IN THE SPECIAL COURT OF THE SPECIAL JUDGE

UNDER MCOC AND NIA ACT AT BOMBAY

EXHIBIT-3021

IN

MCOC SPL. CASE NO. 1 OF 2009

@ MCOC SPL. CASE NO.8 OF 2011

@ NIA SPL. CASE NO.1 OF 2016

Pragyasingh Chandrakantsingh)
Thakur @ Sadhvi) Accused No.1.

Versus.

State of Maharashtra) Respondents.
(Through NIA, Mumbai.)

Mr. Rasal, SPP for State/Respondent.
Advocate Mr. J. P. Mishra @ Advocate Mr.Prashant Maggu for Accused No. 1.
Advocate Mr. Wahab Khan for Intervener.

CORAM: THE SPECIAL JUDGE
SHRI. S. D. TEKALE
UNDER MCOC AND NIA ACT
C.R.NO.26.
DATE: 28TH JUNE 2016.

ORAL ORDER BELOW EXHIBIT-3021

1. This is the application for bail filed by accused No.1 Pragyasingh Chandrakantsingh Thakur @ Sadhvi in MCOC Special Case No.1/2009. Applicant along with twelve co-accused is charge sheeted by Anti Terrorist Squad (ATS) under Sections 302, 307,326, 324, 427, 153-A and 120 B of the Indian Penal Code read with Sections 3, 4, 5, 6 of the Indian Explosive Substance Act 1980 read with Sections 3, 5 and 25 of

Arms Act 1959 read with Sections 15, 16, 17,18,20 and 23 of Unlawful Activities (Prevention) Act 1967 read with Sections 3(1)(i),3(1)(ii),3(2), 3(4), 3(5) of MCOC Act, 1999.

2. Brief facts of the case concerning to this bail application can be summarized as under:

On 29.9.2008 at about 9.35 p.m. bomb explosion took place at Malegaon, District Nasik Opposite Shakil Goods Transport Company between Anjuman Chowk and Bhiku Chowk. The said blast was caused by explosive device fitted in LML Freedom Motor Cycle bearing registration No.MH-15-P-4572. As a result of the said explosion six persons were killed and about 101 persons had received injuries of various nature. Damage to the property was also caused.

3. Initially on 30.09.2008 at about 3.00 a.m. offence came to be registered under CR No.130/2008 in Azad Nagar Police Station, Malegaon under Sections 302, 307, 326, 324, 427, 153-A and 120-B of the Indian Penal Code read with Sections 3, 4, 5 and 6 of Indian Explosive Substance Act read with Sections 3, 5 and 25 of Arms Act 1959.

4. During the course of investigation forensic laboratory Nasik opined that exhibits collected from the place of offence contained cyclonite (RDX) and Ammonium Nitrate which are used as high explosive. It was also transpired that registration number of the LML freedom motor cycle used in the crime was bogus and chassis and engine number of the said motor cycle were found to be erased.

5. On 18.10.2008 the provisions of Sections 15, 16, 17,18, 20 and 23 of the Unlawful Activities (Prevention) Act 1967 (Amended) 2004 (hereinafter referred to as "UAP" Act) were invoked and investigation of this case was entrusted to Dy.SP (Headquarter) Nasik Rural as per the provisions of UAP Act. Thereafter on 26.10.2008 ACP and Chief Investigating Officer, ATS, Mumbai Mohan Kulkarni took the charge of the investigation. On 29.11.2008 the provisions of the Maharashtra Control of Organized Crime Act 1999. (Herein after referred to as "MCOC" Act) were added. Investigating Officer of the ATS investigated the matter and initially submitted the charge sheet on 20.09.2009. Thereafter ATS arrested Accused No.12 and submitted the supplementary charge sheet against him on 20.04.2011. During the course of investigation original engine number of LML freedom motor cycle was successfully restored by FSL Nasik and after further investigation it was found that original registration number of the said motor cycle was GJ-05-BR-1920. It was also transpired that applicant is registered owner of the said vehicle. Accordingly applicant was arrested on 23.10.2008 at Mumbai along with co-accused Nos.2 and 3 i.e. Shivnarayan Gopalsingh Kalsangra and Shyam Bhavarlal Sahu.

6. According to the case of ATS co-accused Prasad Purohit is serving as Army Officer and was associated with Military Intelligence and Interior Terrorism (Insurgency Activities). Prasad Purohit floated Abhinav Bharat Organization on 09.02.2007 inspite of being serving as Commissioned Officer in Arm Forces against service rules. According to prosecution co-accused Ramesh Upadhyaya, Swami Amrutanand and other

co-accused including some witnesses were members of the said Abhinav Bharat Organization. It is the case of the ATS that the object of the accused persons was to turn India into Hindu Rashtra called as "Aryavart". They wanted to form Government in exile. Applicant and co-accused were dissatisfied with the Constitution of India and had wanted to prepare their own constitution. They had planned to train the persons for guerrilla war. They had also decided to kill the persons opposing their object of formation of Hindu Rashtra which is against the secular policy of the Government. As per the case of ATS this applicant, co-accused and members of the said organization time to time held meetings to discuss various aspects for achieving their goal. As per case of the ATS in one of the meetings at Bhopal during the course of discussion applicant shouldered the responsibility for providing persons to cause bomb blast in order to take revenge of Jihadi activities by Mohamedian community. As per prosecution case co-accused Swami Amrutanand has recorded the conversation in some of the meetings.

7. It is the case of ATS that said Abhinav Bharat is the Organized Crime Syndicate and its members were active since year 2003. According to ATS applicant and co-accused entered into criminal conspiracy between January 2008 to 23rd October 2008 with the common object and with intention to strike terror in the minds of people by exploding bomb at Malegaon and overawe the Government. According to ATS co-accused Prasad Purohit had brought RDX with him from Kashmir after completing his posting there and same was kept in his cupboard at his house.

8. The case of the ATS further shows that traces of RDX were also found in the house of accused No.11 Sudhakar Omprakash Chaturvedi @ Chanakya Sudhakar at Devlali Camp Nasik. According to the ATS absconding accused Ramji @ Ramchandra Gopalsingh Kalsangra and Sandip Dange and accused No.12 Praveen Venkatesh Takkalki @ Pravin Mutalik in pursuance of the conspiracy hatched by all accused persons planted and exploded the explosive device by using LML Freedom Motor Cycle. Case of ATS further shows that absconding accused Ramchandra and Sandip Dange are the men of this applicant acted at her instance. Case of ATS further shows that applicant accused provided above motor cycle belonging to her for causing bomb blast. In this way applicant is one of the principal conspirators and took active part in the said bomb blast by providing planters as well as her motor cycle for planting explosive in it.

