



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF FEBRUARY, 2019

BEFORE

THE HON'BLE MR.JUSTICE B.A.PATIL

CRIMINAL PETITION NO.8325/2018

BETWEEN :

Sri Mohan Nayak N.,
S/o N. Vasudeva Nayak
Aged about 50 years
R/at "Shree" Nivasa
Mundadka, Sampaje,
Sullia Taluk, D.K. District-574 234.

... Petitioner

(By Sri Aruna Shyam M., Advocate)

AND :

The State of Karnataka
through Special Investigating Team
and Rajarajeshwari Nagar P.S.
Represented by its State Public Prosecutor
High Court Building, High Court of Karnataka
Bangalore-560 001.

... Respondent

(By Sri H.S. Chandramouli, SPP-I)

This Criminal Petition is filed under Section 439 of Cr.P.C praying to enlarge the petitioner on bail in Crime No.221/2017 of Rajarajeshwari Nagar P.S., Bangalore for the offences punishable under Sections 302, 120B, 114, 118 r/w Section 35 of Indian Penal Code and Sections 3 and 25 of ARMS Act.

This Criminal Petition having been heard and reserved on 24.01.2019 coming on for pronouncement of orders this day, the Court made the following:-

ORDER

In this case, accused No.8 has approached this Court for grant of regular bail under Section 439 of Cr.P.C. in Crime No.221/2017 of SIT Police and Rajarajeshwari Nagar Police Station for the offences punishable under Sections 302, 120B, 114, 118 r/w. Section 35 of IPC; Section 3 of the Karnataka Control of Organized Crimes Act,2000 ('KCOCA' for short); and Sections 3 and 25 of Indian Arms Act.

2. It is relevant to note here itself that initially the petitioner was arrayed as accused No.8 and now he is ranked as accused No.11.

3. I have heard the learned counsel Sri Aruna Shyam for the petitioner and Sri H.S.Chandramouli, learned SPP-I for the respondent-State.

4. Before adverting to the arguments of the learned counsel for the petitioner and the learned SPP-I, it is just and necessary to have the brief factual matrix of the case which is as under:-

5. One Mrs.Kavitha Lankesh, sister of the deceased Mrs.Gowri Lankesh filed the complaint alleging that deceased was working as a Journalist and also a progressive thinker. She used to reside alone at Rajarajeshwarinagar. It is alleged that on 5.9.2017 at about 8.26 p.m., the mother of the complainant received a phone call stating that something had happened to Mrs.Gowri Lankesh at her residence. Immediately thereafter, they rushed to the house of the deceased at Rajarajeshwarinagar, where the complainant saw that a car was parked in front of the gate and near the main door her sister was lying in a pool of blood. The complainant also noticed that near the body of the deceased, there were some cartridge pieces and by

suspecting that some miscreants have committed the murder of her sister, she filed the complaint accordingly. On the basis of the complaint, a case was registered in Crime No.221/2017 for the above said offences.

6. During the course of investigation, Special Investigation Team arrested one K.T.Navinkumar on 2.3.2018 thereafter accused No.2-Praveen was also implicated. After investigation, by showing K.T.Navinkumar as accused No.1 and Praveen as accused No.2 charge sheet came to be filed. In the charge sheet accused No.2 was shown as absconding. While filing the charge sheet, the Investigating Officer sought permission of the learned Magistrate for further investigation so as to produce additional documents. The learned Magistrate by the order dated 30.5.2018 took cognizance. Thereafter, during the course of investigation, accused Nos.2, 3, 4 and 6 were apprehended and subsequently, accused No.7 was also apprehended. After lapse of some

time, petitioner-accused No.8 was apprehended alleging that he is also the member of syndicate of the alleged crime and now he is in custody.

7. It is submitted by the learned counsel for the petitioner-accused No.8 that the name of the petitioner is not mentioned in the complaint. First charge sheet has been filed without showing the name of the petitioner-accused No.8. During the course of investigation he has also co-operated with the Investigating Officer. Thereafter, he has been apprehended and second charge sheet has been filed. He further submitted that the entire case rests on circumstantial evidence and there are no eye witnesses. The petitioner has been apprehended only on suspicion without there being any basis. He further submitted that in order to attract the provisions of KCOCA, the prosecution has to satisfy relevant two pre-conditions i.e., at least there should be two charge sheets filed against the members of an

