CASE NO.:
Appeal (crl.) 523 of 2005

PETITIONER:
Ranjitsing Brahmajeetsing Sharma

RESPONDENT:
State of Maharashtra & Anr.

DATE OF JUDGMENT: 07/04/2005

BENCH:
N. Santosh Hegde,B.P. Singh & S.B. Sinha

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No.3879 of 2004)

S.B. SINHA, J :

Leave granted.

Interpretation and application of the Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOCA') is involved in this appeal which arises out of a judgment and order dated 16th July, 2004 passed by a learned Single Judge of the Bombay High Court in Criminal Application No. 572/2004 refusing bail to the Appellant herein.

The Appellant is a former Commissioner of Police. He was posted in the city of Pune in the said capacity between 30th April, 2000 and 31st December, 2000. He was appointed Commissioner of Police, Mumbai on or about 1st January, 2003. Allegedly, he was so posted upon supercession of a few officers. A disciplinary proceeding was initiated against him on 25.11.2003 but without taking any further action thereupon, he was allowed to superannuate on 30.11.2003.

One Abdul Karim Ladsa Telgi (hereinafter referred to as 'Telgi') was arrested and proceeded against for alleged commission of offence of printing counterfeit stamps and forgery in various States including the State of Maharashtra. He was lodged in Bangalore Jail since November, 2001.

During the Appellant's tenure as Commissioner of Police, Pune, fake stamp papers worth Rs. 2.98 lacs were seized whereupon a first information report bearing C.R. No. 135 of 2002 came to be registered at Bund Garden Police Station, Pune under Sections 120-B, 255, 249, 260, 263(a) and (b), 478, 472 and 474 read with Section 34 of the IPC. The said offence was being investigated by one Mr. Deshmukh but having regard to the magnitude thereof, three teams lead by one Mr. S.M. Mushrif, Addl. Commissioner of Police (Crime) were formed. The said Mr. Mushrif is said to be a brother of a Minister of the Government of Maharashtra. On or about 16.07.2002, however a proposal was mooted to invoke Section 3 of the MCOCA and upon obtaining the opinion of Senior Public Prosecutor therefor, the same was invoked.

One Mr. Mulani, Assistant Commissioner of Police (Crime Branch) had been included in the field work team along with other officers in connection with the investigation of the said crime. Overall supervision of the said crime, however, was entrusted to one Mr. Maheshgauri, Joint Commissioner of Police.

On the ground of alleged involvement in the aforementioned case, the

Appellant was arrested on 1.12.2003 whereafter a remand application for 15 days of police custody was made but he was remanded to police custody from 2.12.2003 to 9.12.2003 and thereafter to judicial custody. His application for bail was rejected by the Special Court, Pune by an order dated 19.1.2004 whereupon he filed an application for grant of bail before the High Court. By reason of the impugned order, the said application has been rejected.

Before adverting to the rival contentions raised in this appeal, we may notice some admitted facts.

On the basis of the information received by the Appellant and on his direction to intercept the car and on his telephonic instruction thereabout, a first information report dated 7.6.2002 was lodged. During the course of the investigation of the said case, number of places were raided and huge quantity of stamps, printing machinery worth Rs. 21,28,47,63,824/- were seized from several accused persons.

The provisions of the MCOCA were invoked against Telgi who figured as accused No. 23 and Mr. Shabir Sheikh, accused No. 25 on the ground that a period of 90 days was coming to an end on 3.9.2002. On or about 22.11.2002, Mr. Jaiswal, DIG, SRPF, Mumbai granted an approval to invoke the provisions of the MCOCA whereupon DCP, Dr. Jai Jadhav took over investigation of the said case.

Before the High Court, the role of the Appellant was said to be rendition of help and support to organized crime syndicate by certain acts of omission and commission, i.e., by rendering help or support to Mulani, a co-accused when he was Commissioner of Police, Pune and through API-Dilip Kamat, co-accused while he was the Commissioner of Police, Mumbai.

The allegations against the Appellant as have been noticed by the High Court are as under:

"I. The applicant knew the adverse antecedents of Mulani since 1996. The respondents have relied on the following circumstances and the sequence of events in support of their case against the applicant.

(a) A complaint about corruption was received in respect of Mulani on 14.9.1996, who was then the Sr. Inspector of Police at Dongri Police Station, Mumbai. A copy of this complaint was also received by the applicant, who was then working as Jt. Commissioner of Police, Mumbai and bears his signature on it. The said complaint was forwarded by the applicant to Anti Corruption Bureau, Mumbai.

(b) In the affidavit dated 29.10.2002 filed by the applicant in his capacity as Commissioner of Police, Pune before the Maharashtra State Administrative Tribunal (MAT) against Mulani he has categorically affirmed that conduct of Mulani was found to be highly suspicious in sensational murder case of one Faizulla Khan.

(c) On 6.9.2002, the Investigation was handed over to DCP Jay Jadhav as by then the provisions of MCOCA were invoked against two of the Accused in C.R. No. 135/2002. New teams were formed for the investigation under MCOCA. While forming the team, the applicant included Mulani's name in the investigation team in connection with the investigation of C.R. No. 135/2002 (Page No. 12694 of chargesheet) though he was specifically told by DCP Jay Jadhav not to include him in the

team (statement of CDP Jay Jadhav Page 11941 of the Chargesheet). It was on the pretext that PI Deshmukh was too overburdened being in charge of Bund Garden police station and it was only Mulani who knew all the facets of the case.
(d) The investigation revealed that Ashok Basak, Addl. Chief Secretary (Home), State of Maharashtra (for short, "Basak") had informed the applicant on 6.9.2002 about Mulani being in telephonic contact with Telgi, who was then lodged in Central Jail at Bangalore and his tainted role in fake stamp case. This information was passed on to Basak by Adhip Choudhari, Addl. Chief Secretary (Home), Government of Karnataka. The applicant had assured Ashok Basak that he would remove Mulani from investigation. Despite this, Mulani was not neutalised by the applicant and he was allowed to continue in the investigation team.
(e) There is no dispute that atleast on 6.9.2002 Basak had shared the said information with the applicant.
(f) A complaint of corruption dated 15.7.2002 received from President, Pune Forum Citizen, against ACP Mulani, was received by the applicant on 31.8.2002.
(g) Mulani was transferred to Jat, Dist-Sangli by the order of the Government dated 4.9.2002. This order was received in Pune on 6.9.2002. The order of transfer of Mulani was not served till he had obtained a stay against the transfer from the MAT on 6.9.2002 (Page 12843).
(h) The Stay was for transfer to JAT Division and not for internal transfer. Yet, Mulani was not transferred from the investigation of C.R. No. 135/2002, on the other hand, Mulani was sent to Bangalore on 18.9.2002 all alone without the I.O.
(i) The Government of Maharashtra had constituted Special Task Force (STF) for enquiring into all the pending cases relating to counterfeit stamps in the State of Maharashtra and the applicant was appointed as the Chairman to head the STF. Not a single meeting of this STF was convened by the applicant.
(j) Mulani was allowed to be associated with the investigation till 30.9.2002 and he was transferred to Special Branch only on 30.9.2002 (Page No. 12846).
(k) On 10.10.2002 certain names were recommended for reward in connection with the investigation of C.R. No. 135/2002. Although Mulani’s name was not listed initially, it was specifically added by the applicant in his own handwriting.
(l) The applicant did not ensure the filing of a properly reasoned chargesheet in C.R. No. 135/2002 P.S. Bund Garden and did not ensure the timely application of MCOCA to the whole case. Reference statement of the Director General of Police, Maharashtra Shri S.C. Malhotra. The filing of the chargesheet was hurried through by the applicant (Reference statement of Kishore Jadhav - Page 11947).
II. On this background, on and from 1.1.2003 the applicant was posted as Commissioner of Police,

