Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1969-1970 OF 2010

Prasad Shrikant Purohit ...Appellant

VERSUS

State of Maharashtra & Anr. ...Respondent

With

Criminal Appeal No.1971 of 2010
Criminal Appeal Nos.1994-98 of 2010
Criminal Appeal No.58 of 2011
Criminal Appeal No. 636 of 2015 @ SLP (Crl.) No.8132 of 2010
Criminal Appeal Nos. 639-40 of 2015 @ SLP (Crl.) Nos.9370-71 of 2011
SLP (Crl.) 9303 of 2011
SLP (Crl.) No.9369 of 2011

J U D G M E N T

Fakkir Mohamed Ibrahim Kalifulla, J.

1. Leave granted in SLP (Crl.) No.8132 of 2010 and SLP (Crl.) Nos.9370-71 of 2011.

2. As in all the above appeals the issue that arises for consideration is the applicability of the Maharashtra Control of

Organized Crime Act, 1999 (hereinafter called "MCOCA"), all these appeals are disposed of by this common judgment.

3. Criminal Appeal Nos.1969-70/2010 have been preferred by Lt. Col. Prasad Shrikant Purohit challenging the judgment in Criminal Appeal No.867 of 2009 which was disposed of by the common order passed by the Division Bench of the Bombay High Court in Criminal Appeal Nos.866, 867, 868, 869 and 1024 of 2009 dated 19.07.2010. By the said order the Division Bench reversed the order of the Special Judge dated 31.7.2009 passed in Special Case No.1 of 2009 wherein he held that the charges against the accused in C.R.No.18 of 2008 registered with Anti-Terrorist Squad, Mumbai (hereinafter referred to as "ATS") under the MCOCA do not survive and were discharged from the case. The Special Court by invoking Section 11 of the MCOCA directed the case to be tried by the regular Court. The Division Bench while allowing the Criminal Appeal Nos.866 to 869 of 2009 set aside the order of the Special Judge 31.07.2009 in Special Case No.1 of 2009 as well as orders passed in Bail Application Nos.40 to 42 of 2008, restored those applications to the file in MCOCA Special Case No. 01 of 2009 for being decided on merits by Special Judge himself. In Criminal Appeal No.1024 of 2009 while

allowing the said appeal, Bail Application No.41 of 2008 was directed to be restored in MCOCA Special Case No. 01 of 2009 for being heard and decided on merits.

4. The appellant-Lt. Col. Prasad Shrikant Purohit is the first respondent in Criminal Appeal No.867 of 2009.

5. The appeals arising out of SLP (Crl.) No.9370-71/2011 have also been preferred by the very same appellant, namely, Lt. Col. Prasad Shrikant Purohit challenging the common order passed in Criminal Bail Application No.333 of 2011 with Criminal Application No.464 of 2011 along with Criminal Application No.556 of 2011 dated 9th November 2011 by the learned Single Judge of the Bombay High Court. By the said order the learned Judge allowed the Criminal Application No.556 of 2011 filed by Ajay Ekanath Rahirkar by granting him bail by imposing certain conditions. In the case of appellant herein, the challenge made in Criminal Application No.464 of 2011 was the order of the Special Judge after the order of remand passed by the Division Bench dated 19.07.2010. The Special Judge by the order dated 30.12.2010 rejected the appellant's application for bail. The learned Single Judge after detailed discussion, dismissed the Criminal Bail Application No.333 of 2011 as well as Criminal

Application No.464 of 2011 by the order impugned in these appeals.

6. The appeal arising out of SLP(Crl.) No.8132/2010 has been filed by one Pragyasinh Chandrapalsinh Thakur challenging the common order dated 19.07.2010 passed by the Division Bench of the Bombay High Court in Criminal Appeal No.866 of 2009 which is identical to the case of the appellant in Criminal Appeal Nos.1969-70 of 2010.

7. Criminal Appeal No.1971 of 2010 is preferred by one Rakesh Dattaray Dhawade challenging the order dated 19.07.2010 passed by the Division Bench of the Bombay High Court in Criminal Appeal No.868 of 2009.

