IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION NO. 12478 of 2021

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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BILKISBANU (BILKISBANO) HANIFKHAN @
KALO MUNNO AMIRKHAN JATMALEK
Versus
STATE OF GUJARAT

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Appearance:
MR YATIN OZA, SENIOR ADVOCATE WITH MR ASHISH M DAGLI(2203) for the Applicant(s) No. 1
MR MITESH AMIN, PUBLIC PROSECUTOR WITH MR RONAK RAVAL, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**

Date : 08/02/2022

ORAL JUDGMENT

1. Heard the learned advocates for the respective parties through video conferencing.

2. This application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 (for short “the Code”) seeking regular bail in connection with F.I.R. registered as **C.R. No.11211016200542 of 2020 with Dhrangadhra Taluka Police Station, District Surendranagar** for the offences punishable under Sections 3(1)(i), 3(1)(ii), 3(2) and 3(4) of the Gujarat Control of Terrorism and Organized Act, 2015 (for short “the Act”).

3. Learned Senior Advocate Mr.Yatin Oza has submitted that the applicant may be released on bail since she has been wrongly roped in the aforesaid offence. He has submitted that five FIRs, which are registered against the present applicant, are clubbed together, for which separate trial will be connected, hence the applicant may not be made to suffer the rigors of the trial under the provisions of the Act. He has referred to Article 20(2) of the Constitution of India, and has submitted that no person shall be prosecuted and punished for the same offence more than once and hence, the applicant may be released on bail.

3.1 Learned Senior Advocate Mr.Yatin Oza has further submitted that except one offence, which is registered under Section 307 of the Indian Penal Code, 1860 (for short "the IPC") in the year 2016, all the other offence pertains to offence under Section 379 of the IPC and one offence under the provisions of Section 413 of the IPC.

3.2 While referring to various FIRs and charge-sheets registered against the applicant, it is contended that it cannot be said that the applicant is continuing in unlawful activity of an organized crime or she is part of an organized syndicate as defined under the Clause (f) of Section 2 of the Act. He has submitted that the FIRs, which are registered in the year 2018, 2019 and 2020 in the respective police stations pertains to the offence punishable under Section 379 of the IPC, which is not a serious offence. It is submitted that the last three FIRs are registered on the same day.

3.3 Learned Senior Advocate Mr.Yatin Oza has further submitted that in the afore-noted offence, except the offence punishable under Section 413 of the IPC, the applicant was not named in the FIR, but she has been named in the supplementary charge-sheets. It is submitted that looking to the contents of the FIR and the allegations made against the applicant, it is apparent that she is not remotely connected to an organized crime syndicate. It is submitted by him that the applicant is not a history-sheeter nor she is associated with any kind of syndicate. It is submitted that initially on 08.08.2020, police came to arrest one Hanif and after his arrest, the applicant was later on arrested. It is also submitted by him that after the arrest of one Mehmood Malaji before last August-September, 2020, the applicant has been falsely implicated on his statement. It is submitted that all the offences are registered on the statement of the co-accused, which cannot be considered as substantial piece of evidence and hence, she may be released on bail.

3.4 While referring to the definition of the Act, more particularly Section 2(c), learned Senior Advocate Mr.Yatin Oza has submitted that for filing of more than one charge-sheet for the offence punishable with more than 3 years imprisonment is not enough, but it must be satisfied that the unlawful activity is grave. It is submitted that if it is only an organized crime committed by an accused after the promulgation of the Act, the same has to be considered in light of the previous charge-sheet. In support of his submissions he has placed reliance on the judgment dated 06.05.2021 passed in Criminal Misc. Application No.38191 of 2021 by this Court. It is submitted that the applicant has not misused her liberty when she was granted temporary bail by this Court and hence, looking to her age, the applicant may be released on bail. Further, it is submitted by him that her husband and her minor son has been falsely encountered by the police and looking to her plight, she may be released on bail.

3.5 Finally, it is submitted that at the most, it can be said that the applicant was dealing with stolen articles, which is a minor offence, for which the provisions of the Act do not get attracted and hence, the application may be allowed. No further submissions are advanced.