Mumbai.
(a) The applicant was well aware about various cases of stamps scam which were pending in Mumbai, while he was working as Jt. Commissioner, Mumbai during the year on 8.6.2002, he had sent a wireless message calling for the details of these cases.
(b) On 9.1.2003, DIG Jaiswal alongwith Addl. D.G. Karnataka Shri Kumar personally met and informed the applicant about Telgi enjoying all comforts in his flat at Cuffe Parade, Mumbai. He ought to have immediately taken coercive action and ensured its implementation.
(c) Thereafter, a written report (Page 12181) dated 10.1.2003 was sent by DIG Jaiswal setting out in detail the facts noticed by him during their visit to Cuffe Parade flat. On this letter, the applicant had made a noting that API Kamat and the constables be placed under suspension with immediate effect. However, the record shows that they were not suspended till 15.1.2003 and no active steps were taken by the applicant to ensure the immediate suspension though it was within his powers to ensure that the same was done with immediate effect. The noting dated 15.1.2003 on (Page Nos. 12202 and 12203) clearly shows that till 15.1.2003 these police personnel were not suspended.
(d) It is significant to mention that DIG Jaiswal in his report had specifically voiced an apprehension that a big seizure may be concocted in order to protect the erring police officer, API Dilip Kamat and in fact, this apprehension came though because of the conspiracy that was hatched between the officials of Crime Branch, Mumbai (Statement of ACP Padwal at Page No. 11087).
III. According to the prosecution, following circumstances could not be explained by the applicant.
(a) The fact that he had a closed door meeting with A.K. Telgi in isolation between himself and A.K.L. Telgi only to the exclusion of other high ranking officers (Statement of ACP Supriya Patil at Page No. 11912, DCP (H.Q.) Koregaonkar at Page No. 11898 and DCP Jay Jadhav at Page No. 111940).
(b) The applicant knew A.K.L. Telgi even when he was at Mumbai earlier is also apparent from the statement of DCP Vasant Koregaonkar (Page No. 11898)
(c) Brain Maping (P-300) of AKL Telgi, shows that he had given positive responses to the question relating to payment made to the applicant, favour shown by the applicant in Pune cases and facilities provided in Mumbai custody by the applicant (Page No. 12960 to 12963)."

The plea taken by the Appellant herein about his innocence was rejected by the High Court upon arriving the following findings:

(i) Despite possession of powers which he could have used against accused involved in the case, as also against the erring officers, he protected and projected Mulani and Kamat as good and responsible officers. The Appellant was aware of the tainted background and adverse antecedents of Mulani and both the accused visited Bangalore with him. After the provisions of the MCOCA were invoked and Dr.

Jai Jadav was appointed as investigating officer, the name of Mulani was included in the investigation team by the Appellant herein. A calculated attempt was made by the Appellant herein to continue Mulani in the investigation team and was assigned responsible role to play. Despite his transfer to Jat, district Sangli by the order dated 4.9.2002 which was received on 6.9.2002, Mulani was not neutralized till 30th September, 2002 although the Appellant had received an information from the Additional Chief Secretary, Ashok Basak that Mulani had been contacting Telgi telephonically who was then lodged in Central Jail.

(ii) "Instead, he allowed Mulani to continue in the investigation team even after 6.9.02, this lapse on the part of the applicant under any circumstances cannot be termed as innocent, innocuous and inadvertent. This observation becomes stronger if we look at the subsequent events, i.e. overtacts of the applicant after 6.9.02. After 6.9.02 Mulani was continued in the investigation team. He was sent to Bangalore all alone on 18.9.02. When a proposal was placed before the applicant to recommend names of officers for rewards for their outstanding role in the fake stamps case consisting of nine names, the applicant on 10.10.02 included the name of Mulani in his own handwriting in the said list of officers. This cannot be termed as innocent dereliction of duties. At every stage it, prima facie, shows that there was a calculated attempt on the part of the applicant to continue Mulani in the investigation team and see that he is projected as most efficient officer despite the knowledge of his adverse antecedents and the tainted role in the investigation of fake stamps case."

(iii) "The facts of the case would go to show that his association with Mulani were with actual knowledge or atleast there are reasonable grounds to believe that the applicant was aware that Mulani was engaged in assisting the organised crime syndicate of Telgi."

(iv) "In my opinion, the acts and commissions on the parts of the applicant in helping and supporting Mulani and Kamat would, prima facie, fall within the first part of Section 24 and therefore it would not be correct to state that Section 24 is not attracted. The role of the applicant clearly demonstrates that he rendered help and support to the member of an organised crime syndicate."

(v) "In so far as "Cuffe Parade flat" episode is concerned, it is true that the applicant took over as Commissioner of Police Mumbai on 1.1.2003. The custody of Telgi was with Mumbai police from 20.10.02 to 21.1.03. However, fact remains that on 9.1.2003, DIG Jaiswal along with Addl. D.G. Karnataka-Shri Srikumar had personally met the applicant and informed him about Telgi's enjoying all comforts in his flat at Cuffe Parade, and conducting his unlawful activities on mobile phone, requesting him to take immediate coercive action and ensure its implementation."

(vi) As regard application of the provisions of the MCOCA, the High Court was of the opinion that as the Appellant knowingly facilitated the commission of an organized crime through Mulani at Pune and Kamat at Mumbai, prima facie, he committed an offence under Section 3(2) of the MCOCA and having abetted them also committed an offence under Section 4 thereof.

Submissions of Mr. V.R. Manohar, learned senior counsel appearing on behalf of the Appellant are as under:

(a) The Appellant did not include Mulani in the investigating team. In fact he was included in the field track team by Mr. Mushrif for the purpose of tracing and arresting accused persons which does not come within the purview of the investigation of the offence or interrogation of the accused.

(b) As regard the allegation regarding abetment of Kamat, it was pointed

out that when custody of Telgi was taken by Mumbai Police between 20th October, 2002 and 21.st January, 2003, one Mr. M.N Singh was the Commissioner of Mumbai Police during which period Telgi was allegedly not kept in custody and was staying in his own flat or hotel and only on or about 9th January, 2003 when Mr. Jaiswal upon visting the flat of Mr. Telgi found out the same and brought it to the notice of the Appellant orally whereupon the order of suspension was passed on telephone by him. On 10th January, 2003 which happened to be a Friday, Jaiswal addressed a letter to the Chief Secretary, Maharashtra with a copy to the Appellant which was received in his Office on 12th January, 2003 and on that day itself an order of suspension was passed but the Joint Commissioner actually placed Kamat and others on suspension on 15th January, 2003.