8. The appeal arising out of SLP (Crl.) No.9303/2011 is preferred by one Sudhakar Dhar Dwivedi and Ramesh Shivji Upadhyay challenging the order dated 20.10.2011 of the learned Single Judge of the Bombay High Court. By the said judgment, the learned Single Judge declined to interfere with the order of Special Judge in Misc. Application No.98/2011 permitting police custody to the first respondent, namely, National Investigation Agency (NIA) for 8 days from 22.07.2011 up to 30.07.2011. In

fact, the said case was originally investigated by ATS and final report was submitted on 30.01.2009 and supplementary charge-sheet vide MCOCA No.8/2011 was filed on 21.4.2011. Thereafter by order dated 1.4.2011 of the Ministry of Home Affairs, Government of India, investigation was transferred to NIA and an FIR was registered as Crime No.5/2011 by police station NIA on 13.4.2011. Thereafter NIA sought for police custody which was granted by order passed in Misc. Application No.98/2011 dated 19.07.2011. The said SLP is not argued before us and, therefore, the same is delinked from this batch of cases and the same shall be heard separately.

9. We heard arguments of Mr. U.R. Lalit, learned senior counsel who appeared before us for the appellants in Criminal Appeal Nos.1969-70/2010 as well as Criminal Appeal Nos.1994-98/2010, Mr. Triloki Nath Razdan, learned counsel for the appellant in appeal arising out of SLP (Crl.) No.9303/2011, Mr. Basava Prabhu S. Patil, learned senior counsel in the appeal arising out of SLP (Crl.) No.8132/2010 and Mr. Vikas Mehta, learned counsel in Criminal Appeal No.1971 of 2010.

10. Mr. U.R. Lalit, learned senior counsel in his submissions referred to the brief facts which led to the initiation of the

proceedings against the appellants under the provisions of MCOCA. As the narration goes, there was a bomb blast at the place called Malegaon in Mumbai on 29.9.2008. With reference to the said occurrence, FIR No.130/2008 was registered in the Azad Nagar police station in Malegaon on 30.9.2008. On 26.10.2008, the said FIR was transferred and registered as C.R. No. 18/2008 and the investigation was taken over by ATS. Thereafter the appellant in Criminal Appeal No. 1971/2010, namely, one Rakesh Dattaray Dhawade was arrested by ATS on 02.11.2008. Subsequent to his arrest, the appellant in Crl. Appeal Nos. 1969-1970/2010 was arrested on 05.11.2008. On 20.11.2008, approval was given as per Section 23(1) (a) of MCOCA by DIG, ATS for recording of information about the commission of an offence and for applying the provisions of Section 3(1)(i),3(2) and 3(4) of MCOCA against all the accused in C.R. No. 18/2008.

11. Be that as it may, earlier on 21.11.2003, there was a bomb explosion at Mohmedia Masjid, Nanalpeth, Parbhani which was registered as C.R. No.161 of 2003/Parbhani. There was another bomb explosion at Kaderia Masjid, Jalna during Friday Namaz which was registered as C.R.No. 194 of 2004/Jalna.

12. In the case pertaining to Parbhani, the charge-sheet was filed on 07.09.2006 against A1–Sanjay Choudhary for the offences punishable under Sections 302, 307, 324, 337, 338, 285, 286 and 295 read with 34, IPC and Sections 3, 4, 6 of the Explosives Act and Section 25(1) and (3) of the Arms Act. The case was registered as RCC No.467/2006. A supplementary chargesheet-I was filed in Parbhani case against four accused for the above referred to offences as well as Sections 120-B & 153-A read with 34 of IPC on 29.9.2006.

13. In Jalna case, charge-sheet was filed against A-1 for the offences punishable under Sections 307, 436, 324, 323, 120-B, 153-A read with 34 of IPC and Sections 3, 4, 6 of Explosives Act on 30.9.2006. In Jalna case, two supplementary charge-sheets were filed on 7.1.2008 against four additional accused and against five accused on 14.1.2008. On 13.11.2008, supplementary charge-sheet-2 was filed against the appellant in Crl. Appeal No.1971 of 2010-Rakesh Dattaray Dhawade in Parbhani Case and a supplementary charge-sheet-3 was filed against him in Jalna Case on 15.11.2008. Thereafter, on 20.11.2008, charge-sheet in Malegaon Blast Case was filed by ATS against the appellants herein under the MCOCA. On

15.01.2009, sanction under Section 23(2) of MCOCA was also granted.

14. In the above stated background, Mr. U.R. Lalit, learned senior counsel made as many as five submissions to contend that MCOCA was not attracted as against the appellants and, therefore, the orders impugned are liable to be set aside.