4. In response to the aforesaid submissions, learned Public Prosecutor Mr.Mitesh Amin has submitted that the applicant along with other 20 accused are involved in the highway thefts. He has referred to the contents of the FIR and has submitted that the investigation reveals that the applicant is a member of an organized crime syndicate. It is also submitted that an FIR has been registered against the present applicant for the offence punishable under Section 307 of the IPC, where she has assaulted the police authorities along with other co-accused. It is submitted that 20 accused against whom the FIRs are filed, are involved in murders, robbery, dacoity, rape, theft, assault on police etc.

4.1 Learned Public Prosecutor Mr.Amin, while referring to the provisions of Act, more particularly definition of Section 2(c) thereof, which defines "continuing unlawful activity", has submitted that the registration of the FIR reveals that the applicant was embroiled in the offence prior to the promulgation of the Act and thereafter also. He has submitted that in the FIR, which is registered under the provisions of Section 413 of the IPC, she is the sole accused, and the same prescribes punishment with imprisonment of life or with imprisonment of either description for a term which may extend to ten years. He has submitted that Section 2(c) of the Act, which defines “continuing unlawful activity”, stipulates that the offence must be punishable with imprisonment for a term of more than 3 years or more and all the offences, which are registered against the applicant stipulate imprisonment for more than 3 years.

4.2 Learned Public Prosecutor Mr.Amin has further submitted that the husband of the applicant was involved in 93 offences and her brother is involved in 68 offence and there are in total 142 offences registered against the syndicate. It is further submitted by him that there were 9 vehicles seized and one of the vehicles belongs to the applicant. It is further submitted that the investigation reveals that the applicant is directly connected with an organized crime syndicate and has been carrying out the activity detrimental to the interest of the State and this Court, while exercising its powers under Section 439 of the Code, has to be conscious of the provisions of Section 20(4)(b) of the Act. Thus, he has submitted that the present application may not be entertained.

5. I have heard the learned advocates appearing for the respective parties. The relevant documents, which are produced on record, are also perused by this Court.

6. The petitioner is seeking regular bail under the provisions of Section 439 of the Code in connection with FIR registered as **C.R. No.11211016200542 of 2020 with Dhrangadhra Taluka Police Station, District Surendranagar** for the offences punishable under Sections 3(1)(i), 3(1)(ii), 3(2) and 3(4) of the Act. The present applicant has been named as accused no.11 along with 20 accused. Against the present petitioner the offence which has been mentioned are as under:-

Sr. No.	Name of the Accused	Name of Police Station, CR No. & Offices	Charge Sheet No. & Status
1.	Bilkisbanu	Vatvad, S'nagar CR No.0019 of 2018 for offence under Sections 379 & 114 of IPC	30/2018 dated 16-7-2018 pending before JMFC at Vatvad as Sessions Case No.342/2018.
2.	-do-	Viramgam Rural Police Station, CR No.0059 of 2016 for offences under sec.307,147, 148, 149, 152,	10/2018 dated 12-2-2018 pending before JMFC

		186 of IPC and Sec.25(1)(1-b), (a) of Arms Act	Court, Viramgam as Sessions Case No.235 of 2018 dated 12-2-2018
3.	-do-	Bajana Police Station, Surendranagar CR No.I-0024 of 2019 for offences punishable under section 379, 114 of the IPC	Investigation is going on
4.	-do-	Bajana Police Station, Surendranagar FIR No.11211058200069 of 2020 for offences punishable under sections 379 and 114 of the IPC	Investigation is going on
5.	-do-	Bajana Police Station, Surendranagar FIR No.11211058200393 of 2020 for offences punishable under section 431 of the IPC	Investigation is going on