(c) Even during the raids made in the Bhiwandi Godown on the night of 9th January, 2003 seizure of stamps worth Rs.820 crores was made, out of which some were found to be genuine ones and, thus, such seizures whether directed against Telgi or Sheikh having resulted in demolition of Telgi empire, the Appellant cannot be said to have aided or abetted the commission of any offence. In any event, having regard to the finding of the learned Single Judge that the Appellant thereby did not aid or abet Telgi who was proceeded against under MCOCA, but merely abetted the abettors and, thus, the provisions thereof are not applicable.

(d) So far as alleged acts of omissions and commissions on the part of the Appellant between the period 9th January, 2003 to 15th January, 2003 are concerned, even in the chargesheet he is said to have only aided Mulani and, thus, the provisions of the MCOCA are not applicable.

(e) As regard the allegations that the Appellant continued to keep Mulani in the investigation team, our attention has been drawn to the fact that immediately after the order of transfer was passed on 4th September, 2002, Mulani moved the Administrative Tribunal and obtained an order of stay on 6th September, 2002 which was in the following terms:

"The Applicant, who is working as Assistant Commissioner of Police, Crime Branch, Pune has to retire within about 11 months. His service record seems to be very good. Hence transfer order of the applicant dated 04-09-2002 is stayed until further orders. Respondents to file a reply."

It is only on that date, the Appellant was informed by Shri Basak about Mulani's integrity. Mulani was pulled out of the Crime Branch and posted in a Special Branch by the Appellant despite threat of contempt and in fact a contempt petition was filed by Mr. Mulani in the Maharashtra State Administrative Tribunal, at Mumbai.

(f) Even the Director General of Police had certified Mulani as an excellent officer in the year 2003 and upon invocation of MCOCA, Dr. Jai Jadav was appointed as investigating officer. Though he was required to find out suitable officers to be included in his team, Dr. Jai Jadav made inquiries from the Appellant as also the Joint Commissioner, as to the names of the suitable officers therefor and the name of Mulani was suggested. Thus, it would not be correct to contend that Mr. Mulani was kept in the investigating team by the Appellant.

(g) Even assuming that there had been gross dereliction or carelessness on the part of the Appellant, there is nothing on record to show that the Appellant had benefitted himself in any manner whatsoever or had the requisite mens rea.

As regard filing of chargesheet against the wife, daughter and brother of Telgi, there had been difference of opinion between Mushrif and Deshmukh wherewith the Appellant was not involved. Mr. Jaiswal prejudged the Appellant's guilt.

(h) As regard initiation of disciplinary proceeding, our attention was invited to the fact that the Special Investigation Team (SIT) was constituted on 2nd November, 2002 in the following terms:

"Government Resolution : Government has decided to create a Special Investigation Team (S.I.T.) to make in-depth investigation and follow-up of action in bogus stamp case headed by Shri S.K. Jaiswal, Deputy Inspector General of Police S.R.P.F., Mumbai. He will be assisted by one Deputy Commissioner of Police, one Assistant Commissioner of Police, and three inspectors of Police. The names of these team members will be decided by the Director General of Police. The infrastructural support in terms of manpower, vehicle and communication, etc., will be provided by the Pune City Police.

The team will report to Shri A.K. Agarwal, Additional Director General of Police, C.I.D., Pune.

The Special Investigation Team will also look into the charges made by Shri Mushrif, Additional Commission of Police, Pune."

Mr. Jaiswal found the Appellant's guilt of dereliction of duty as early as on 3rd April, 2003 and despite the limited jurisdiction of the Special Investigation Team, he exceeded his brief implicating the Appellant. In this connection our attention has also been drawn to the recommendation made by SIT against various persons who do not figure as accused, viz., Prakash Deshmukh, Ashok Kamble, Kishore Jadhav, DCP Dr. Jai Jadhav, Vasant Koregaonkar which are as under:

"(v) Number of acts of omission and commission during the course of investigation lie squarely at door of Senior formations of Pune City Police. This investigation was extremely crucial as the case had national ramifications and the financial structure of the State of Maharashtra and Govt. of India was being undermined systematically. Hence, it is for the Govt. to consider appropriate action against Shri S.M. Mushrif, Shri M.S. Maheshgauri and Shri R.S. Sharma for their several acts of omission and commission as detailed earlier."

It has been pointed out that despite such adverse comments both Mushrif and Maheshgauri have been cited only as witnesses and, thus, the Appellant was discriminated against.

(i) As regard application of MCOCA, the learned counsel would contend that the provisions thereof cannot be given such wide interpretation as has been done by the learned Single Judge.

(j) As Mulani never visited Bangalore alone, the learned Judge committed a factual error in this behalf.

(k) As regard recommendations for grant of reward in favour of Mulani, it was pointed out that the learned Judge had misread and misinterpreted

the context in which such recommendation was made. It was pointed out that DCP Zone II on 10.10.2002 gave a list of officers who have done the best works which is as under:

"(1) P.I. Shri Prakash Deshmukh
(2) PSI Shri Chavan
(3) PC Shri Katke N.K. BN 4059
(4) PC Shri Steven Sundaram, B.N. 756
(5) P.I. Shri Kadam (who has refused to take up investigation)
(6) API Shri Thakare
(7) PSI Shri Ballal
(8) API Shri Karnire
(9) Civilian Computer Software Engineer, Mr. Davis K.T.
(10) H.C. Lele"

According to the Appellant, however, in order of priority, the name of (1) PSI Shri Chavan, (2) P.I. Shri Prakash Deshmukh (3) P.I. Shri Kadam, (4) PC Shri Steven Sundaram, B.N. 756, (5) PC Shri Steven Sundaram, B.N. 756, (6) H.C. Lele were recommended and, furthermore, the following endorsement was made:

"I have indicated priority above. Also include names of ACP Mulani/Yadav and Davies in the text."

The names of ACP Mulani/Yadav and Davies, thus, were directed to be included only in the text, i.e., the history of the case and not for the purpose of grant of any reward.

Mr. A. Sharan, the learned Addl. Solicitor General appearing on behalf of the CBI, on the other hand, would contend that the Appellant had known Telgi both as a scamster as well as a person for a long time, as would appear from the statement of one Mr. R.S. Mopalwar, an IAS officer

It was urged that from the statement of Mr. Maheshgauri, it would appear that the Appellant met Telgi alone, apparently for the purpose of interrogation, but no record thereof is available. The said statement is supported by Smt. Supriya Patil Yadav and Shri Vasant Koregaonkar, an affidavit of Mr. Mushrif in the Public Interest Litigation by Shri Anna Hazare.