15. Mr. U.R. Lalit, learned senior counsel prefaced his submissions by stating that appellants were all proceeded against based on the footing that they were members of an organization called “Abhinav Bharat” which was registered in 2007 and that they were now being prosecuted under the provisions of MCOCA. The learned senior counsel submitted that in order to prosecute the appellants under the MCOCA, the definition of “continuing unlawful activity”, “organized crime” and “organized crime syndicate” as defined under Section 2(1)(d),(e) and (f) of MCOCA should be satisfied. The learned senior counsel while referring to the above definitions submitted that the prosecuting agency were relying upon the Parbhani case and Jalna case which occurred in 2003 and 2004 and which were organized by RSS and Bajrang Dal with which neither Abhinav Bharat nor the appellants were in anyway connected and,

therefore, the definition of “continuing unlawful activity” or “organized crime” as well as “organized crime syndicate” was not fully established.

16. The next submission of Mr. U.R. Lalit, learned senior counsel was that in order to attract Section 2(1)(d) for an offence to be a ‘continuing unlawful activity’ within a period of preceding ten years from the date of the third occurrence, two prior cases falling under the said Section should have been filed and taken cognizance of and that the date with reference to which the preceding ten years is to be counted is the date of third occurrence. The learned senior counsel, therefore, submitted that the Malegaon bomb blast occurred on 29.09.2008, the arrest of Rakesh Dattaray Dhawade was on 02.11.2008, supplementary charge-sheet against him was filed in Parbhani case on 13.11.2008 and in Jalna case on 15.11.2008 and in Parbhani, the case was committed to Sessions Court only on 29.4.2009 i.e. not within the preceding 10 years of the occurrence in Malegaon and, therefore, the definition of Section 2(1) (d) was not satisfied. Even with reference to Jalna, the learned senior counsel submitted that the Express Order of cognizance was taken only on 28.11.2008 i.e. after the occurrence in Malegaon, namely,

29.09.2008. Therefore, the requirement of preceding ten years in order to bring the earlier two occurrences in Parbhani and Jalna within the definition of 2(1)(d) as continuing unlawful activities was not made out. The learned senior counsel in this context submitted that the conclusion of the Division Bench that cognizance is always with reference to the offence and not the offender, is not the correct legal position. The learned senior counsel after referring to Sections 173(2)(i)(a), 190(1)(b) and 178 of the Code of Criminal Procedure (Cr.P.C.) submitted that a close reading of the above Sections shows that the cognizance will be with reference to the offender and not the offence. The learned senior counsel, therefore, submitted that in the case of Jalna the Express Order of cognizance was taken on 28.11.2008 after the supplementary charge-sheet dated 15.11.2008 against Rakesh Dattaray Dhawade, which was long after the date of occurrence of Malegaon, namely, 29.09.2008, and, therefore, the requirement of two earlier cases as stipulated under Section 2(1)(d) was not satisfied. The learned senior counsel relied upon the decisions in **Ajit Kumar Palit v. State of West Bengal** - AIR 1963 SC 765 and **Dilawar Singh v. Parvinder Singh @ Iqbal Singh & Anr.** - 2005 (12) SCC 709 in support of his submissions.

17. Mr. U.R. Lalit, learned senior counsel then contended that the event of cognizance being taken as defined under Section 2(1) (d) can only be with reference to 'competent court' and in the case of Parbhani and Jalna as the offences were under Sections 302, 307/308 etc., Sessions Court was the competent court and not the Chief Judicial Magistrate. The learned senior counsel pointed out that in the case of Parbhani, the committal order was passed only on 29.04.2009 i.e. long after the Malegaon case occurrence, namely, 29.09.2008. Therefore, the requirement of two earlier cases which were taken cognizance of by the competent court cannot be held to have been satisfied. In support of the said submission, learned senior counsel relied upon **Fakhruddin Ahmad v. State of Uttaranchal and Anr.** – (2008) 17 SCC 157.

18. The learned senior counsel then contended that in order to attract the provisions of MCOCA, in all the three cases, the same gang must have been involved. Elaborating his submission, the learned senior counsel contended that Rakesh Dattaray Dhawade who has been added as A-7 in Malegaon case was arrested on 02.11.2008 and his arrest was shown in Parbhani and in Jalna on 13.11.2008 and 15.11.2008 as directed by the

Additional Police Commissioner of ATS and even going by the statement of A-7, he procured some materials and gave them to one principal accused in Parbhani and Jalna, namely, Devle and going by the said statement, there is no scope to link the appellant with the cases which related to Parbhani and Jalna and, therefore, the requirement of involvement of the same gang in all the three cases was not satisfied. The learned senior counsel submitted that in any event, the appellants were not concerned with Parbhani and Jalna, that they were not even aware of A-7's involvement in those two occurrences, as they were not members of those gangs which were involved in Parbhani and Jalna and, therefore, the invocation of MCOCA was not made out. The learned senior counsel further contended that it was all the more reason to hold that cognizance should be with reference to the offender and not the offence which has to be mandatorily satisfied.

