)
Additional Sessions Judge-04 & Spl. Judge (NDPS),
South-East/New Delhi/10.06.2013