9. As per prosecution case bomb explosion was caused in the holy month of Ramzan in crowded place having muslim dominating area. Holy festival of Navratri was to commence on 30.09.2008. According to the prosecution this bomb blast was caused with intent to strike terror in the people and to create communal rift. After completion of the investigation Anti Terrorist Squad (ATS) Bombay filed charge sheet on 20.01.2009.

10. At this stage it will appropriate to mention that after filing the charge sheet on 20.01.2009 by Anti Terrorist Squad (ATS) Bombay investigation was started by National Investigation Agency (NIA), New Delhi in this matter as per the order of Government of India dated

01.04.2011. Accordingly on 13.04.2011 NIA re-registered the offence in respect of the said incident as Crime No.05/2011.

11. It will appropriate to mention that co-accused Prasad Purohit had filed Bail application No.42/2008 on 03.12.2008. By order dated 31.07.2009 my learned predecessor discharged present applicant and co-accused from the offences under MCOC Act and directed to transfer the case to the Regular Court at Nasik as per Section 11 of the MCOC Act. The State being an aggrieved by the said order filed Appeal bearing No. 866/2009 before High Court under Section 12 of the MCOC act. The said appeal was allowed by the Division Bench of Hon'ble High Court by order dated 19.7.2010 and set aside the order of my learned predecessor dated 31.7.2009. Case was restored to the file of this court under MCOC Act for decision on merit. Accordingly Bail Application No.42/2008 filed by co-accused Prasad Purohit was remanded for hearing to this court. My learned predecessor thereafter rejected bail application No.42/2008 filed by co-accused Prasad Purohit and the Hon'ble High Court also rejected the bail application of applicant Prasad Purohit by order in Criminal Bail Application No.333/2011 on 09.11.2011.

12. This applicant and co-accused challenged the order of Division Bench of the Hon'ble High Court Bombay dated 19.07.2010 in Appeal No.866/2009 before the Hon'ble Apex Court. Co-accused Prasad Purohit also challenged the order regarding rejection of his bail application by the Hon'ble High Court before the Hon'ble Apex Court.

13. The Hon'ble Apex Court by common order dated 15.04.2015 in Criminal Appeal No.1969-1970 of 2010 decided all appeals raised by the applicant and other co-accused persons regarding applicability of MCOC Act in present case. The Apex Court also restored Bail Application No. 42/2008 to the file of this court for a fresh decision in the light of the observations made in the judgment dated 15.4.2015. This applicant was appellant in SLP(Criminal) No.8132/2010 before the Hon'ble Apex Court. In the aforesaid judgment the Hon'ble Apex Court also held that this applicant is entitled for the same relief as is granted to the appellant Prasad Purohit for consideration of grant of bail. The copy of the said order of the Hon'ble Apex Court is at Exhibit-2377.

14. It is not disputed before me that initially this applicant had filed bail application under Section 167(2) of the Code of Criminal Procedure. It is an admitted fact that said bail application filed by the applicant came to be rejected upto the Hon'ble Apex Court. Thereafter this applicant filed bail application on medical ground but that application was also rejected by this court. Then this applicant filed bail application at Exh.993 before this court for consideration of her prayer on merit but said application came to be rejected on 25.09.2012. It is not in dispute that against that order this applicant preferred an appeal. Initially it was registered as Criminal Bail Application No.1679/2012 in the Hon'ble High Court but later on it was converted as Criminal Appeal No.1305/2013. It is an admitted fact that Division Bench of the Hon'ble High Court dismissed the said appeal on 04.04.2014.

15. After decision of the Hon'ble Apex Court as per Exhibit-2377 applicant had filed application at Exh.2400 for bail on 21.09.2015. That application was rejected by this court on 07.11.2015.

16. NIA submitted the supplementary report u/s. 173(8) of the Code of Criminal Procedure on 13.05.2016. According to NIA during the course of further investigation u/s. 173(8) of the Code of Criminal Procedure it is transpired that accused No.1 Pragyasingh Chandrakantsingh Thakur @ Sadhvi has no concerned with this offence and Investigating officer of NIA exonerated her as no case is made out against accused No.1. NIA has also dropped the charges of MCOC against all accused persons and I.O. has concluded that no offence under MCOC Act is attracted in this case.

17. Treating the above report by NIA as a change in the circumstance accused No.1 has filed this bail application on the following grounds.

(i) The motor cycle involved in the bomb blast bearing GJ-05-BR-1920 was not in possession of accused No.1 and was used by absconding accused Ramchandra Kalsangara hence though accused No.1 is shown as registered owner of this motor cycle she has no concerned with the incident.

(ii) There is no prima facie case against accused No.1 regarding alleged conspiracy to commit the crime for the reasons:

(i) Confessional statements of Accused Nos.7, 10 and 12 cannot be considered as there is no sufficient material on record to show the prima facie case in respect of charges under MCOC Act.

(ii) PW79 and PW112 have changed their previous version before investigating officer of NIA and they have retracted their statements before the Metropolitan Magistrate at Delhi while giving statement u/s. 164 of of the Code of Criminal Procedure.

(iii) Statement of PW55 cannot be relied on as he has retracted his previous statement before I.O. of NIA and as he has made complaint regarding harassment and torture made by officers of ATS to the Human Rights Commission.

(iv) Statement of PW22 also cannot be relied on as he has made complaint of torture and harassment by ATS officers before the Judicial Magistrate, Indore.

18. After giving opportunity of hearing to the prosecution and accused by passing order below Exhibit 3108 intervener i.e. father of deceased who died in bomb blast was permitted to address the court through advocate.

19. Heard learned advocates Mishra and Maggu for accused No.1, advocate Wahab Khan for the intervener and ld. SPP Rasal for NIA.