19. The learned senior counsel lastly submitted that going by the definition of 'organized crime' under Section 2(1) (e), there must have been a pecuniary gain accompanied by the act of violence, that the appellant had not taken any money from anybody and when such pecuniary advantage should have been

present in all the three cases, it cannot be held that the case against the appellant would come under the definition of 'organized crime'. According to learned senior counsel, in the case of Parbhani and Jalna, only violence was the basis and promoting insurgency was not even the case of prosecution which may have a semblance of application in Malegaon case and certainly not in Parbhani and Jalna. The learned senior counsel, therefore, contended that the application of MCOCA as against the appellants was wholly inappropriate and consequently, the order of the Division Bench and the subsequent order of the Special Court in declining to grant bail was liable to be set aside. The learned senior counsel submitted that the appellants made out a case to show that there were reasonable grounds for believing that he was not guilty of such offence under MCOCA and as provided under Section 21(4)(b) of MCOCA and should have been granted bail. The learned senior counsel further submitted that the appellant in Criminal Appeal Nos.1969-70 of 2010 as well as in SLP (Crl.) Nos.9370-71 of 2011 has been in jail for more than six years and he is entitled for grant of bail.

20. Mr. Triloki Nath Razdan, learned counsel appearing for the appellants in the appeal arising out of SLP (Crl.)

No.9303/2011 while adopting the arguments of Mr. U.R. Lalit, learned senior counsel for the appellant in Crl.A.No.1969-70/2010 contended that the Objects and Reasons of MCOCA shows that the very purport of the enactment was to curb the accumulation of illegal wealth, that in order to attract the provisions of MCOCA, involvement in organized crime by an organized crime syndicate in all the three cases must be satisfied. By referring to the sanction order dated 15.01.2009, learned counsel submitted that when the arrest of Rakesh Dattaray Dhawade was in the month of November, 2008, the requirement of Section 2(1) (d) relating to two previous cases of continuing unlawful activity was not satisfied. In other words, according to learned counsel, as the requirement of continuing unlawful activity in respect of an organized crime by the organized crime syndicate was not shown, MCOCA was not attracted. The learned counsel relied upon in **Central Bank of India v. State of Kerala and others** - (2009) 4 SCC 94 and **Ranjitsing Brahamjeetsing Sharma v. State of Maharashtra & Anr.** – (2005) 5 SCC 294.

21. Mr. Patil, learned senior counsel appearing for the appellant in SLP (Crl.) No.8132/2010 referred to the impugned judgment of the Division Bench, in particular, paragraph 18 and

submitted that the question which was posed for consideration by the Division Bench was limited to the extent of examining the issue of taking cognizance of the offences by the Chief Judicial Magistrate at Parbhani and its counterpart at Jalna. Sofaras the appellant in the present appeal was concerned, learned senior counsel submitted that she became a S*anyasin* after performing appropriate Hindu religious rites and prayers on 30.01.2007, that she was residing in an ashram at Jabalpur, Madhya Pradesh and that she owned a two wheeler LML-Freedom which she sold out to one Sunil Joshi of Madhya Pradesh way back in October, 2004 for a sale consideration of Rs.24,000/- and she also signed the necessary transfer application Forms in October, 2004 itself and that thereafter she had no control over the said vehicle. The learned senior counsel submitted that inspite of her disclosing the above facts, the officials of ATS applied third degree methods upon her and insisted that the said vehicle was involved in Malegaon blast occurrence and, therefore, she was also involved in the said occurrence. The learned senior counsel submitted that she was implicated in the Malegaon case while she is innocent simply because the vehicle bearing registration No.MH-

15-P-4572, which she owned, was stated to have been involved in the Malegaon blast.