It is alleged that as per section 2(1) of the Gujarat Control of Terrorism and Organized Act, 2015 against the present applicant in the past 10 years, 5 offences have been registered out of which in 2 matters charge-sheets have been filed and in 3 matters the investigation is going on and the present accused is helping the other accused in commission of the crime and, therefore, she is a member of the organized crime syndicate. It is alleged that all the accused persons used to chase and recce the vehicles passing on Ahmedabad – Rajkot and Ahmedabad – Kutch National Highways, internal roads of Surendranagar district and highways of other districts during night time using their various vehicles and while tailgating the vehicle going ahead, some of the accused persons sitting in the vehicle, used to slide over the bonnet through the side door in the moving vehicle and climb on the vehicle going ahead from its rear and by cutting its tarpaulin and ropes, they used to steal valuable muddamal such as essential articles, auto parts, agricultural items, electronic items and pass the muddamal to their accomplices in the chasing vehicle and their accomplices used to arrange the stolen muddamal in their vehicle and thereby, they committed innumerable offences of stealing valuable muddamal from moving vehicles in very short span of time in the districts of Surendranagar, Morbi, Ahmedabad Rural, Rajkot Rural, Botad, Mahesana and Banaskantha in collusion and abetment of each other for a long period of time. As the gang is not hesitating to retaliate and attack fatally when the vehicle drivers and police tries to prevent such acts of the gang at the time of stealing, intense fear of the gang has been spread among the drivers, traders and the persons associated with industries and transport community through the highways. The members of this gang, committing organized crimes have committed vehicle theft, stealing valuable muddamal on moving vehicles, violation of the Arms Act, violation of the Prohibition Act, causing injury, loot, robbery, extortion, gang rape, abduction, murder, attempt to murder, preventing public servant from discharging his duty, deadly attack on public servant and causing damage to public property.

It is further stated that the applicant is the sister of accused no.1 and wife of accused no.2 and she used to keep all muddamal articles, which were still in possession and used to help the accused to dispose of so that they could not be caught.

7. The first and foremost contention raised by the learned Senior Advocate Mr.Yatin Oza, while placing reliance on the Article 20(2) of the Constitution of India, is that the applicant cannot be prosecuted and

punished for the same offence more than once. The aforesaid Act as would suggest has been enacted by the legislation keeping in mind to suppress the unlawful activities, which are being committed by the organized crime. The provisions of the Act will get attracted if the offence within the definition of an "organized crime" is committed by an organized crime syndicate, which prescribes the punishment with imprisonment for a term of three years or more undertaken either singly or jointly, by such members. As on today, the provisions of the Act stand firm. So long the provisions remain in the statute, this Court cannot express or critcise its consequences being critical or in conflict with the provisions of Article 20(2) of the Constitution, more particularly while exercising powers under the provision of section 439 of the Cr.P.C. I may say *Dura lex sed lex* (The law may be harsh, but it is the law). Even if it is harsh it has to be followed and enforced.

8. I may extract the relevant provisions of the Act, before dealing the application on merits. The same are as under:

> "***SECTION 2 : Definitions***
>
> *(1) In this Act, unless the context otherwise requires,*
>
> *(a) "abet" with its grammatical variations and cognate expressions, includes-*
>
> *(i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner an organised crime syndicate;*
>
> *(ii) the passing on or publication of without any lawful authority, any Information likely to assist the organised crime syndicate and the passing on or publication of or distribution of, any document or matter obtained from the organised crime syndicate; and*
>
> *(iii) the rendering of any assistance, whether financial or otherwise, to the organised crime syndicate for committing an offence under this Act;*
>
> *(b) "Code" means the Code of Criminal Procedure, 1973;*
>
> *(c) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment for a term of three years or more, undertaken either singly or jointly, as a member of an organised 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;*
>
> *(d) "economic offences" include running of the ponzy schemes and the multi-level marketing schemes with a view to defraud the people at large for obtaining the monetary benefits or large scale organized betting in any form;*
>
> *(e) "organised crime" means any continuing unlawful activity and terrorist act*

including extortion, land grabbing, contract killing, economic offences, cyber crimes having severe consequences, running large scale gambling rackets, human trafficking racket for Prostitution or ransom by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion or other unlawful means;

(f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulging in activities of organised crime;"

9. The offences, as narrated hereinabove, suggest that the first offence, which was registered at Vatvad Police Station, Surendranagar being CR No.0019 of 2018 is under Sections 379 and 114 of the IPC, in which cognizance has been taken and charge-sheet has been filed and the trial is pending before JMFC, Vatvad in Sessions Case No.342/2018. The second FIR has been registered at Viramgam Rural Police Station being C.R.No.0059 of 2016 for the offence punishable under Sections 307, 147, 148, 149, 152, 186 of IPC and under Section 25(1)(1-b) (a) of the Arms Act, which is also pending trial before JMFC, Viramgam. The third offence has been registered at Bajana Police Station, Surendranagar being C.R.No.I-0024 of 2019 for the offence punishable under Sections 379 and 114 of the IPC and another FIR in the same police station has been registered for the very same offence and the offence punishable under Section 413 of the IPC registered before the very same police station, wherein the investigation is pending.