20. Advocate of accused No.1 submitted that the Hon'ble Apex Court in Criminal Appeal Nos.1969-1970 of 2010 dated 15.04.2015 has raised the doubt regarding application of the provisions under MCOC Act against accused persons except accused No.7 Rakesh Dhawade. According to him the Hon'ble Apex Court instead of discharging these accused persons from the charges of MCOC Act raised the doubt only because at that time the investigation by NIA was pending. He submitted that now NIA has completed the investigation and has come to the conclusion that there is no sufficient material to prosecute accused persons for the offence punishable under MCOC Act. According to him in fact other accused persons except Accused No.7 have no nexus with the previous offences at Parbhani and Jalna hence prima facie offences under MCOC Act do not attract. He also submitted that now Special Public Prosecutor has not opposed the bail application of accused No.1 hence bar u/s. 21(4) (b) of MCOC Act also does not attract. Not only this but in view of the order of the Hon'ble Apex Court dated 15.04.2015 also bar u/s. 21(4)(b) is not attracted. According to him due to these reasons confessional statements of accused Nos.7, 10 and 12 cannot be looked into.

21. He further submitted that ATS has implicated accused No.1 as conspirator of the commission of crime on the basis of various meetings. According to him out of these meetings two meetings at Faridabad and Bhopal are strongly relied by the ATS. He submitted that as per case of ATS also this applicant was not present in Faridabad meeting. He submitted that case of ATS shows that secrete meeting was held at Bhopal in which there was a discussion to commit bomb blast at Malegaon. He

submitted that as per case of ATS during the said discussion accused No.1 showed readiness to provide man power for committing bomb blast. He further submitted that ATS has relied mainly on PW79 and PW112 to establish the above fact. According to him though these witnesses had stated about showing readiness to provide man power by accused No.1 for committing bomb blast at Malegaon before investigating officer of ATS now they have retracted from their statement. Statement recorded by investigating officer of NIA shows that PW79 was not present at Bhopal at that time and PW112 has stated that no such statement was made by accused No.1 in his presence. According to him these two witnesses have stated same facts in their statements u/s. 164 of the Code of Criminal Procedure before Metropolitan Magistrate at Delhi. By giving torture and by harassing the witnesses false statements were recorded by officers of ATS.

22. He further submitted that PW22 has also retracted his previous statement before the investigating officer of NIA. According to him in his previous statement before ATS officer he had stated about the conversation between absconding accused Ramchandra Kalsangara and applicant indicating the involvement of applicant in this crime and her knowledge about the use of her motor cycle. According to him he has also lodge complaint alleging that officers of ATS harassed him and tortured him and compelled to give statement as prepared by them before the Metropolitan Magistrate, Mumbai. He submitted that now investigating officer recorded his statement which also disclosed same thing that under threat and torture ATS officer has recorded his statement.

23. He further submitted that samething is happened in respect of PW55 also. In his previous statement before ATS officer he has stated about extra judicial confession of accused No.9 in which there is reference of applicant. According to him this witness has filed a complaint before the Human Rights Commission about threat and torture by ATS officers to extort such statement and compelling him to give a statement before the Metropolitan Magistrate. He submitted that now investigating officer of NIA has recorded his statement and said witness has deposed the fact of torture and threat by ATS officers and fact of compelling him to give statement as per their wish. According to him all above facts show that now there is change in circumstance and it cannot be said that there is prima facie material against the applicant.

24. According to him statement of PW22 and PW23 show that motor cycle alleged to be involved in bomb blast was in possession and control of Ramji Kalsangara since year 2007. According to him investigating officer came to know about the ownership of motor cycle by the applicant after recording of statements of PW43 to PW45 on 10.11.2008 but he arrested applicant on 23.10.2008 and there is also entry in station diary dated 11.10.2008 about real registration number of motor cycle. According to him all these facts show that investigating officer of ATS concocted the story to implicate the applicant in this matter falsely.

25. To show that how ATS officers have made false investigating, advocate of applicant submitted that as per case of ATS u/s. 27 of Indian Evidence Act they recovered timers from the house of accused No.2 Shiv

Narayan Kalsangara. Panchanama dated 01.11.2008 at page 45 of Volume-I show this fact. According to him as per statements of PW185 and 186 recorded by investigating officer of NIA in fact ATS officers had entered in the house of accused No.2 through ventilator. He submitted that PW185 and 186 are the local police officers. According to him it shows false investigation by ATS officers.

26. He further submitted that statement of PW185 shows that one witness by name Dilip Patidar was taken by ATS team to Mumbai for the purpose of investigation. According to him till today whereabouts of the said witness are not known. He submitted that CBI inquiry was directed by the Hon'ble High Court of Madhya Pradesh in this matter and now concern court has issued non bailable warrant against two officers of ATS who were in the said investigation team.

27. In support of all above arguments advocate of applicant relied on various documents filed along with list at Exh.3113.

28. He further submitted that supplementary report filed by the investigating officer of NIA shows that ATS officers made false investigation and instead of collecting the evidence created evidence against the applicant.

29. Advocate Maggu submitted that all above facts and documents filed along with list Exh.3113 and further report of NIA show that investigation done by ATS was not only tainted but motivated for profit.

According to him this investigation is resulted in causing injury to the applicant. Right of the accused to have a fair investigation has been deprived by ATS. He submitted that earlier orders passed by this court as well as the Hon'ble High Court and the Hon'ble Supreme Court are passed on presumption that the investigation by ATS was fair but now it is demonstrated that the investigation done by ATS was concocted, false and fabricated. According to him in view of these reasons all orders previously passed have become non est.

30. He further submitted that since from beginning accused and witnesses have agitated that ATS officers have made false investigation. Now grievances alleged by the applicant and witnesses at that time are supplemented by NIA. According to him Dilip Patidar was taken by ATS officers on 10.11.2008. Statements of PW22 and other witnesses are recorded in the same period. Till today Dilip Patidar is missing. All these facts clearly indicate that statement of PW22 and other witnesses are not voluntary statement. According to him investigation was in a direction to falsely implicate the accused. Hence no weightage should be given to the investigation done by ATS. According to him witnesses have not filed complaint against NIA saying that they are tortured as in the case of ATS. This aspect also gave credibility to the investigation done by NIA. According to him there is no need to consider material on record meticulously at the stage of bail. In short according to advocates of applicant in view of the investigation done by NIA now there is no prima facie case against the applicant.

31. Advocates of applicant also submitted that since last 8 years applicant is in jail. She is suffering from breast cancer. She is a woman. She is deprived of her right to have medical treatment of her choice. Applicant is victim of false investigation hence advocates of applicant prayed to release the applicant on bail.