22. The learned senior counsel then submitted that if the Objects and Reasons is read for interpreting Section 3, a strict application of the Act should be made, in which event, in order to invoke the provisions of MCOCA Section 2(1)(d), (e) and (f) should be satisfied. It was contended that for implicating a person it is to be mandatorily shown that he was involved in a 'continuing unlawful activity' as a member of crime syndicate or on behalf of it on two earlier occasions, that the appellant was not involved in either the Parbhani case or in Jalna case and, therefore, the invocation of MCOCA against the appellant was not maintainable. The learned senior counsel also submitted that having regard to the relevant dates with reference to the committal order in Jalna case, namely, 11.8.2008, the subsequent charge-sheet against A-7 on 15.11.2008 on which date the case was registered afresh as RCC No.648/2008 and on 28.11.2008 when committal order was passed, the sanction order in Malegaon case being 20.11.2008, there was no scope to hold that there were two earlier cases falling within the definition of continuing unlawful activity as defined under Section 2(1)(d) of the Act. The learned senior

counsel, therefore, contended that the order of the trial Court dated 31.07.2009 discharging all the accused was justified and the Division Bench ought not to have interfered with the said order.

23. The learned senior counsel also submitted that the Division Bench having noted that the offence under Section 153A, IPC was not laid after getting prior sanction as required under Section 196 Cr.P.C. even as against A-7 Rakesh Dattaray Dhawade, there was no valid cognizance taken by the trial Court in respect of the earlier cases of Parbhani and Jalna. The learned Senior Counsel, therefore, contended that in the absence of the 'continuing unlawful activity' as defined under Section 2(1)(d) of an 'organized crime' by 'organized crime syndicate' shown, application of MCOCA was not justified. As far as the preceding 10 years as prescribed under Section 2(1)(d) is concerned, learned senior counsel submitted that Section 2(1)(d) specifically refers to 'activity' for calculating the preceding 10 years and, therefore, 29.09.2008 would be the relevant date and calculated on that basis the claim of the prosecution that there were two earlier cases as stipulated under Section 2 (1)(d) was not satisfied. In support of this submission, learned senior counsel

relied upon the decisions of this Court reported as **Mahipal Singh v. Central Bureau of Investigation & Anr. -** 2014 (11) SCC 282, **State of Maharashtra & Ors. v. Lalit Somdatta Nagpal & Anr. –** (2007) 4 SCC 171, **State of Maharashtra v. Bharat Shanti Lal Shah and Ors. -** 2008 (13) SCC 5 and **Tolaram Relumal & Anr. v. The State of Bombay -** AIR 1954 SC 496.

24. Mr. Vikas Mehta, learned counsel appearing for the appellant in Criminal Appeal No.1971/2010, namely, Rakesh Dattaray Dhawade after making reference to the judgment in **Mahipal Singh (supra)** contended that prior to the registration of FIR No.130 of 2008 on 30.09.2008 in the Malegaon blast case, the appellant was not involved in any 'continuing unlawful activity'. According to him, if a strict interpretation is to be placed on the definition of 'continuing unlawful activity' as stated in the said decision of this Court, the appellant having been not involved in the commission of any offence prior to registration of FIR No.130/2008 either singly or jointly as a member of an 'organized crime syndicate, invocation of MCOCA was not justified. The learned counsel then contended that in order to invoke MCOCA all the three definitions of Section 2 (1) (d), (e)

and (f) should be satisfied in which event it should be by the same gang in all the three cases. The learned counsel then contended that since strict interpretation is to be made as directed by this Court while upholding the validity of the Act, it should be construed only in that manner. The learned counsel by relying upon the decisions in **Ranjitsing Brahamjeetsing Sharma (supra), Lalit Somdatta Nagpal (supra)** and **Mahipal Singh (supra)** contended that the requirement of satisfaction of 'continuing unlawful activity' of an 'organized crime' by an 'organized crime syndicate' insofar as it related to the appellant was not made out and the application of the MCOCA was not justified. Mr. S.S. Shamshery, learned counsel appearing for the appellant in Criminal Appeal No.58/2011 submitted that he is adopting the arguments of Mr. U.R. Lalit, learned senior counsel for appellant in Criminal Appeal No.1969-70 of 2010 and the judgment of the Division Bench is liable to be set aside.