10. This Court has perused the contents of the FIRs and the charge-sheets. Though, at the outset, it is not in dispute that the applicant has not been named in the FIRs, except the offence under Section 413 of the IPC, however, when the investigation progressed, her complicity in the offence is revealed and accordingly, she is arraigned as an accused in the supplementary charge-sheet. This Court has perused the statement of witnesses annexed with the charge-sheet.

11. Merely because the applicant was not named in the FIR, such factor

cannot in any manner influence the discretion of this Court to enlarge her on bail. As noticed hereinabove, there are at least 20 members involved in various offences. The complicity of the applicant can only be known after other members of the syndicate are apprehended and investigated by the policy authorities. P*rima facie*, the investigation reveals that the applicant is a member of the syndicate as she used to deal with the stolen articles, which were looted by the other accused from various highways of the State. The material on record reveals that *prima facie* the applicant along with other co-accused, who are relatives and family members, have formed an organised crime syndicate for committing the offences, and her role as alleged will satisfy the requirement of section 2(1)(a) which defines "abet".

12. At this stage, it would be apposite to refer to the decision of the Supreme Court in the case of <u>Prasad Shrikant Purohit vs State Of Maharashtra & Anr,</u> (2015) 7 SCC 440, whereby the Supreme Court, while examining the *peri materia* provisions of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter called "MCOCA"), has held thus:-

> "*42. The definition of 'continuing unlawful activity' under Section 2(1)(d) mainly refers to an activity prohibited by law. The said activity should be a cognizable offence, punishable with imprisonment of three years or more. The commission of such offence should have been undertaken either by an individual singly or by joining with others either as a member of an 'organized crime syndicate' or even if as an individual or by joining hands with others even if not as a member of a 'organized crime syndicate' such commission of an offence should have been on behalf of such syndicate. It further states that in order to come within the definition of 'continuing unlawful activity' there should have been more than one charge-sheet filed before a competent Court within the preceding period of 10 years and that the said Court should have taken cognizance of such offence.*
>
> *43. Before getting into the nuances of the said definition of 'continuing unlawful activity', it will be worthwhile to get a broad idea of the definition of 'organized crime' under Section 2(1)(e) and 'organized crime syndicate' under Section 2(1)(f). An 'organized crime' should be any 'continuing unlawful activity' either by an individual singly or jointly, either as a member of an 'organized crime syndicate' or on behalf of such syndicate. The main ingredient of the said definition is that such 'continuing unlawful activity' should have been indulged in by use of violence or threat of violence or intimidation or coercion or other unlawful means. Further such violence and other activity should have been indulged in with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. Therefore, an 'organized crime' by nature of violent action indulged in by an individual singly or jointly either as a member of an 'organized crime syndicate' or on behalf of such syndicate should have been either with an object for making pecuniary gains or undue economic or other advantage or for promoting*

insurgency. If the object was for making pecuniary gains it can be either for himself or for any other person. But we notice for promoting insurgency, there is no such requirement of any personal interest or the interest of any other person or body. The mere indulgence in a violent activity etc. either for pecuniary gain or other advantage or for promoting insurgency as an individual, either singly or jointly as a member of 'organized crime syndicate' or on behalf of a such syndicate would be sufficient for bringing the said activity within the four corners of the definition of 'organized crime'

44. An 'organized crime syndicate' is a group of two or more persons who by acting singly or collectively as a syndicate or gang indulge in activities of 'organized crime'.

45. By conspectus reading of the above three definitions, if in the preceding 10 years from the date of third continuing unlawful activity if more than one charge-sheet has been filed before a competent Court which had taken cognizance of such offence which would result in imposition of a punishment of three years or more, undertaken by a person individually or jointly either as a member of an 'organized crime syndicate' or on its behalf, such crime if falls within the definition of 'organized crime', the invocation of MCOCA would be the resultant position."