32. The ld. SPP submitted that in view of further investigation by NIA prosecution has no objection to release the applicant on bail.

33. Advocate of intervener submitted that there is sufficient material on record to show the involvement of applicant in commission of crime. According to him already relying on the material collected by ATS this court as well as the Hon'ble High Court and the Hon'ble Supreme Court have rejected bail applications and other various applications filed by the applicant. According to him under garb of further investigation investigating officer of NIA has practically made re-investigation in this matter which cannot be permitted. He further submitted that investigating officer has not made investigation of offence but he has made investigation of the investigation done by ATS which cannot be permitted. According to him if really ATS has made the false investigation then why investigating officer of NIA has not registered the offence and take appropriate action against ATS officers.

34. He further submitted that mere on the ground that NIA has dropped charges under the provisions of MCOC accused cannot be discharged. According to him already this court has taken cognizance

under the provisions of MCOC Act against the accused. He submitted that the Hon'ble Apex Court in the judgment dated 15.04.2015 in Criminal Appeal No.1969-1970 of 2010 simply raised the doubt about applicability of provisions of the MCOC Act but accused are not discharged. According to him in such circumstances confessional statements of accused Nos.7, 10 and 12 are required to be considered along with other material on record. In support of this submission advocate of intervener relied on the authority reported in **AIR 1999 SC 2640 State of Tamil Nadu through Superintendent of Police CBI/SIT V/s. Nalini and others**. He submitted that the applicant is such influential person that even though she is in jail witnesses have changed their statements. In short according to him it will not proper to release the applicant on bail for having fair trial. He prayed for dismissal of the bail application.

35. In present case admittedly two investigating agencies have done the investigation. Initially ATS has filed charge sheet against in all twelve accused persons and have shown accused Ramchandra Kalsangara and Sandip Dange as absconding accused. Thereafter NIA has made the investigation in this matter as per the direction of the Central Government. Investigating officer of NIA has submitted further investigation report u/s. 173(8) of the Code of Criminal Procedure. NIA has exonerated some accused persons including the applicant from all charges. NIA has also dropped charges under MCOC Act. It is clear from the report filed by NIA that I.O. of NIA is not in agreement with the investigation done by ATS on certain points. But at the same time I.O. of NIA has accepted the investigation done by ATS on several other aspect of the matter. This is bail

application of accused No.1. Investigating officer of NIA is in disagreement with the conclusion drawn by I.O. of ATS in respect of accused No.1. Hence question arises that investigation of which investigating agency is to be accepted.

36. One limb of the argument was that NIA being a superior investigating agency the investigation done by I.O. of NIA should be given more weightage. But I think that this submission cannot be accepted for more than one reasons. Firstly the investigation done by NIA is further investigation as per the provisions of Section 173(8) of the Code of Criminal Procedure. Moreover the National Investigation Agency Act 2008 does not provide any specific provision to the effect that investigation done by NIA should be accepted in case of controversy between conclusion drawn by NIA and any other investigating agency. On the contrary scheme of Section 6 of the NIA Act shows that sub-section (4) and (5) of Section 6 authorizes the Central Government to direct the agency to investigate schedule offences. Sub-section (6) speaks about result of such direction and according to sub-section (6) after such direction is given by the Central Government State Government or previous investigating officer of the State should not proceed with the investigation and should transmit the relevant documents and record to the agency forthwith. Despite the mandate under sub-section (6) sub-section (7) provides that till the agency takes up the investigation of the case it is mandatory on the part of the previous investigating officer to continue with the investigation. What it shows that the investigation done by previous investigating agency is no affected only because NIA has made the further investigation.

37. The Hon'ble Apex Court in **Vinay Tyagi V/s. Irshad Ali @ Deepak and others reported in (2013) 5SCC 762** laid down the law when there is investigation by two or more investigating agency. Question before the Hon'ble Apex Court was whether in exercise of its powers u/s. 173 of the Code of Criminal Procedure trial court has the jurisdiction to ignore any one of the reports, where there are two reports by the same or different investigating agency in furtherance of the orders of the court? If so to what effect. The Hon'ble Apex Court in para No.40 has laid down that:

> "the court of competent jurisdiction is duty bound to consider all reports, entire records and documents submitted there with by the investigating agency as its report in terms of Section 173 of the Code of Criminal Procedure. This rule is subject to only the following exception:
>
> (a) "Where specific order has been passed by the learned Magistrate at the request of the prosecution limited to exclude any document or any part thereof;
>
> (b) When an order is passed by the high courts in exercise of is extra-ordinary or inherent jurisdiction directing that any of the reports i.e. primary report, supplementary report or the reports submitted on 'fresh investigation' or ' re-investigation' or any part of it be excluded, struck off the court record and be treated as non est".

38. The Hon'ble Apex Court in paragraph 32 of the judgment held that both reports have to be held conjointly and its cumulative effect of reports and documents annexed thereto to which the court would be expected to apply its mind to determine whether there exist grounds to presume that accused has committed the offence. Considering the above law laid down by the Hon'ble Apex Court it is clear that for deciding bail application of the applicant it is necessary to consider the investigation reports filed by ATS as well as further report filed by NIA.

39. At this stage it will appropriate and pertinent to mention that after the direction of the Hon'ble Apex Court in Criminal Appeal Nos. 1969-1970 of 2010 dated 15.04.2015 this applicant had filed bail application at Exhibit-2400 on 21.09.2015. The ld. SPP filed reply on 08.10.2015 and had resisted bail application of this applicant. After hearing applicant, prosecution and intervener that bail application came to be rejected on 07.11.2015. Now according to the applicant due to filing of the report by NIA there is change in circumstance hence this fresh application for bail is filed. Admittedly the order at Exh.2400 has become final as no appeal against that order is preferred. Considering this fact so far as this court is concern only it has to be seen that really there are change in circumstances and if yes whether those changes are sufficient to say that there are no reasonable grounds for believing that accusation against the applicant is prima facie true.

40. According to applicant filing of report by NIA and exonerating the applicant from all charges by NIA itself is sufficient to say that there

are no reasonable grounds for believing that accusation against the applicant is prima facie true. NIA has filed the report u/s. 173(8) of the Code of Criminal Procedure. Already on the basis of charge sheet filed by ATS cognizance of the offences alleged against the applicant is taken by this court. Yet the applicant is not discharged from those offences. Considering these facts now it has to be seen really the report filed by NIA is sufficient to say that there are no reasonable grounds to believe that accusation against the applicant is prima facie true.