25. As against the above submissions made on behalf of the appellants, Mr. Anil Singh, learned ASG for the respondent State submitted that the Division Bench after formulating the question in paragraph 18 ascertained the relevant dates when cognizance

was taken in Parbhani case and in Jalna case by the Committal Court and in both the cases cognizance was taken as early as on 07.09.2006 in Parbhani and on 30.9.2006 in Jalna which were borne out by records and, therefore, the Division Bench was justified in setting aside the order of the Special Court. In support of his submission that taking a fresh cognizance is not a requirement of law in a case where cognizance is already taken in respect of the same offence, reliance was placed upon **R.R. Chari v. State of Uttar Pradesh** - AIR 1951 SC 207, **Raghubans Dubey v. State of Bihar** - AIR 1967 SC 1167, **Darshan Singh Ram Kishan v. State of Maharashtra -** AIR 1971 SC 2372, **State of West Bengal v. Salap Service Station & Ors. -** 1994 (3) Suppl. SCC 318, **CREF Finance Limited v. Shree Shanthi Homes (P) Ltd. and another -** 2005 (7) SCC 467, **State of Karnataka v. Pastor P. Raju -** 2006 (6) SCC 728, **S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd. & Ors. –** (2008) 2 SCC 492, **Fakhruddin Ahmad (supra)** and **Sarah Mathew v. Institute of Cardio Vascular Diseases By its Director Dr. K.M. Cherian & Ors.–** (2014) 2 SCC 62.

26. According to learned ASG, in respect of an offence under MCOCA, for invoking its provisions, cognizance of the offence taken as provided under Section 190 Cr.P.C. was sufficient. The learned ASG then submitted that in order to ascertain a 'continuing unlawful activity' as defined under Section 2 (1) (d) of the MCOCA what is required is commission of such an offence as a member of either 'organized crime syndicate' or on behalf of 'organized crime syndicate' would mean any 'organized crime syndicate' and not the same 'organized crime syndicate'. As far as the contention relating to two earlier cases in the preceding 10 years, the learned ASG submitted that in the Malegaon case, the occurrence was on 29.09.2008 and in the preceding 10 years i.e. on 07.09.2006 cognizance was taken in the Parbhani case and in Jalna case cognizance was taken on 30.09.2006 and, therefore, the same was sufficient to hold that the appellants were involved in a 'continuing unlawful activity' and thereby satisfied the requirement of 2 (1) (d) (e) and (f) of MCOCA. The learned ASG sought to distinguish the case in **Mahipal Singh (supra)**. The learned ASG by relying upon **Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra & Ors.** – 2010 (5) SCC 246 submitted that insurgency is a grave disturbance of public order

and, therefore, the question of pecuniary advantage was not needed where promotion of insurgency formed the basis for prosecuting the appellants under MCOCA. On 'other advantage', learned ASG relied upon **State of Maharashtra v. Jagan Gagansingh Nepali @ Jagya** -2011 (5) Mh.L.J. 386.

27. Mr. Mariaarputham, learned senior counsel appearing for the State of Maharashtra and NIA after referring to the accusations against the accused submitted that going by the allegations and the gravity of the offence, they are not entitled for bail. The learned senior counsel also submitted that apart from offences under the MCOCA, the appellants are also proceeded under the Unlawful Activities (Prevention) Act, 1967, in particular, offences under Sections 13, 15, 16, 17, 18, 18B, 20, 23 etc. and the maximum penalty for offences under Sections 15 to 23 is the death penalty and that under Section 43D(5) for grant of bail, severe restrictions have been imposed and, therefore, both because the question raised about the implications of MCOCA, as well as, having regard to the offences for which the appellants are proceeded against, they are not entitled for grant of bail. The learned senior counsel then contended that in order to constitute an offence as an 'organized

crime' under Section 2 (1)(e) of MCOCA, it is not necessary that for the commission of such aggressive offences, there should be allegation of pecuniary advantage also. According to learned senior counsel, insofar as, promotion of insurgency is concerned, even without any allegation of pecuniary gain, the said act by itself would constitute an 'organized crime'. The learned senior counsel, therefore, contended that even in the absence of any allegation of pecuniary gain, the offence alleged would fall under the category of 'organized crime'. The learned senior counsel further contended that in any event there were materials to show that the appellant in Criminal Appeal 1969-70/2010 as well as the appellant in Criminal Appeal No.1971/2010 had pecuniary advantage. The learned senior counsel then contended that cognizance of the offence was taken by the Magistrate based on the charge-sheet and when once there was application of judicial mind with a view to proceed with the matter, the requirement of cognizance was fulfilled. Insofar as the offences pertaining to Parbhani and Jalna were concerned, the learned senior counsel contended that they were all IPC offences and, therefore, taking cognizance of those offences need not be tested on the anvil of the provisions of MCOCA. The learned senior counsel placed