According to the learned counsel the Appellant has helped those officers who did not want to make Telgi's wife, daughter and brother as accused by dragging his feet.

Mr. Sharan would contend that Mulani had in fact been involved in the investigating team work, as would appear from the notesheet file of investigation, inasmuch as he had interrogated some witnesses. Our attention has also been drawn to the answers given by the Appellant himself in response to the questionnaire dated 7.11.2003 contending that the Appellant accepted that Mulani had not been taken out of the team till 30th September, 2002 although he was transferred on 4th September, 2002.

Our attention has further been drawn to the brain mapping test of Telgi to show that the Appellant had accepted unlawful gratification from him.

According to the learned counsel, since beginning the Appellant had knowledge about the magnitude of the offence but despite the same, he helped Kamat by not implementing his order of suspension till 15th January, 2003 and, thus, allowed him to take steps to protect himself by arranging a fake seizure as was apprehended by Mr. Jaiswal. Drawing our attention to

the judgment of the learned Single Judge, it was contended that having regard to the provisions of the MCOCA, the Appellant must be held to have conspired with the members of the organizing team by facilitating commission of the crime. According to the learned counsel, in view of the sub-section (4) of Section 21 of the MCOCA, the High Court has rightly refused to grant bail to the Appellant.

MCOCA was enacted to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang, and for matters connected therewith or incidental thereto.

The Statement of Objects and Reasons for enacting the said Act are as under:

"Organised crime has been 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, killing, 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 noticed 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.

2. The existing legal frame work i.e. the penal and procedural laws and 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."

Section 2 is the interpretation clause. Section 2(1)(a), (d), (e) and (f) whereof read thus:

"2(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;
(d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one chargesheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;
(e) "organised crime" means any continuing unlawful activity 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, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;
(f) "organised 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 organised crime;"

Sub-section (2) of Section 3 provides for punishment for organized crime in the following terms:

"(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organized crime or any act preparatory to organized crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life, and shall also be liable to a fine, subject to a minimum fine of rupees five lacs."

Section 4 provides for punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate. Section 20 provides for forfeiture and attachment of property, sub-section (2) whereof reads as follows:

"(2) Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him, to pass on order that all or any properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the properties so attached shall stand forfeited to the State Government, free from all encumbrances."

Section 21 provides for modified application of certain provisions of the Code of Criminal Procedure, sub-section (4) whereof is as under:

"(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 \026
(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 Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

Section 24 reads, thus:
"24. Whoever being a public servant renders any help or support in any manner in the commission of organised crime, as defined in Clause (e) of Section 2, whether before or after the commission of any offence by a member of an organised crime syndicate or abstains from taking lawful measures under this act or intentionally avoids to carry out the directions of any Court or of the superior police officers in this respect, shall be punished with imprisonment of either description for a term which may extend to three years and also with fine."

The interpretation clause as regard the expression 'abet' does not refer to the definition of abetment as contained in Section 107 of IPC. It refers to such meaning which can be attributed to it in the general sense with grammatical variations and cognate expressions. However, having regard to the cognate meaning, the term may be read in the light of the definition of these words under Sections 107 and 108 of the Indian Penal Code. The inclusive definition although expansive in nature, "communication" or "association" must be read to mean such communication or association which is in aid of or render assistance in the commission of organized crime. In our considered opinion, any communication or association which has no nexus with the commission of organized crime would not come within the purview thereof. It must mean assistance to organised crime or organised crime syndicate or to a person involved in either of them. It, however, includes (a) communication or (b) association with any person with the actual knowledge or (c) having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate. Communication to, or association with, any person by itself, as was contended by Mr. Sharan, would not, in our considered opinion, come within meaning of the aforementioned provision. The communication or association must relate to a person. Such communication or association to the person must be with the actual knowledge or having reason to believe that he is engaged in assisting in any manner an organised crime syndicate. Thus, the offence under Section 3(2) of MCOCA must have a direct nexus with the offence committed by an organised crime syndicate. Such abetment of commission of offence must be by way of accessories before the commission of an offence. An offence may be committed by a public servant by reason of acts of omission and commission which would amount to tampering with the investigation or to help an accused. Such an act would make him an accessory after the commission of the offence. It is interesting to note that whereas Section 3(2) having regard to the definition of the term 'abet' refers directly to commission of an offence or assisting in any manner an organised crime syndicate, Section 24 postulates a situation where a public servant renders any help or support both before or after the commission of an offence by a member of an organised crime syndicate or abstains from taking lawful measures under this Act.

Interpretation clauses contained in Sections 2(d), 2(e) and 2(f) are inter-related. An 'organised crime syndicate' refers to an 'organised crime' which in turn refers to 'continuing unlawful activity'. As at present advised, it may not be necessary for us to consider as to whether the words "or other

lawful means" contained in Section 2(e) should be read "ejusdem generis"/ "noscitur-a-sociis" with the words (i) violence, (ii) threat of violence, (iii) intimidation or (iv) coercion. We may, however, notice that the word 'violence' has been used only in Section 146 and 153A 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 place only in the Contract Act. If the words 'unlawful means' is to be widely construed as including any or other unlawful means, having regard to the provisions contained in Sections 400, 401 and 413 of the 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 the Parliament.

The Statement of Objects and Reasons clearly state as to why the said Act had to be enacted. Thus, 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 within the definition of organised crime and committed by an organised 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 chargesheet may be filed. As we have indicated 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 ingredient for commission of a crime under MCOCA.

In Shri Ram Vs. The State of U.P. [AIR 1975 SC 175], it was stated:

"6\005Thus, in order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107."

Sub-section (2) of Section 3 inter alia provides for facilitating conspiracy or abetting or commission of a crime by a person knowingly or any act preparatory to organised crime.

The expression 'conspiracy' is not a term of art. It has a definite connotation. It must be read having regard to the legal concept which is now well-settled having regard to several decisions of this Court in Kehar Singh and others Vs. The State (Delhi Admn.) [AIR 1988 SC 1883], State of Karnataka Vs. L. Muniswamy and others [AIR 1977 SC 1489] and P.K. Narayanan Vs. State of Kerala [1995 (1) SCC 142].

In Kehar Singh (supra), it is stated:

"275. From an analysis of the section, it will be

seen that Section 10 will come into play only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence. There should be, in other words, a prima facie evidence that the person was a party to the conspiracy before his acts can be used against his co-conspirator. Once such prima facie evidence exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was first entertained, is relevant against the others. It is relevant not only for the purpose of proving the existence of conspiracy, but also for proving that the other person was a party to it. It is true that the observations of Subba Rao, J., in Sardar Sardul Singh Caveeshar v. State of Maharashtra [(1964) 2 SCR 378 : AIR 1965 SC 682] lend support to the contention that the admissibility of evidence as between co-conspirators would be liberal than in English law. The learned Judge said : (at p. 390) "The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression "in reference to their common intention" is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it\005."