41. First controversy is regarding whether there is prima facie case against the applicant for the offences punishable under MCOC Act and whether for deciding this bail application confessional statements of accused Nos.7, 10 and 12 can be looked into. For this purpose the observations of the Hon'ble Apex Court in Criminal Appeal Nos.1969-1970 of 2010 dated 15.04.2015 required to be considered. The copy of the said judgment is at Exhibit-2377. The Hon'ble Apex Court in paragraph 90 of the judgment came to the conclusion that the provisions under the MCOCA are attracted against accused No.7 hence he is not entitled to be released on bail. But so far as the remaining accused persons are concerned in para 91 of the judgment Hon'ble Apex Court observed that:

> “Having stated the said position relating to A-7, when we came to the case of others, there is no dispute that in respect of other appellants, their involvement is with reference to the present occurrence, namely, Malegaon bomb blast. Admittedly they are not proceeded against for

> the offence relating to Parbhani and Jalna. But still at the present juncture, with the materials available on record as on date, we are not in position to ascertain as to the involvement of the appellants either by way of their nexus with any accused who is a member of an "organized crime syndicate" or such nexus with the offence of an "organized crime" which pertains to Parbhani and Jalna. We cannot also rule out the possibility of the evidence based on the investigation by the prosecuting agency to come out with reliable materials in support of such nexus to be shown with an accused or with the crime in respect of the earlier two cases, namely Parbhani and Jalna. We cannot, therefore, declare to the extent as was done by the Special Judge in the order dated 31.07.2009 to straightway reach at a conclusion to the effect that MCOCA was not attracted and therefore, they should be discharged"

42. Admittedly when the Hon'ble Apex Court delivered the said judgment NIA was investigating the matter. The above observations of the Hon'ble Apex Court show that considering the charge sheet filed by ATS against accused persons Hon'ble Apex Court had come to the conclusion that there was no material against the remaining accused persons except accused No.7 to show their nexus with accused or with the crime pertaining to the Parbhani and Jalna cases. The above observations also

show that Hon'ble Apex Court straightway did not discharge the accused persons from the charges of MCOC because NIA may come with such material after completing the investigation to show nexus of other accused persons with previous two cases.

43. Admittedly NIA has now come with the case that there is no material against accused persons to attract the charges of MCOCA. NIA has dropped the charges of MCOCA. If this is the position then certainly at present so far as this bail application is concerned it has to be said that there is no prima facie case against the applicant in respect of charges under MCOC Act but matter does rest here.

44. Next controversy is regarding whether confessional statements of accused Nos.7, 10 and 12 can be looked into for the purpose of this bail application. Relying on **Nalini's case** advocate of intervener submitted that even if accused persons at the end of trial acquitted for the offence under MCOC Act still their confessional statements can be considered and relied upon for the offences under the Indian Penal Code. From the observations of the Hon'ble Apex Court in case of **Nalini** it emerges that confessional statement recorded u/s. 15 of TADA is admissible against co-accused provided that accused is tried with other co-accused in the same trial in respect of offence under TADA. It is further held by the Hon'ble Apex Court that if accused is acquitted at the end of trial for the offences punishable under the provisions of TADA still confessional statement of accused person can be considered and relied upon for the charges against accused persons under the Indian Penal Code.

45. It is submitted by the advocate of intervener that confessional statements of co-accused can be read after acquittal from the charges of TADA then these confessional statements cannot be kept away at this stage also.

46. It will appropriate to mention that while deciding the bail application at Exhibit-2400 initially in para Nos. 27 to 67 of my order by excluding confessional statements I had come to the conclusion that there are reasonable grounds to believe that accusation against the applicant is true. Thereafter in view of reasons mentioned in para Nos. 68 to 71 I had accepted submission of the intervener and the ld. SPP that confessional statement of co-accused can be considered for the purpose of bail application also.

47. But now circumstances are changed. At the time of deciding bail application at Exhibit-2400 there was no report of NIA and still NIA was investigating the matter. Now NIA has dropped the charges of MCOCA. Hence at this stage for the purpose of the bail application definite conclusion can be drawn that there is no prima facie case against accused for the offences under MCOC Act. If this is the position then certainly confessional statements which are recorded by police officers cannot be looked into.

48. I have already pointed out that while deciding application at Exh.2400 even excluding the confessional statements of accused Nos. 7, 10 and 12 I had come to the conclusion that there is prima facie case

against the applicant. Hence now it has to be seen whether really there is change in circumstance so as to say that there are no grounds for believing that accusation against the applicant is true. For this purpose it is necessary to consider material collected by ATS as well as now material collected by I.O. of NIA during the course of further investigation.

49. Investigating officer of NIA has discussed the evidence against the applicant from page Nos. 31 to 34 in the charge sheet and then came to the conclusion that there is no sufficient evidence on record to prosecute the applicant. So far as this applicant is concerned I.O. of NIA seems to have re-recorded statements of three witnesses and caused to be recorded statements of two witnesses out of above three u/s. 164 of the Code of Criminal Procedure. I.O. has recorded statements of following three witness u/s. 161 of the Criminal Procedure Code.

(i) PW55 (PW181 new) (page Nos.31 to 39)

(ii) PW79 (PW182 new) (page Nos.41 to 43)

(ii) PW112 (PW184 new) (page Nos.49 to 55)

50. I.O. of NIA caused to be recorded statements of PW79 (182) and PW112 (184) u/s. 164 of the Code of Criminal Procedure and the Metropolitan Magistrate Delhi has recorded their statements u/s. 164 of the Code of Criminal Procedure. At this stage it will appropriate to mention that I.O. of ATS has also caused to be recorded statements of above three witnesses u/s. 164 of the Code of Criminal Procedure and the Metropolitan Magistrate Mumbai has recorded their statements. So far as this applicant is concerned except above there is no any other investigation

done by I.O. of NIA.

51. Analysis of the evidence against accused No.1 made by I.O. of NIA at page Nos.31 to 34 show that I.O. of NIA is in agreement with the conclusion drawn by ATS that LML freedom motor cycle bearing No.GJ-05-BR-1920 was used in the bomb blast. I.O. of NIA has also come to the conclusion that said motor cycle is registered in the name of applicant. Hence one thing is clear that both the investigating agencies have concluded that motor cycle registered in the name of applicant is involved in the bomb blast. Due to these reasons submissions advanced by advocate of accused challenging this aspect cannot be accepted because already while deciding the previous bail application at Exhibit-2400 these submissions are dealt with and now considering the scope of this application said submissions cannot be re-appreciated.