organized crime syndicate within 10 years and the second one is the competent Court has taken cognizance of the said offences. In the instant case, those two conditions have not been satisfied and as such the provisions of KCOCA are not attracted. In order to substantiate the said contention, he has relied upon the decision in the case of **State (NCT of Delhi) Vs. Brijesh Singh & others**, reported in **AIR 2017 SC 4888**. He further submitted that there is no evidence one worth believable against the petitioner-accused No.8. Under such circumstances, he can invoke the provisions of Cr.P.C. for grant of bail. He further submitted that though the provisions of KCOCA are made applicable and a special provision has been made for dealing with such offences, in view of the facts and circumstances of the case, the provisions of Cr.P.C. are attracted and they get modified. In order to substantiate his case, he has relied upon the decision in the case of **State of Gujarat Vs. Salimbhai Abdulgaffar Shaikh & others**, reported in

AIR 2003 SC 3224. It is further submitted that how the KCOCA has to be interpreted, has been interpreted by this Court in the case of **M.V.Rudrappa & others Vs. State of Karnataka in Criminal Petition No.4251/2016 & connected matters**, disposed of on **22.7.2016**. He further submitted that as there is no conspiracy in respect of the petitioner-accused No.8, no inference can be drawn in this behalf to connect him to the crime. He further submitted that the only allegation made against the petitioner-accused No.8 is that he was sitting with accused No.1 and provided SIM card, which is a matter that has to be considered at the time of trial. This aspect clearly goes to show that no direct role has been played by the petitioner as regards commission of organized crime and there is no nexus. Under such circumstances, he is entitled to be released on bail. He further submitted that the petitioner is not having any criminal antecedents. In order to substantiate his submission, he has relied upon the decision in the case of

Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra & another, reported in ***(2005)5 SCC 294***. He further submitted that the petitioner is ready to abide by any conditions imposed by this Court and ready to offer sureties. On these grounds, he requests to allow the petition and release the petitioner-accused No.8 on bail.

8. *Per contra*, the learned SPP-I vehemently argued and submitted that the statement of the witnesses and the other material collected during the course of investigation reveal that the petitioner-accused No.8 is a member of organized crime syndicate. He further submitted that the main accused have taken the shelter with the petitioner and it is the petitioner who has taken the house on rental basis and handed over the key to the accused persons. Though the said premises was taken for the purpose of opening the clinic, no such clinic was opened and immediately after the assassination and the

criminal work, the key was handed over back to the owner by vacating the premises. The accused persons have paid the amount to the present petitioner and there was full connivance of accused No.8 along with other accused persons. He further submitted that on the basis of the voluntary statement of the petitioner and the voluntary statements of other accused persons motorcycle used for the purpose of commission of the offence has been recovered. Even the accused persons have shown the house which was taken on rent and the place of incident. All these materials clearly go to show that the petitioner as a part of an organized crime syndicate actively participated and all these circumstances also clearly establish the conspiracy between the petitioner and other accused persons. He further submitted that invoking of KCOCA against the accused persons has not been challenged and the conspiracy has also been established by the material produced along with the charge sheet. Under such

circumstances, the petitioner-accused No.8 is not entitled to be released on bail. He further submitted that after complicity of the petitioner in the activities of other accused persons as a part of an organized crime syndicate if it is proved, then the sanction is inconsequential. In order to substantiate the said contention, he has relied upon the decision in the case of ***Vinod G. Asrani Vs. State of Maharashtra***, reported in ***2007(3) SCC 633***. He further submitted that the Court while granting the bail, has to keep in mind Section 22(4)(b) of the KCOCA and it is expected to exercise its discretion in a judicious manner and not as a matter of course and the Court has to indicate in its order the reasons for *prima facie* conclude why bail was being granted or refused. He further submitted that the Court is duty bound to see if there exists a reasonable ground for believing that the accused is guilty or not guilty, then only it can exercise its power to release the accused on bail. In order to substantiate his contention, he has

relied upon the decision of the Bombay High Court in the case of **Ranjitsing Brahmajeetsing Sharma Vs. Union of India**, reported in **LAWS (BOM)2004 7 25**. He further submitted that a probative value of the case cannot be gone at this stage. The intention of the Legislature is to curtail such type of activities on examination of the material, if the Court is satisfied that a *prima facie* case has been made out under Section 3 of the KCOCA. Though the accused is not directly connected in the said crime and if he is associated with as an abettor or conspirator for facilitating the commission of the offence, then under such circumstances, he is not entitled to be released on bail. In order to substantiate the said contention, he has relied upon the decision in the case of **Manoj Ramesh Mehta Vs. State of Maharashtra**, reported in **AIR 2009 SC 622**. He further submitted that if the petitioner is a member of organized crime syndicate, then every act of the accused persons amounts to an offence. It can be