In P.K. Narayanan (supra), it is stated: "10. The ingredients of this offence are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means an act which by itself may not be illegal. Therefore the essence of criminal 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 and it is a matter of common experience that direct evidence to prove conspiracy 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. But if those circumstances are compatible also with the innocence of the accused persons then it cannot be held that the prosecution has successfully established its case. Even if some acts are proved to have been committed it must be clear that they were so committed in pursuance of an agreement made between the accused who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. From the above discussion it can be seen that some of the circumstances relied upon by the prosecution are not established by cogent and reliable evidence. Even otherwise it cannot be said that those circumstances are incapable of any other

reasonable interpretation."

In Saju Vs. State of Kerala [AIR 2001 SC 175], this Court held:
"7. In a criminal case the onus lies on the prosecution to prove affirmatively that the accused was directly and personally connected with the acts or omissions attributable to the crime committed by him. It is a settled position of law that act or action of one of the accused cannot be used as evidence against another. However, an exception has been carved out under Section 10 of the Evidence Act in the case of conspiracy. To attract the applicability of Section 10 of the Evidence Act, the court must have reasonable ground to believe that two or more persons had conspired together for committing an offence. It is only then that the evidence of action or statement made by one of the accused could be used as evidence against the other."

It was observed:
"\005In short, the section can be analysed as follows : (1) There shall be a prima facie evidence affording a reasonable ground for a court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; (5) it can only be used against a co-conspirator and not in his favour.'"

Mens rea, thus, to commit the crime must be established besides the fact of agreement.

The High Court does not say that the Appellant has abetted Telgi or had conspired with him. The findings of the High Court as against the Appellant are attributable to allegations of abetting Kamat and Mulani. Both Kamat and Mulani were public servants. They may or may not have any direct role to play as regard commission of an organised crime but unless a nexus with an accused who is a member of the organised crime syndicate or an offence in the nature of organised crime is established, only by showing some alleged indulgence to Kamat or Mulani, the Appellant cannot be said to have conspired or abetted commission of an organised crime. Prima facie, therefore, we are of the view that Section 3(2) of MCOCA is not attracted in the instant case.

Section 24 of MCOCA must be given a proper meaning. A public servant can be said to have committed an offence within the meaning of the said provision if he (i) renders any help or support in any manner in the commission of an organised crime; (ii) whether before or after the commission of an offence by a member of an organised crime syndicate or (iii) abstains from taking lawful measures under this Act or (iv) intentionally avoids to carry out the directions of any Court or of the superior police officers in this respect.

The purported acts of omission and commission on the part of the Appellant does not attract the first part of Section 24 of MCOCA. It is not the contention of the Respondents that he has committed any act which

comes within the purview of Clauses (3) and (4) hereinbefore. The provisions of MCOCA, as for example, Section 20 casts a duty upon the persons concerned to see that properties of a member of the organised crime syndicate are attached. In view of Section 4, it also becomes the duty of the persons connected with the investigation of crime to see that persons, who are in possession of movable or immovable property which cannot be satisfactorily accounted for are brought to book.

The Act is deterrent in nature. It provides for deterrent punishment. It envisages three to ten years of imprisonment and may extend to life imprisonment. Death penalty can also be imposed if somebody commits a murder. Similarly, fines ranging between three to ten lakhs can be imposed.

Presumption of innocence is a human right. [See Narendra Singh and Another Vs. State of M.P., (2004) 10 SCC 699, para 31] Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. Sub-Section (4) of Section 21 must be interpreted keeping in view the aforementioned salutary principles. Giving an opportunity to the public prosecutor to oppose an application for release of an accused appears to be reasonable restriction but Clause (b) of Sub-section (4) of Section 31 must be given a proper meaning.

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?

Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on records only for grant of bail and for no other purpose .

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 to 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 organised 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.

In Abdulla Mohammed Pagarkar etc. Vs. State (Union Territory of Goa, Daman and Diu) [AIR 1980 SC 499], it is stated:

"15. Learned counsel for the State sought to buttress the evidence which we have just above discussed with the findings recorded by the learned Special Judge and detailed as items (a) to (e) in paragraph 5 and items (i) and (iii) in paragraph 6 of this judgment. Those findings were affirmed by the learned Judicial Commissioner and we are

clearly of the opinion, for reasons which need not be restated here, that they were correctly arrived at. But those findings merely make out that the appellants proceeded to execute the work in flagrant disregard of the relevant Rules of the G.F.R. and even of ordinary norms of procedural behaviour of government officials and contractors in the matter of execution of works undertaken by the government. Such disregard however has not been shown to us to amount to any of the offences of which the appellants have been convicted. The said findings no doubt make the suspicion to which we have above adverted still stronger but that is where the matter rests and it cannot be said that any of the ingredients of the charge have been made out.
Apart from the findings and evidence referred to earlier in paragraph, no material has been brought to our notice on behalf of the State such as would indicate that the bills or the summaries in question were false in any material particular."

In C. Chenga Reddy and Others Vs. State of Andhra Pradesh [AIR 1996 SC 3390], it is stated:
"55. \005The learned counsel appearing for all the appellants also during the course of their arguments were unable to point out any error in those findings and according to them in the established facts and circumstances of the case, the irregularities, administrative lapses and violation of the codal provisions, could only have resulted in a departmental action against the officials but criminal prosecution was not justified. Their argument has force and appeals to us.."

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

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

Section 21(4) of MCOCA does not make any distinction between an offence which entails punishment of life imprisonment and an imprisonment for a year or two. It does not provide that even in case a person remains behind the bars for a period exceeding three years, although his involvement may be in terms of Section 24 of the Act, the court is prohibited to enlarge him on bail. Each case, therefore, must be considered on its own facts. The question as to whether he is involved in the commission of organized 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 sufficient 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.

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 court intending to grant bail must arrive at a finding that 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 futuro 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.

It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

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.

In Kalyan Chandra Sarkar Vs. Rajesh Ranjan Alias Pappu Yadav and Another [(2004) 7 SCC 528], this Court observed:

"18. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget as observed by this Court in the case Puran v. Rambilas and Anr. (SCC p. 344, para 8):
"Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. ..... That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated."
We respectfully agree with the above dictum of this Court. We also feel that such expression of prima facie reasons for granting bail is a requirement of law in cases where such orders on bail application are appealable, more so because of the fact, that the appellate court has every right to know the basis for granting the bail. Therefore, we are not in agreement with the argument addressed by the learned counsel for the accused that the High Court was not expected even to indicate a prima facie finding on all points urged before it while granting bail, more so in the background of the facts of this case where on facts it is established that a large number of witnesses who were examined after the respondent was enlarged on bail had turned hostile and there are complaints made to the court as to the threats administered by

the respondent or his supporters to witnesses in the case. In such circumstances, the Court was duty-bound to apply its mind to the allegations put forth by the investigating agency and ought to have given at least a prima facie finding in regard to these allegations because they go to the very root of the right of the accused to seek bail. The non-consideration of these vital facts as to the allegations of threat or inducement made to the witnesses by the respondent during the period he was on bail has vitiated the conclusions arrived at by the High Court while granting bail to the respondent. The other ground apart from the ground of incarceration which appealed to the High Court to grant bail was the fact that a large number of witnesses are yet to be examined and there is no likelihood of the trial coming to an end in the near future. As stated herein above, this ground on the facts of this case is also not sufficient either individually or coupled with the period of incarceration to release the respondent on bail because of the serious allegations of tampering with the witnesses made against the respondent."