52. Next allegation against the applicant by ATS is that she provided her motor cycle as well as planters for causing bomb blast. Advocate of applicant submitted that since prior to two years before blast absconding accused Ramchandra Kalsangara was in exclusive possession of the said motor cycle hence there was no question of providing said motor cycle for bomb blast by the applicant. According to him I.O. of NIA has come to the same conclusion and this is the material change in circumstance.

53. Analysis made by I.O. of NIA in respect of this circumstance shows that he considered the statements of PW Nos.21, 23, 30 and 32/46

recorded by the ATS officer and came to the conclusion that Ramchandra Kalsangara was in possession of the said motor cycle.

54. It is pertinent to note that same submission was advanced by the applicant at the time of previous bail application but it was not accepted. In fact selling of motor cycle and having no concern with it though being registered owner is the defence of the applicant which she has to establish during the trial. At this prima facie stage she cannot avoid her connection with the motor cycle being registered owner of the same. I have already pointed out that I.O. simply gave his findings on the basis of statements of witnesses which are already recorded by ATS but this aspect is considered and decided in Exhibit-2400. Hence again it cannot be appreciated in absence of any new material brought by NIA on record.

55. So far as providing motor cycle as well as planters for causing bomb blast by the applicant is concern, statements of PW22 and PW23 were relied while deciding previous bail application at Exhibit-2400. Statement of PW23 recorded by ATS shows that applicant was closely acquainted with wanted accused Ramji and she was in visiting term to the house of Ramji. According to this witness Ramji was using LML freedom motor cycle and Ramji had informed to this witness that motor cycle was given to him by the applicant. On this background statement of PW22 is material to consider.

56. Statement of PW22 shows that Ramji had contacted him on 7.10.2008. According to this witness as per say of Ramji he phoned the

applicant. There was talk of applicant and Ramji on phone on 7.10.2008. This witness had also talked with the applicant on that day and applicant had called this witness on the next day i.e. on 8.10.2008 at Ujjain.

57. Thereafter this witness has stated about whole incident in detail dated 8.10.2008. This witness had gone to receive the applicant at Ujjain railway station. According to this witness there was talk between the applicant and Ramji on mobile phone at railway station also for 5 to 7 minutes. Statement of this witness further shows that then he took the applicant in Mahakal Dharmshala where applicant halted in one room. Then witness has given the account regarding meeting of applicant with one Arvind Jain and then he stated about the fact of arrival of Ramji in the said Dharmashala to meet the applicant. According to this witness in his presence there was conversation between the applicant and wanted accused Ramji. His statement shows that they were talking about incident of bomb blast. Absconding accused Ramji Kalsangara admitted his complicity in causing bomb blast. Statement of this witness shows that applicant was having knowledge about this fact. Not only this but applicant made inquiry with Ramji as to how there were less casualties though her vehicle was used for causing blast and then Ramji said the reason. Statement of this witness clearly show the complicity of applicant and Ramji in commission of crime. It is pertinent to note that statement of PW22 and PW23 are also recorded u/s. 164 of the Code of Criminal Procedure before the Metropolitan Magistrate Bombay and they have stated the same facts.

58. While deciding application at Exh.2400 several objections were raised for accepting and relying on statement of PW22 but those objections were not accepted.

59. Investigating officer of NIA on page 32 of the charge sheet mentioned above facts which PW22 has stated. According to the investigating officer of NIA PW22 has made complaint in the court of Judicial Magistrate Indore on 26.11.2008 stating that he was illegally detained and tortured by ATS and ATS officers forced him to make statement u/s. 164 of the Code of Criminal Procedure hence statement recorded by ATS is also in question and there is every possibility that he may also retract from his earlier statement.

60. It is pertinent to note that filing of the complaint by PW22 was also one of the objections raised by applicant while deciding application at Exhibit-2400 but it was not accepted. At this stage it will appropriate to mention that even Division Bench of the Hon'ble Bombay High Court while deciding Criminal Appeal No.1305/2013 dated 04.04.2014 had relied the statement of PW22, PW23, PW43, PW45 and PW46 while considering the point regarding ownership of the motor cycle and then in paragraph 28 recorded finding that the above material available on record clearly indicates that this applicant actively helped other co-accused by providing motor cycle for explosion of bomb at Malegaon.

From the analysis made by the investigating officer of NIA it

appears that in the name of further investigation without collecting the new material on the basis of statements of witnesses recorded by ATS he came to the conclusion contrary to the conclusion already drawn by this court as well as the Hon'ble High Court. Certainly this cannot be said as a change in the circumstance.

61. On this point statement of PW55 is also material. PW55 has stated the fact that he was with Accused No.9 Prasad Purohit at Panchmadhi between 16.10.2008 to 20.10.2008. He further stated that on 19.10.2008 when accused No.9 Prasad Purohit received the knowledge that this applicant was taken by police accused No.9 Prasad Purohit was disturbed. This witness has also stated about the fact of extra judicial confession made by accused No.9 Prasad Purohit to him regarding preparation of bomb and causing bomb blast at Malegaon by using motor cycle provided by the applicant. It is pertinent to note that this witness has also stated all these facts in the statement recorded before the Magistrate u/s. 164 of the Code of Criminal Procedure.

62. Now investigating officer of NIA during the course of further investigation has recorded statement of this witness as PW181. In his statement before investigating officer of NIA recorded on 14.06.2015 this witness i.e. PW55 has retracted the statement given by him before ATS officer. According to him due to the threat given by ATS officer as per dictation given to him he gave previous statement before ATS officer as well as Metropolitan Magistrate. As this witness has retracted his statement investigating officer of NIA on page No.34 of the charge sheet

while analyzing the evidence against this applicant disbelieved the said witness. It is pertinent to note that while deciding the previous bail application also copy of the complaint made by this witness before the Maharashtra Human Rights Commission was filed on record. Despite this fact his statement was accepted as an additional material against the applicant. Now investigating officer of NIA has discarded his statement on the same ground and on the ground that before him also this witness has retracted his earlier statement. Now position became that this witness has made contrary statements before two investigating officers u/s. 161 of the Code of Criminal Procedure but there is statement of this witness recorded by the Metropolitan Magistrate Mumbai before whom this witness has stated above facts. I think that at this prima facie stage statement made before the Metropolitan Magistrate Mumbai u/s. 164 of the Code of Criminal Procedure is required to be given more weightage.