proved by direct evidence or circumstantial evidence. He further submitted that in order to attract the provisions of the KCOCA, minimum two charge sheets have to be filed against the accused persons within a period of 10 years and the Court has to take cognizance of such offences. But if he is a member of organized crime syndicate and if a charge sheet has been filed against one of them, then under such circumstances, the provisions of Section 21 of the KCOCA are attracted. In order to substantiate his said contention he has relied upon the decision of the Bombay High Court in the case of **Govind Sakharam Ubhe vs. The State of Maharashtra, in Criminal Appeal No.18/2009** disposed of on **11.6.2009**. If the material creates a strong and grave suspicion leading to presume that the appellant is a member of an organized crime syndicate and has been involved in continuing unlawful assemblies, then under such circumstances, *prima facie* there is said to be a material as against the accused and therefore he

is not entitled to be released on bail. He further submitted that the member of the crime syndicate operates singly or jointly in the commission of the crime. They operate in different modules, under such circumstances, the entire evidence and material have to be seen to link the person with the organized crime syndicate. In this behalf, by referring to the statement of the witnesses, he submitted that there is ample material as against the petitioner to show that he is the member of such organized crime syndicate. The conspiracy can be proved either by direct evidence or by circumstantial evidence or by both. He further submitted that the circumstances proved before, during and after occurrence of the crime have to be proved to decide about complicity of the accused. In order to substantiate the said contention, he has relied upon the decisions in the case of ***Pratapbhai Hamirbhai Solanki Vs. State of Gujarat & another***, reported in ***(2013)1 SCC 613*** and in the case of ***Devender Pal Singh Vs. State of***

NCT of Delhi & another, reported in **(2002)5 SCC 234**. He further submitted that when once already the bail application filed by the accused has been rejected, as per Section 12 of the KCOCA, an appeal lies and no criminal petition is maintainable before this court. He further submitted that the application under Section 167 of Cr.P.C. for grant of statutory bail is pending before the Court below. Under such circumstances, the present second petition by the same accused is not maintainable. On these grounds, he prayed to dismiss the petition.

9. I have carefully and cautiously gone through the submissions made by the learned SPP-I and perused the records. Even he made available the statements of the witnesses recorded during the course of investigation. I have also gone through the said statements. The first and foremost contention taken up by the learned SPP-I is that the present petition is not maintainable in view of Section 12 of the KCOCA. It is his further submission

that as per Section 12 of the KCOCA, against an order, an appeal lies and already an application has been filed before the Court below and the same has been rejected. As such he submits that the appeal ought to have been filed instead of the present petition. For the purpose of brevity I quote Section 12 of the KCOCA, which reads as under:-

"12. Appeal. – (1) Notwithstanding anything contained in the code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special court to the High Court.

(2) Every appeal under this section shall be preferred within thirty days from the date of the judgment, sentence or order."

10. As could be seen from the said provision of law, an appeal lies against any judgment, sentence or order, but if it is an interlocutory order, then under such circumstances, no appeal lies. Even as could be seen

from Section 22(4)(b) of the KCOCA, provisions of Cr.P.C. are also made applicable, but the Court which exercises the power has to exercise its discretion in a judicious manner and not as a matter of course. The only reservation is that the prosecutor must be given an opportunity to oppose the application of such reliefs and if he opposes the application, the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail. In the light of the said discussion the contention taken up by the learned SPP-I is not acceptable and the same is rejected.