In Jayendra Saraswathi Swamigal Vs. State of T.N. [(2005) 2 SCC 13], this Court observed:

"16. \005 The considerations which normally weigh with the Court in granting bail in non-bailable offences have been explained by this Court in State v. Capt. Jagjit Singh (1962) 3 SCR 622: AIR 1962 SC 253 and Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118: (1978) 2 SCR 358: AIR 1978 SC 179: and basically they are - the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case\005"

In Kalyan Chandra Sarkar Vs. Rajesh Ranjan Alias Pappu Yadav and Another [2005 (2) SCC 42], this Court observed:

"18. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However. Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non bailable offences are entitled for bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact

situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier applications being rejected, the courts can do so."

It was, however, observed:

"42. While deciding the cases on facts, more so in criminal cases the court should bear in mind that each case must rest on its own facts and the similarity of facts in one case cannot be used to bear in mind the conclusion of fact in another case\005"

We are not oblivious of the fact that in certain circumstances, having regard to the object and purport of the Act, the Court may take recourse to principles of 'purposive construction' only when two views are possible.

The High Court, in our considered view, considered the matter from a wrong perspective. Only because the Appellant had the power, the same would not by itself lead to a conclusion that he was a privy to the crime. As regard Mulani's visit to Bangalore, it is accepted that on all occasions he was accompanied by other officers. The purpose of such visit was to have a high level conference so as to enable the Government of Maharashtra to obtain custody of Telgi. On 9.7.2002, Mulani visited Bangalore in the company of the Appellant. On 23.7.2002, he visited in the company of Appellant as also the Additional Chief Secretary, Shri Basak. Those two visits were prior to 6.9.2002. On 11th September, 2002, he went to Bangalore in the company of Shri Sampat Kadam as the case of Telgi was fixed on that day. He is said to have been sent by Shri Mushrif. Dr. Jai Vasantrao Jadhav in his investigation note dated 15.12. 2003 stated:

"On 09/09/2002 Mushrif sahib called me to his office and told me the story of his trip to Bangalore. He himself had gone there with the transfer warrant to bring Telgi to Pune. Similarly, he informed me about the future date i.e. 12/09/2002, set by the Bangalore court for hearing and that Advocate general of Maharashtra P. Janardanan and an advocate from Pune Raman Agrawal as special public prosecutor will be going there for the hearing. For the said hearing ACP Mulani, police inspector Sampat Kadam were to procered to Mumbai and they will go to Bangalore court along with P. Janardanan. In this connection a discussion had already been held, said Mushrif."

On 18.9.2002, Mr. Mulani visited Bangalore in the company of the Addl. Advocate General of Maharashtra on which date the Court passed the order under Section 268 of the Code of Criminal Procedure.

As regards Mr. Mulani's participation in the investigation, we may notice that Dr. Jadav again in his statement dated 2.4.2002 stated:

"He has done the work of searching the absconding accused in the aforesaid crime and he should be deputed with the same work. Accordingly, ACP Shri Mulani was assisting me in the work of searching the absconding accused."

As regards his inclusion in the team, Dr. Jadav had stated:

"The investigation of Crime 135/2002, of Bund Garden Police Station was handed over to me on 4.9.2002 under written orders. Thereafter, a meeting had taken place between Police Commissioner Shri R.S. Sharma, Joint Police Commissioner Shri Mahesh Gauri and myself for deciding which officers should be included for the investigation work. At that time Shri Sharma Saheb told me that you take whatever officers you want for the investigation. On this, I told him that I do not personally know the officers in Pune. Being on the post of DCP (Departmental Enquiries), I am not conversant with the investigating skill of the officers in Pune city. After I told so, they finalized the names of the members of the investigation team. In that the name of ACP Mulani was first."

The Appellant, therefore, did not suggest the name of Mulani himself. He did so at the instance of Dr. Jadav and that too both by him as also the Joint Commissioner.

So far as the recommendation of the Appellant for inclusion of Mr. Mulani's name in the list of officers who were to be rewarded for having done best work, is concerned, it appears that 10 names were suggested for the said purpose. The Appellant changed the priority in the manner as indicated hereinbefore. Only those persons whose names are referred in the list were to receive award. The names of Mulani, Yadav and Davies were directed to be included in the text which would mean mentioning of their names in the history of case, as evidently they were involved in the investigation throughout.

Furthermore, the name of Mulani alone was not added but names of two other officers were also added. We may further notice that the Appellant by letter dated 22.11.2002 addressed to the Director General of Police made serious complaints against Mr. Mushrif stating:

"The request of Additional Commissioner of Police Mr. Mushrif for removing the names of near relatives of Mr. Abdul Kareem Ladsab Telgi, his wife and daughter because of their financial partners. Thus, being a supervising officer it was his duty to collect evidence during the investigation and to take proper decision like the Investigating Officer, being a Supervisory Officer. It appears that Shri Mushrif has neglected these things intentionally.

Prior to this also Shri Mushrif has written letters to the Investigating Officers to obstruct the investigation directly or indirectly, which came to be noticed because of the complaints made by the officers. Similarly, he being Officer of the rank of Deputy Inspector General of Police, he was capable of invoking provisions of Maharashtra Control of Organised Crime Act, still Mr. Mushrif despite being the Senior Officer of the crime avoided to invoke the said provision. From all these things the otherwise intention of Mr. Mushrif to obstruct the investigation is apparent.

Mr. Mushrif has written a letter on 23.10.2002, in which it is stated that the

Investigating Officer should remove the names of the five accused persons, who are absconding, without giving any reason and with the malafide and corrupt intention he has suggested the addition of six names as absconding accused. The copy of the said letter is already submitted to you.

In fact it is said that the five names which are removed are the part of information prepared on the computer of Mr. Mushrif. Out of which, I have submitted the clear report that we have no objection if the cases of Shri Manoj Kotharath and Shri Bajrang are transferred to Central Crime Investigation Department.

Shri Mushrif is informing the media that the Inquiry of this matter be conducted by Shri P.D. Director General of Police, Anti Corruption Bureau or Shrigarvel Director General of Police. In this connection, I wish to state that all these matters be investigated immediately and therefore a retired Judge of the High Court be appointed for the said purpose. Thereby not only allegations made by Mr. Mushrif will be enquired into but this also will be seen as to in these important crime, which is spread over the entire country when the investigation is reached upto the very important stage, who is trying to indirectly help the main kin pin of the crime Telgi by obstructing the investigating right from the beginning?

Since now the investigation of this crime is being made by the Special Investigation Team, it is requested that the truth behind all these matters be brought to surface and the appropriate action be taken against the concerned persons at the earliest."