63. Next allegation against the applicant by ATS is that she is one of the main conspirators of the crime. As per case of ATS applicant was present in the meeting held at Bhopal and in the said meeting applicant shouldered the responsibility to provide men for causing bomb blast at Malegaon. For this purpose statements of PW79 and PW112 are re-recorded by the investigating officer of NIA. Their statements u/s. 164 of the Code of Criminal Procedure are also recorded by the Metropolitan Magistrate Delhi. At this stage it is pertinent to note that ATS officer has also caused to be recorded statements of these two witnesses u/s. 164 of the Code of Criminal Procedure by Metropolitan Magistrate Mumbai. It means now there are two contrary statements of these witnesses u/s. 161

of the Code of Criminal Procedure as well as there are two contrary statements of these witnesses u/s. 164 of the Code of Criminal Procedure.

64. At this stage it will appropriate to consider the background on which Bhopal meeting was held. Bhopal meeting took place on 11.04.2008 and 12.04.2008. Prior to that as per the prosecution case there was a meeting at Faridabad Anantpur village on 25.01.2008 and 26.01.2008. There was also a meeting in Calcutta in February 2008. Even as per the case of NIA also above meetings had taken place. NIA has also in agreement with the ATS officers that in Bhopal meeting at Sri Ram Temple this applicant was present.

65. It is necessary to consider the material on record on which background said Bhopal meeting took place. Transcripts of the meeting at Faridabad, Anantpur in file names sanatan bharat.WMA dated 26.01.2008, purohit.WMA dated 27.01.2008 and major upadhyay.wma dated 25.01.2008 show that co-accused Swami Amtrutanand, Prasad Purohit, Ramesh Upadhyay and some others were present in the said meeting including some of the witnesses. This conversation show the following things.

(i) Above participants in the meeting want to establish Hindu Rashtra i.e. “Aryavart”.

(ii) Discussion also shows that they wanted to overawe the government and wanted to establish government in exile.

(iii) Discussion further shows that they were not ready to accept the present constitution and want to prepare a new

constitution suited to their ideology.

(iv) This discussion further shows that above participants were of the view that persons resisting their ideology should be ex-communicated i.e. should be killed.

66. It appears from the discussion that co-accused Prasad Purohit had stated to the participants about his contact in Israel for implementation of their ideology. This discussion further shows that according to above accused there should not be place for muslim in Hindu Rashtra and they were also planning about formation of Ministry. This discussion also shows that list of 70 persons was prepared by co-accused Prasad Purohit who were to be ex-communicated. This discussion shows the object and mind set of co-accused who were present in the said meeting.

67. On this background further meeting at Bhopal took place on 11th and 12th April 2008. Statements of PW112 and 118 show that they were called in the said meeting and when they reached at Bhopal they saw posters of objectionable slogans regarding muslim community which was disliked to PW112. It is pertinent to note that these facts are also stated by PW112 (New 184) in his statement before investigating officer of NIA.

68. As per the statement of PW112 before ATS officer in Faridabad meeting co-accused Prasad Purohit had talked about Jihadi activities in Maharashtra at Aurangabad and Malegaon and he had also talked regarding preparation of guerrilla war to take revenge of such

activities. It is notable that when investigating officer of NIA re-examined this witness according to him he had not stated before ATS officer regarding talk of Prasad Purohit about preparation of guerrilla war to take the revenge of Jihadi activities.

69. According to PW112 after public meeting at Bhopal there was a meeting in one room and in the said meeting accused Swami Amrutanand, Prasad Purohit, Ramesh Upadhyay, Sameer Kulkarni, Sudhakar Chaturvedi, applicant and some other persons were present. Statement of PW112 before ATS officer shows that according to him in the said meeting accused No.9 Prasad Purohit talked about immediate action for taking revenge against muslim and he also gave opinion that Malegaon in Maharashtra is muslim dominating area hence if bomb blast is caused there it may amount of taking the revenge. According to him thereafter this applicant reacted by saying that she is ready to arrange persons for doing such act.

It is pertinent to note that in re-examination of this witness by the investigating officer of NIA he retracted from this part of the statement. But it is notable that this witness has reiterated the fact before the investigating officer of NIA also that in the said meeting issue of growing Jihadi activities in Aurangabad and Malegaon of Maharashtra was discussed. According to him in the said meeting accused No.9 explained about Jihadi activities in detail and asked to do something for its prevention by expanding the Abhinav Bharat Sanghatan in said area. What it shows that during re-examination by the investigating officer of

NIA this witness has not stated the actual utterance of the applicant showing her readiness to provide men for causing bomb blast.

70. It is pertinent to note that this witness is well educated person being doctor. Not only this but it appears from his statement that he has shouldered various responsibilities in various organizations. It is notable that no where this witness has stated that due to the threat by ATS officer he had given statement before ATS officer and before the Metropolitan Magistrate,Mumbai that this applicant had showed her readiness to provide persons for causing bomb blast at Malegaon. In his re-examination by the investigating officer of NIA he has stated that he had not stated above fact to the ATS officer and the Metropolitan Magistrate Mumbai and his signatures were obtained without showing his statement and without reading the contents to him. According to him at that time he was under pressure as his name was emerging in the media and his wife was suffering from Cancer.

71. So far as PW79 is concerned before ATS officer and in his statement before the Metropolitan Magistrate Mumbai he has stated about his presence in Bhopal meeting and he has specifically stated that whenever he was going in the room for serving tea and other eatables accused No.9 Prasad Purohit expressed his feeling that it is necessary to take immediate planned action to take revenge against muslim community. He has also expressed his opinion that at Malegaon there is muslim dominating area and if bomb blast is caused there it may amount of taking revenge. PW79 has also stated that applicant and co-accused expressed

their consent and applicant showed her readiness to provide persons for committing bomb blast. It is pertinent to note that in his re-examination by investigating officer of NIA he has denied his presence in Bhopal meeting and he has also stated the same fact before the Metropolitan Magistrate, Delhi.