11. It is the contention of the learned counsel for the petitioner that provisions of the KCOCA is not applicable to the facts of the case on hand and as such the present petition may be considered with reference to the bail provision. He further submitted that earlier, the name of the petitioner was not found and it was included

subsequently. On going through the records made available it would indicate that as against the accused persons the KCOCA has been applied and even the sanction has also been granted in this behalf by the concerned authority and thereafter the initial charge sheet was filed on 29.5.2018 and the supplementary charge sheet came to be filed on 23.11.2018. The fact of invoking the provisions of KCOCA has not been challenged anywhere by any of the accused persons. When the said fact has not been challenged and after satisfaction, the competent authority has issued sanction to prosecute the accused persons, at this juncture this Court cannot go in detail with regard to the said aspect since the scope under the present petition is very limited. Though the learned counsel for the petitioner has relied upon the decision of this Court in the case of ***M.V.Rudrappa & others Vs. State of Karnataka*** (quoted *supra*), wherein it was an admitted fact that all the accused approached this Court by way of writ petition

challenging invoking the provisions of the KCOCA and after hearing the matter, stay was granted with regard to invocation of the provisions of the KCOCA. Under the said circumstances, this Court by taking into consideration the general provisions of Cr.P.C. released the accused on bail. The said facts and circumstances are not applicable to the present case and as such it will not help the case of the petitioner in this behalf.

12. Now let me consider whether the petitioner has made out any reasonable grounds to entertain his application for release on bail. I have carefully and cautiously gone through the charge sheet material and the statements of the witnesses. In the first instance, K.T.Naveenkumar was arrested on 18.2.2018 while he was carrying ammunition for delivery and a case has been registered in Crime No.45/2018 and when he was interrogated, it revealed his involvement in Gowri Lankesh's murder case and on the basis of the voluntary

statement by him, another accused by name Praveen @ Sujith Kumar was apprehended on 19.5.2018 and in his voluntary statement he stated his involvement in conspiracy of murder of Prof.Bhagwan and subsequently on the basis of the information given by him, Amol Kale, Amith Degvekar and Manohar Edave were apprehended and some recovery has also been made and on the basis of their voluntary statements the present petitioner was also apprehended. In the voluntary statement of the petitioner, the diary has been seized and in the said diary it indicated that petitioner at the instance of Amol Kale and in furtherance of conspiracy he took the house on rental basis and remitted a sum of Rs.3,800/- and the said amount has been paid by Amol Kale and other accused persons. Even the call details collected would also reveal that there was contact between the petitioner and other accused persons and they have conspired to commit the alleged offence. All the materials which have been produced clearly go to show the complicity of

the petitioner in the activities of the other accused persons as a member of an organized crime syndicate. At this juncture, this Court has to see whether there is *prima facie* material as against the petitioner and whether the petitioner is entitled to be granted bail or not. On examination of the material, the involvement of the petitioner is not only peripheral but there is an active participation by him in commission of the crime.

13. I have carefully and cautiously gone through the decisions quoted by the learned counsel for the petitioner and the learned SPP-I. On close scrutiny of the said decisions it emerges that provisions of KCOCA are departure from the normal penal laws of the country and unless the acts committed by the accused squarely fall within the provisions of the said special Statute, he should not be roped in by stretching the language of such enactment. But at the same time, if otherwise the material placed attract the provisions of the special Act

no lenient view should be taken. If lenient view is taken, the purpose of the very special enactment and its objects fail. With that background, as discussed above, on careful consideration of the records, it indicates that the present petitioner took the house on rent, he paid the rent before the alleged incident and even without starting the clinic after taking the said house on rental basis immediately after the incident, he surrendered the said house. Even the movement of the other accused and the petitioner near the said house and the call details go to show that he is a member of an organized crime syndicate and was associate with the main accused. Even the records go to show that he has facilitated the commission of the organized crime by aiding and assisting in some of the activities relating to the alleged incident. Being the member of the organized crime syndicate, the members operate either singly or jointly or some times he may be a member of the said group or a single member, but undertakes to do the act of the

organized crime, then under such circumstances, the provisions of the KCOCA are attracted and the petitioner is held liable in this behalf.

14. Though during the course of arguments, it was argued that at the time of obtaining sanction to prosecute the accused under the KCOCA, the petitioner's name was not found and as such he is not a member of the organized crime syndicate and as such he is not liable. Similar issue came up before this Court in the case of ***Raju & others Vs. State of Karnataka by Yelahanka Police Station, Bengaluru, in Criminal Petition No..4795/2017***, which came to be disposed of on 3.8.2017, wherein it has been observed at paragraphs-11, 12, 13 as under:-