About Mulani's lack of integrity, admittedly facts were made known to the Appellant only on 6.9.2002. Prior thereto, Mulani received very good remarks from his superior officers as would appear from a letter dated 21.3.2002 addressed by Shri A.K. Sharma to M.C. Mulani.

It is undisputed, as would appear from the stand taken by the State before the Maharashtra State Administration Tribunal, that transfer of Mulani was not by way of penalty but on administrative grounds. The State Government through Shri Ashok Basak also could have suspended Mulani. It does not appear from the records that apart from field work and searching for the accused Mulani took any part in investigation between 6.9.2002 and 30.9.2002.

Mr. Mushrif in answer to the questionnaire categorically stated that four teams were formed for investigation and Mulani was in the team of field work. He, having been brought by Mr. Mushrif, had been working earlier. Mr. Mushrif accepts that the Appellant had asked him to supervise the investigation of the teams. He had drawn a broad outline as to how to proceed systematically:

"On 12.6.2002 I had drawn a broad outline as to how to proceed systematically. My concept was as under:
(a) A team for appraised of seized evidence paperwork.
(b) Investigation team

(c) Field work"

It is also noteworthy that in the said statement, in certain matters, the Appellant's role was described as under:

"12. CP's source information led to the registration of Cr. No. 135/2002. When you received information about this? Being incharge of Crime branch, What immediate steps were taken by you for further investigation?

It seems that a verifiable information was received by Shri Kale, PI Crime, P.S. Bundgarden. In this connection he sent for two suspects. The suspects did not reveal much. The informer was asked to further cultivate the suspects. That two suspects had been allowed to go was mistaken that they are being left off. This information came to the notice of CP who intervened and asked Sr. P.I. Deshmukh, P.S. Bundgarden, to apprehend the suspects and further interrogate them. This interrogation revealed vital information implicating the suspects and the others. Interrogations revealed further information that to a trap. PI Kale himself lodged the complaint and the F.I.R. came to be registered."

So far as the inspection of Cuffe Parade flat is concerned, the High Court failed to notice that at the time of inspection of the flat Jaiswal could have taken certain action which he did not. At least he could have seized his mobile. The Appellant took all steps which he could take. He passed telephonically an order of suspension of the officers in presence of Jaiswal when the matter was brought to his notice. When the letter dated 10.1.2003 reached him on 12.1.2003 he also passed an order of suspension in writing. It was for the Joint Commission to implement the said order of suspension. It is too much to expect that an officer passing an order of suspension must also see to it that his order is implemented by all concerned. The High Court is also not correct in attributing motive to the Appellant as regards seizure of fake stamps and genuine stamps from the Bhiwandi godown on 12.1.2003. The Appellant had no role to play therein. Before the learned Single Judge admittedly a wrong contention was raised on behalf of the Respondents that Jaiswal had at one point of time expressed a suspicion that the magnitude of Kamat's involvement may be minimized by making a fake raid.

For all intent and purport, the High Court has placed the onus of proof upon the Appellant, which is impermissible.

The Appellant faced a contempt petition before the Maharashtra State Administrative Tribunal and in his affidavit, he categorically stated that neither Mulani was the investigating officer nor supervisory officer. In his affidavit, as regard reason for his transfer to Special Branch from Crime Branch, he stated:

"8. With reference to paras 6(5)(v) of the application, I say that this was a very sensational murder case and the applicant was the immediate supervisory officer of its investigation. But as the main culprit could not be arrested, the case was transferred to State C.I.D. by the C.I.D. It transpired that the deceased Faizulla Khan along with two other persons had met the applicant in his office a couple of hours before his assignation. But this vital information was not disclosed by the

applicant anywhere in the investigation, though he was the immediate Supervisory Officer of the case. Thus, his conduct was found to be highly suspicious in this sensational case. Under these circumstances it was not desirable to keep the applicant in the Crime Branch. This is one of the reasons for his transfer out of the Crime Branch.

17. With reference to para 6(13) of the application, I say the allegations in this para are denied as the applicant has been retained as A.C.P., Pune City. However, there is no stay granted to the internal orders issued by the respondent no. 2 of the applicant. Neither the applicant has prayed in his O.A. No. 863/2002 that he should not be transferred anywhere from the Crime Branch, Pune City."

In Kartar Singh Vs. State of Punjab [(1994) 3 SCC 569], this Court observed:

"352. It is true that on many occasions, we have come across cases wherein the prosecution unjustifiably invokes the provisions of the TADA Act with an oblique motive of depriving the accused persons from getting bail and in some occasions when the courts are inclined to grant bail in cases registered under ordinary criminal law, the investigating officers in order to circumvent the authority of the courts invoke the provisions of the TADA Act. This kind of invocation of the provisions of TADA in cases, the facts of which do not warrant, is nothing but sheer misuse and abuse of the Act by the police. Unless, the public prosecutors rise to the occasion and discharge their onerous responsibilities keeping in mind that they are prosecutors on behalf of the public but not the police and unless the Presiding Officers of the Designated Courts discharge their judicial functions keeping in view the fundamental rights particularly of the personal right and liberty of every citizen as enshrined in the Constitution to which they have been assigned the role of sentinel on the qui vive, it cannot be said that the provisions of TADA Act are enforced effectively in consonance with the legislative intendment."

In Prakash Kumar Alias Prakash Bhutto Vs. State of Gujarat [(2005) 2 SCC 409], the Constitution Bench of this Court while noticing Kartar Singh (supra) observed:

"44. In our view the above observation is eloquently sufficient to caution police officials as well as the Presiding Officers of the Designated Courts from misusing the Act and to enforce the Act effectively and in consonance with the legislative intendment which would mean after the application of mind. We reiterate the same."

The learned Additional Solicitor General, however, had drawn our attention to the statement of Mr. R.S. Mopalwar. The said statement was recorded on 21.6.2004. Shri U.K. Goel has also not been examined on the ground that he has gone out of the country. This material was not used before the learned Single Judge.

Mr. Saran, laid emphasis on the fact that Telgi was interrogated alone by the Appellant after asking all others to leave the room without maintaining any record therefor.

In this connection, we may notice the questionnaire and statement of Shri Maheshgauri, question No. 50 whereof reads as under:

"50) Did CP ever interrogate Telgi in prison? Did CP ever record his statement on the tape recorder? Are you aware about it?

Ans: - CP did interrogate Telgi in camera in his own chamber. We were present in chamber of CP when AKL Telgi was ushered in by either Mulani or PI Deshmukh. By we I mean DCP Koregaokar was also present when Telgi entered. CP said, "rwgh oks gS uk tks cWkEcs gWkLihVy ds nxsZ is vk;k djrk Fkk uk" Then we moved out. I do not know if the conversation was tape recorded."