72. At this prima facie stage without going to the question that which version of these witnesses is correct, safe conclusion can be drawn on the basis of statement of PW112 (new PW184) that in Bhopal meeting applicant was present and in the said meeting there was a discussion about growing Jihadi activities in Aurangabad and Malegaon and accused No.9 asked to do something for its prevention by expanding Abhinav Bharat Sanghatan in the said area.

73. So far as criminal conspiracy is concerned it is settled that criminal conspiracy can be proved either by direct evidence or by circumstantial evidence or by both. In absence of direct evidence circumstances proved before, during and after occurrence have to be considered to decide about the complicity of the accused. For the offence punishable u/s. 120 B of the Indian Penal Code it is not necessary to prove that perpetrators expressly agreed to do or caused to be done illegal act. This agreement may be proved by necessary implication.

74. I have already pointed out the background on which Bhopal meeting was held. Presence of this applicant in Bhopal public meeting as well as in the meeting held in one room is also transpired in the

investigation of NIA. As pointed above statement of PW112 before NIA officer also shows that in Bhopal meeting there was a discussion about Jihadi activities at Aurangabad and Malegaon. On this background involvement of motor cycle in bomb blast registered in the name of applicant coupled with conversation of the applicant with absconding accused Ramchandra Kalsangara subsequent to the incident as stated by PW22 certainly show that there are reasonable grounds for believing that the accusation against the applicant is prima facie true. Retraction of previous statements by PW79 and PW112 during the course of re-examination by the investigating officer of NIA is not sufficient to say that there is change in the circumstances to release the applicant on bail.

75. During the course of argument it is submitted by advocates of applicant that she is suffering from breast cancer. She is deprived from right to have treatment of her choice. The applicant is a woman and is now unable to walk without support. Advocate of applicant relied on the medical certificate filed along with this application dated 19.03.2016. It will appropriate to mention that this ground was raised in the application at Exh.2400 also. Not only this but the same ground was raised before the Hon'ble High Court in Criminal Appeal No.1305/2013. The Hon'ble High Court did not accept the said ground and it is specifically observed by the Hon'ble High Court that medical treatment and help can be provided to the applicant in government hospital. Medical report filed along with this application shows that applicant is taking treatment in hospital since 20.11.2013 as indoor patient. Considering these facts ground of ill-health raised by the applicant cannot be said as change in circumstance after

decision on Exhibit-2400 by this court.

76. During the course of argument advocates of applicant submitted that since last more than seven years applicant is in jail hence on the ground of delay in commencing the trial she is entitled to be released on bail. In support of this submission advocates of applicant relied on the judgment of the Hon'ble Apex Court in **Criminal Appeal No. 03/2011 arising out of Special Leave Petition (Criminal) No. 7999/2010, State of Kerala V/s. Raneef**. Advocates of applicant also relied on the authority reported in **2005 SCC (Criminal) 1057 Ranjitsing Brahmajeetsing Sharma and another**. It is true that applicant is in jail since long. But it will appropriate to mention that ground of delay was raised by the applicant in her previous application at Exhibit-2400 as well as this ground was also raised by the applicant before Division Bench of the Hon'ble Bombay High Court in Criminal Appeal No.1305/2013. This ground raised by the applicant was not accepted.

77. Now in view of the direction of the Hon'ble Apex Court this special court is constituted for the trial of the case. NIA has also completed the investigation in this matter. The Hon'ble Apex Court has already expedited the trial of this case. Hearing on the point of framing of charge is going on. Considering all these facts I think that now submission of advocate of applicant on the point of delay cannot be accepted.

78. Now question is whether merely on the ground that prosecution agency i.e. NIA has given no objection to release the applicant on bail she should be released on bail or not? Sub-section (5) of Section 43-D of the Unlawful Activities (Prevention) Act, 1967 says that unless the

public prosecutor has been given an opportunity of being heard no person accused of offence punishable under Chapter-IV and VI of UA(P) Act be released on bail. Proviso of sub-section (5) of Section 43-D of UA(P) Act put the restriction on the discretion of the court to release the applicant on bail if there are reasonable grounds for believing that accusation against such person is prima facie true. It means after giving an opportunity to the public prosecutor to file say it is mandatory on the part of the court to see whether there are reasonable grounds for believing that accusation against the accused is prima facie true, irrespective of the fact that public prosecutor resisted the application for bail or not. Not only this but sub-section (6) of Section 43-D of the UA(P) Act specifically says that above restriction on granting of bail is in addition to the restriction under the Code of Criminal Procedure.

79. In present case NIA has given no objection to release the applicant on bail mainly on the ground that she is exonerated by NIA from all charges levelled against her. It is not disputed that previous bail application filed by the applicant at Exhibit-2400 is rejected on 07.11.2015. I have already pointed out that after considering both the reports i.e. report of NIA as well as ATS it cannot be said that due to filing of further report by NIA there is any change in the circumstance so as to say that there is no reasonable ground for believing that accusation against the applicant is prima facie true. If this is the position then mere on the ground that now NIA has given no objection it is difficult to accept prayer of the applicant.

80. Moreover it is pertinent to note that previous bail application of the applicant at Exhibit-2400 was filed on 21.09.2015. NIA had strongly resisted that application by filing say on 08.10.2015. That application came to be rejected on 07.11.2015. It is pertinent to note that PW55 (New PW 181) is re-examined by the investigating officer of NIA on 14.06.2015. PW79 (New PW182) is re-examined by the investigating officer of NIA on 12.09.2015 and PW112 (New PW184) is re-examined by the investigating officer of NIA on 17.10.2015. What it shows that above three material witnesses were re-examined by the investigating officer of NIA well before passing previous order. Not only this PW55 and PW79 were examined by the investigating officer of NIA even prior to filing the previous bail application at Exhibit-2400. Despite these facts for the reasons best known to the prosecution at that time NIA had strongly resisted the bail application of the applicant without relying the statements of above witnesses before the investigating officer of NIA. In view of these reasons, now only because prosecution i.e. NIA has given no objection it is difficult to accept the prayer of the applicant. In view of all above discussion, it is clear that the applicant is not entitled to be released on bail. In result proceed to pass following order.

ORDER

Application filed by the accused No.1 Pragyasingh Chandrakantsingh Thakur @ Sadhvi at Exhibit-3021 is hereby rejected.

(S. D. TEKALE)
Special Judge
under MCOC & NIA Act
City Civil & Sessions Court
Gr.Bombay.

Dictated on : 28.06.2016.
Transcribed on : 28.06.2016.
Signed on :