"11. A reading of Section 2(1)(d), 2(1)(e) and 2(1)(f) of KCOCA would clearly indicate that "Continuing Unlawful Activity" would mean an activity prohibited by law for the time being in force, which is a cognizable offence punishable

with imprisonment for three (3) years or more, undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one charge sheet have been filed before a competent Court. The expression "Organized crime" would also disclose that it is a continuing unlawful activity by an individual, singly or jointly, either as a member of the organized crime syndicate or on behalf of such syndicate, etc. The "Organized crime syndicate" as defined under Section 2(f) means a group of two or more persons who singly or collectively, as a syndicate or gang indulge in activities of organized crime. Thus, emphasis under these definition clauses is not only to the organized crime but also to continuing of such activity by an individual either singly or jointly by group of two or more persons and in such circumstances it would attract these provisions. In this background when the permission accorded by the competent authority under Section 24(1)(a) of KCOCA dated 07.03.2017 - Annexure-C when perused it would disclose that Assistant Commissioner of Police, Yelahanka Sub-Division,

Bengaluru has submitted an application to the competent authority for grant of prior approval under Section 24(1)(a) of KCOCA disclosing the names of five accused persons who had formed a crime syndicate and are continuously involved in unlawful activity by use of violence and with an object of gaining pecuniary benefit as indicated under Section 2(1)(d), 2(1)(e) and 2(1)(f) by also bringing to the notice of the sanctioning authority criminal cases registered against such persons including crime number in question namely, Cr.No.58/2017 registered by Yelahanka Police Station and for the purposes of proceeding to investigate the said crime by invoking Section 24(1)(a) of KCOCA prior approval was sought for. The competent authority namely, Additional Commissioner of Police, East, Bengaluru City in exercise of his power vested under Section 24(1)(a) of KCOCA has granted approval to apply the provisions of KCOCA and to invoke Section 3 of the said Act in Crime No.58/2017 registered under Sections 399, 402, 120(b) of IPC read with Sections 27 and 30 of Indian Arms Act, 1959 and accordingly directed Sri. B.M.Narayanaswamy,

Assistant Commissioner of Police to carry out further investigation under Section 24(1)(b) of the KCOCA.

12. A conjoint reading of Section 24(1) and 24(2) would clearly disclose that sanction is accorded under sub-section (1) of Section 24 of KCOCA for the purposes of carrying out investigation and during such investigation the Investigating Officer may very well proceed to investigate to find out as to who are all involved and on investigation being completed, the Investigating Officer may place all such material before the sanctioning authority and such authority would examine the same to grant sanction against all such persons, who may be involved and if in the opinion of said authority all such persons are involved in the commission of organized crime they can be proceeded once sanction is obtained. It does not restrict power of the sanctioning authority to restrict himself to accord sanction only to the persons whose names are indicated in the application submitted by the applicant for prior approval, inasmuch as, on such approval being granted to

the Investigating Officer, material so collected may also result in names of other accused persons also being disclosed as having involved in such organized crime or being part of organized crime syndicate. There may be instances where an approval is granted under Sections 24(1)(a) of KCOCA and name of a person may not have found in the application so submitted for grant of approval and during investigation it may be found other person/s are also involved in the commission of organized crime and as such sanctioning authority on the basis of material so collected during the course of investigation would examine the said material, satisfy himself about there being necessity to grant sanction under Section 24(2) of KCOCA and accord sanction for prosecuting all such accused persons who may be involved in commission of organized crime, by granting sanction under Section 24(2) KCOCA.

13. Hon'ble Apex Court in the case of VINOD G. ASRANI vs. STATE OF MAHARASHTRA reported in (2007) 3 SCC 633 was examining as to whether non inclusion of petitioner's name in

the approval under Section 23(1)(a) of MCOCA (analogous provision to Section 23(1)(a) of KCOCA was fatal to the investigation or not? and found that in the facts obtained in the said case though petitioner's name was not included in the approval granted under Section 23(1)(a) MCOCA, while granting sanction, his name had been included under Section 23(2) after the stage of investigation into the complaint, since his complicity was established during the course of such investigation. It has been held:

"8. We have carefully considered the submissions made on behalf of the respective parties and the relevant provisions of MCOCA and we are of the view that the High Court did not commit any error in dismissing the petitioner's writ application. We are inclined to accept Mr. Altaf Ahmed's submissions that non-inclusion of the petitioner's name in the approval under Section 23(1)(a) of MCOCA was not fatal to the investigation as far as the petitioner is concerned. On the other hand, his name was included in

the sanction granted under Section 23(2) after the stage of investigation into the complaint where his complicity was established. The offences alleged to have been committed by the petitioner have a direct bearing and/or link with the activities of the other accused as part of the Chhota Rajan gang which was an organized crime syndicate.