The Supreme Court, while examining the provisions of Section 2(1)(d) in MCOCA Act, which is *pari materia* to Section 2(1)(c) of the Act, which defines "continuing unlawful activity" has held that the commission of such activity should be a cognizable offence, punishable with imprisonment of three years or more and such offence should have been undertaken either by an individual singly or by joining with others either as a member of an 'organized crime syndicate' or even if as an individual or by joining hands with others even if not as a member of a 'organized crime syndicate' and such commission of an offence should have been on behalf of such syndicate. Unquestionably, the offences which are registered against the applicant stipulate punishment of more than three years. It is further held by the Apex Court that in order to come within the definition of 'continuing unlawful activity' there should have been more than one charge-sheet filed before a competent court within the preceding period of 10 years and that the said Court should have taken cognizance of such offence.

13. It is not in dispute that before the promulgation of the Act, i.e. on 05.11.2019, the applicant has been arraigned as an accused under the provisions of Sections 379 and 307 of the IPC and after the promulgation in 3 offences under Section 379 and 413 of the IPC. The investigation for the

said offence is still going on. The registration of the offences on the same day cannot dilute the offence registered under the Act, and such registration of the FIRs cannot *ipso facto* influence the grant of bail.

14. While examining the definition of an ‘organized crime’ under Section 2(1)(e) and ‘organized crime syndicate’ under Section 2(1)(f) of the MCOCA Act, which are *peri materia* to Section 2(1) (e) and (f) of the Act, the Supreme Court has held that the main ingredient of the definition of "organized crime syndicate and organized crime" is that such continuing unlawful activity should have been indulged in by use of violence or threat of violence or intimidation or coercion, or other unlawful means. Further, such violence and other activities should have been indulged in with an objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or for promoting insurgency. Therefore, an 'organized crime' by nature of violent action indulged in by an individual singly or jointly either as a member of an 'organized crime syndicate' or on behalf of such syndicate should have been either with an object for making pecuniary gains or undue economic or other advantage or for promoting insurgency. It is further held that mere indulgence in a violent activity etc. either for pecuniary gain or other advantage or for promoting insurgency as an individual, either singly or jointly as a member of 'organized crime syndicate' or on behalf of a such syndicate would be sufficient for bringing the said activity within the four corners of the definition of 'organized crime'. *Prima facie,* the contents of the FIRs, and the charge-sheets disclose, that the applicant along with co-accused singly and jointly while acting as a member of an ‘organised crime syndicate’ was promoting and carrying out the ‘organised crime’.

15. The applicant is seeking bail under Section 439 of the Code. While examining the case of the applicant, against whom the FIR under the Act

has been registered, this Court cannot be oblivious of the the provisions of Section 20(4) of the Act. The same read thus:

> "*20 (4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond. unless -*
>
> *(a) the Public Prosecutor has been 'given an opportunity to oppose the application of such release; and*
>
> *(b) where the Public Prosecutor opposes the application,. the Special Court is satisfied that there are reasonable grounds for believing that accused is not guilty of committing such offence and that he is not likely to commit any offence while on bail'"*

16. The provisions of clause (b) of sub-section (4) of Section 2 of the Act mandates that the Court, while considering the case of an accused for bail has to be satisfied that there are reasonable grounds for believing that the accused is not guilty of committing such offence and that he is not likely to commit any offence while on bail. Thus, this being a Special Act, dealing with organized crime by an organized crime syndicate, the Court is required to record its opinion that there are reasonable norms for believing that the accused is "not guilty" of the alleged offence. Such satisfaction is an inbuilt mechanism of the aforesaid provision. Looking to the overall contents of the FIRs and the charge-sheets and the role attributed to the applicant, the applicant is unable to carve out any exception, which can impress this Court to from a *prima facie* opinion, which can satisfy the expression "*reasonable grounds for believing that accused is not guilty of committing such offence*'

17. So far as reliance placed on the judgment dated 06.05.2021 passed in Criminal Misc. Application No.3891 of 2021 is concerned, the same will not rescue the applicant since the Court was dealing with application seeking bail for offence under the Act, which was registered pursuant to the FIRs registered for the offences under the IPC prior to the promulgation of the Act.

18. In view of the foregoing reasons and analysis, the present application fails; the same is hereby rejected. RULE discharged.

Sd/-
(A. S. SUPEHIA, J)

ABHISHEK/1