If the Appellant was knowing Telgi, there was no reason to seek to identify Telgi by reference to a person who used to visit Bombay Hospital, Dargah. Our attention has also been drawn to the report of the brain mapping test of Telgi. In the said report, it is stated:

"Pursuant to the request made vide letter cited under reference, accused Mr. Karim Telgi was brought for polygraph examination on 20th December 2003. The cited suspect was first interviewed and interrogated. It was found during the interrogation and the interview that the suspect appeared to be concealing some of the relevant information and not truthful to his statement with regard to the involvement of politician and police officers in the fake stamp paper. He was further subjected for "Brain Mapping" test on 21 December 2003."

As regard what transpired in the meeting with Telgi during interrogation by the Appellant, Dr. Jadhav made the following statement in the investigation note:

"On 19/10/2002 accused Telgi was granted magisterial custody and hence, he was to be taken to Yerwada jail. But police commissioner Mr. Sharma ordered us, "Bring the accused to my chamber for the purpose of interrogation" and we had to comply. We took accused Telgi to the office of the police commissioner at around 18.00 hrs. We kept Telgi outside and informed commissioner Sharma by going into his chamber that we had brought Telgi in the office. Then on his direction, we came out of the chamber and sent accused Telgi alone inside as per Mr. Sharma's instructions. After this, Sharma Sahib interrogated the accused Telgi from 18.00 hrs. to 20.00 hrs. The Yerwada jail officials do not allow the accused in the jail late in the night as a regular practice. When we came to know about this, we informed additional police commissioner Mahesh Gauri, accordingly. Then on Mr. Gauri's direction, we went inside Mr. Sharma's cabin and informed him accordingly. That time he said that,

he would finish within ten minutes. Then after 10-15 minutes Sharma sahib called us in and ordered us to take Telgi away. Then along with Telgi, we started moving outside the commissioner's office and towards the Yerwada jail and we asked Telgi about the interrogation by the Sharma Saheb. Here, Telgi told us, "Sharma sahib asked me about the place where I had hided the remaining stamps? To whom and how much money did I give? Who are the political figures of my acquaintance? etc. his main thrust was on these questions, After asking the questions, Mr. Sharma's right hand was moving towards the button of the tape-recorder as he wanted to tape my answers. I was not able to see the tape recorder, but it was evident from the movements of his hand that he was trying to switch on the tape for recording my answers." Then we reached the Yerwada Jail. Police sub inspector Mr. Hanumansingh Subbalkar (crime branch, Pune Police Commissionerate) was the chief officer appointed to keep the custody of Telgi and party."

Therefore, there is some substance in the contention of Mr. Manohar that the Commissioner of Police may not like to interrogate an accused person as regard his political connections, if any, in presence of others, but the line of interrogation was revealed by Telgi immediately after he came out of his chamber. It further appears from the record that even Mushrif had interrogated Telgi exclusively.

Furthermore, it appears that it is Mushrif who wanted to keep wife, daughter and brother of Telgi out of the chargesheet, as would appear from the statement of Mr. Kishore Eknath Yadav to the following effect:

"Names of accused Fathima and Javed were mentioned in the case diary as suspects however full names and addresses of these accused could not be made accused. Because the information is not available against them and they are only servants, such instructions were issued by Addl. Commissioner of police during the time of beginning of the investigation and on other occasions.

It was further stated:

"Although for the said purpose note was made for seeking written orders, Honourable Additional Commissioner of Police has not made any specific order. Apart from this who should be made accused or not was the primary right of D.C.P. Zone \026 II as per the decision taken by Additional Commissioner of Police and the final decision about the same was to be that of Addl. Commissioner of Police (Order dated 13/6/2002).

Apart from the fact that nothing has been brought on record to show as to how far a report of brain mapping test can be relied upon, the report appears to be vague. It appears, the Respondents themselves did not want to put much reliance on the said report.

Furthermore, the admissibility of a result of a scientific test will depend upon its authenticity. Whether the brain mapping test is so

developed that the report will have a probative value so as to enable a court to place reliance thereupon, is a matter which would require further consideration, if and when the materials in support thereof are placed before the Court.

In Frye Vs. United States [293 F 1013 (DC Cir) (1923)], the principles to determine the strength of any investigation to make it admissible were stated in the following terms:

"Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Some where in the twilight zone the evidential force must be recognized, and while the Courts will go a long way in admitting the expert testimony deducted from a well recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs.

Frye (supra), however, was rendered at a time when the technology, the polygraph test, was in its initial stage and was used in few laboratories. The guidelines issued therein posed a threat of lack of judicial adaptation of the new developments and ignored the reliability on a particular piece of evidence.

A change of approach was, however, found in Daubart Vs. Merryll Dow Pharmaceuticals Inc. [113 Sct 2786 (1993)] where the courts while allowing "general acceptance" stated that this might not be a precondition for admissibility of the scientific evidence, for which the Court may consider the following:

(a) Whether the principle or technique has been or can be reliably tested?
(b) Whether it has been subject to peer review or publication?
(c) It's known or potential rate of error?
(d) Whether there are recognized standards that control the procedure of implementation of the technique?
(e) Whether it is generally accepted by the Community? And
(f) Whether the technique has been introduced or conducted independently of the litigation?

In a case involving an issue as to whether on-job-exposure to the manufacturers products promoted small cell lung cancer, the U.S. Supreme Court in General Electric Co. Vs. Robert K. Joiner [522 US 139 L.Ed. 2d] following Daubert (supra), held that in cases involving the issue of expert evidence the appellate court should only consider whether there is any abuse of discretion in admitting such evidence by the trial courts and should not go into reviewing the evidence itself as it is for the trial courts to assume the "gate keeper's role" in screening such evidence to ensure whether it is not only relevant but also reliable. This was further expanded in Kumho Tire Co. Ltd. Vs. Carmichael [(1999) 119 S.Ct. 1167] whereby the 'gate keeping' obligation of the Trial Judge to ensure the relevancy and reliability for admitting the evidence extended not only to scientific but also to all kinds of expert evidence.

In R. Vs. Watters [(2000) All ER (D) 1469], it was held :

"DNA evidence may have a great significance where there is supporting evidence, dependent, of course, on the strength of that evidence."

"\005in every case one has to put the DNA evidence in the context of the rest of the evidence and

decide whether taken as a whole it does amount to a prima facie case."

As at present advised, thus, and having regard to the fact that the prosecution did not rely upon the said report before the High Court, we also for the purpose of the present matter do not intend to place any reliance thereupon.

Mr. Manohar's contention to the effect that those officers whose conduct was not above board and who did not take any action for attaching the property of the accused and his relations in terms of the Act, have not been made accused, may also be correct. He has further brought to our notice that witnesses have also changed their stand after the Appellant was placed under arrest. At this juncture, it may not be necessary for us to go into details on the aforementioned contention.

We have referred to the aforementioned materials only for the purpose of showing that the High Court may not be entirely correct in coming to the conclusion that the Appellant prima facie committed an offence under Section 3(2) as well as Section 24 of MCOCA.

For the reasons aforementioned, we are of the opinion that the order dated 4.11.2004 granting interim bail to the Appellant should continue subject to the same conditions.

This appeal is allowed.

JUDIS