9. As pointed out by Mr. Ahmed, this Court in Kari Choudhary v. Sita Devi had while considering a similar question observed that the ultimate object of every investigation is to find out whether the offences alleged to have been committed and, if so, who had committed it. The scheme of the Code of Criminal Procedure makes it clear that once the information of the commission of an offence is received under Section 154 of the Code of Criminal Procedure, the investigation authorities take up the investigation

and file charge-sheet against whoever is found during the investigation to have been involved in the commission of such offence. There is no hard-and-fast rule that the first information report must always contain the names of all persons who were involved in the commission of an offence. Very often the names of the culprits are not even mentioned in the FIR and they surface only at the stage of the investigation. The scheme under Section 23 of MCOCA is similar and Section 23(1)(a) provides a safeguard that no investigation into an offence under MCOCA should be commenced without the approval of the authorities concerned. Once such approval is obtained, an investigation is commenced. Those who are subsequently found to be involved in the commission of the organized crime can very well be proceeded against once sanction is obtained against them under Section 23(2) of MCOCA."

15. A reading of the Sections 2(1)(d), 2(1)(e) and 2(1)(f) of the KCOCA and the aforesaid decision, it clearly goes to show that sometimes the names of the culprits are not mentioned at the stage of investigation and after obtaining the sanction, if the investigation is continued, those who are subsequently found in the commission of the organized crime can very well be proceeded against when once the sanction is obtained against the remaining accused persons. In the instant case, as per the law, sanction has been obtained is not in dispute and even it has not been seriously challenged during the course of arguments. When that being the case, the contention of the learned counsel for the petitioner is not acceptable and the same is rejected.

16. It is the further submission of the learned counsel for the petitioner that the conspiracy is going to take place within the four corners, but there is no material to show that the petitioner is a member of

conspiracy and as such there is no material to connect him. But what is criminal conspiracy and how it is to be proved has been elaborately discussed by the Hon'ble Apex Court in the case of **Pratapbhai Hamirbhai Solanki Vs. State of Gujarat & another** (quoted *supra*), wherein at paragraphs-21 to 23, it has been held as under:-

"21. At this stage, it is useful to recapitulate the view this Court has expressed pertaining to criminal conspiracy. In Damodar v. State of Rajasthan, a two-Judge Bench after referring to the decision in Kehar Singh v. State (Delhi Admn.) State of Maharashtra v. Som Nath Thapa, has stated thus: (Damodar case, SCC p.344, para 15)

"15. ... The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful

object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120-B of the Penal Code, 1860."

22. In Ram Narayan Popli v. CBI while dealing with the conspiracy the majority opinion laid down that: (SCC p.778, para 342)

"342. ... The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons

whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act."

It has been further opined that: (Ram Narayan Popli case, SCC p. 778 para 342)

"342. ... The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. ... no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual

effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design."

The two-Judge Bench proceeded to state that: (Ram Narayan Popli case, SCC p. 778, para 342)

"342. ... For an offence punishable under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means."

23. *In the said case it has been highlighted that in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which 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."*

17. The Hon'ble Apex Court in the case of ***Devender Pal Singh Vs. State of NCT of Delhi & another***,(cited *supra*), at paragraph-48 has also observed as under:-

"48. As noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to Sub-section (2) of Section 120-A, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit

the crime and if these requirements and ingredients are established, the act would fall within the trappings of the provisions contained in Section 120-B [See Suresh Chandra Bahri v. State of Bihar].”

18. From the above proposition of law, on close scrutiny of papers made available, present factual matrix as discussed above is tested with the touch stone of the principle laid down by the Hon'ble Apex Court. *Prima facie* it satisfies the above said test and thereby it can safely be held that the petitioner is a member of the conspiracy, no doubt that is a matter which has to be considered and appreciated at the time of trial. But at this juncture, to consider the bail application, *prima facie*, there is sufficient material as against the petitioner. In that light, the said contention is also not acceptable and the same is rejected.

For myriad reasons aforestated, this Court is of the considered view that the contentions raised by the

learned counsel for the petitioner are not acceptable so as to release the petitioner on bail and as such the petition is liable to be dismissed.

Accordingly, the petition stands ***dismissed***.

Since the petitioner is in custody for long time, the trial Court is directed to expedite the trial.

Sd/-
JUDGE

*ck/-