reliance upon the decisions in **Gopal Marwari & Ors. v. Empero**r -AIR 1943 Patna 245 which was affirmed by this Court in **R.R. Chari (supra).** He also placed reliance upon **Darshan Singh Ram Kishan (supra), State of West Bengal & Anr. v. Mohd. Khalid & Ors.–** (1995) 1 SCC 684, **CREF Finance Limited (supra), Pastor P. Raju (supra), Mona Panwar v. High Court of Judicature at Allahabad Through its Registrar & Ors. –** (2011) 3 SCC 496 and **Sarah Mathew (supra)**.

28. On the submission relating to competent Court, learned senior counsel submitted that in Parbhani and Jalna reference needs to be made only to Sections 190, 200, 201, 202 read with Section 4 Cr.P.C. and when on a complaint filed by the prosecution, the CJM having taken cognizance, the same was sufficient for the fulfillment of requirement of the 'continuing unlawful activity' as defined under Section 2 (1) (d) of the MCOCA. According to learned senior counsel, for the purpose of taking cognizance under the above provisions, the presence of the accused was not necessary. As far as the relevant date is concerned, according to learned senior counsel, even if the date of occurrence of Malegaon blast, namely, 29.9.2008 is taken as

the relevant date, the committal Court having taken cognizance by receipt of the charge-sheet dated 07.09.2006 in respect of Parbhani and on 30.09.2006 in the case of Jalna and the committal order was on 12.02.2007 in Jalna, the cognizance was well before 29.09.2008 and, therefore, there was nothing lacking for the purpose of invoking the provisions of MCOCA. The learned senior counsel further contended that as long as all the three incidents were committed by a group of persons and one common individual was involved in all the three incidents, that would attract invocation of MCOCA.

29. Mr. Tushar Mehta, learned ASG also appearing for NIA submitted that in the event of granting bail, having regard to the nature of offence alleged to have been indulged in by the appellants, severe conditions should be imposed and that the agency is entitled for custodial interrogation and also the presence of the accused at the time of trial should be ensured.

30. By way of reply Mr. U.R. Lalit, learned senior counsel submitted that the prosecution has not shown involvement of 'Abhinav Bharat' in the Parbhani case or Jalna case in which event if 'Abhinav Bharat' is to be excluded, the linking of the

appellants by making reference to Abhinav Bharat will also entitle them to contend that MCOCA cannot be invoked. The learned senior counsel submitted that since MCOCA has been invoked for the purpose of ascertaining the cognizance of the offence, reference to Section 2(1)(d) would alone be made and not under Section 190 Cr.P.C. The learned senior counsel further contended that cognizance by the competent Court in the facts and the nature of offence alleged in Parbhani and Jalna would only mean the Sessions Court under Section 209 Cr.P.C. and, therefore, there is a serious doubt as to the application of MCOCA. The learned senior counsel, therefore, contended that such doubt should be held in favour of the appellants under Section 21(4)(b) of MCOCA and the appellants should be granted bail.

31. Mr. Patil, learned senior counsel for the appellant in appeal arising out of SLP(Crl.) No.8132/2010 submitted that when the case of the said appellant is considered with reference to additional charge-sheet, appellant being a lady suffering from cancer and her implication was because of sale of her two wheeler four years before the occurrence, applying the decision in **Salap Service Station (supra)**, she is entitled for the grant of bail.

32. Having noted the submissions of respective counsel, at the outset, we want to note the specific challenges made in these appeals. As far as the appellant in Criminal Appeal No.1969-70 of 2010 is concerned, he along with the other appellants is aggrieved by the common judgment of the Division Bench of the Bombay High Court in Crl.A. Nos.866, 867, 868, 869 and 1024 of 2009 dated 19.07.2010. By the said judgment, the Division Bench set aside the order of the Special Judge dated 31.07.2009 in Special Case No.1/2009. While setting aside the said order of the Special Judge, the Division Bench directed the Special Judge to consider the bail applications in Bail Application Nos.40-42 of 2008 and pass orders on merits. In fact, the Special Judge in his order dated 31.07.2009 took the view that MCOCA was not applicable to Special Case No.1/2009 and consequently by invoking Section 11 of MCOCA, directed the case to be tried by the regular Court. Therefore, when we examine the correctness of the judgment of the Division Bench dated 19.07.2010 in Crl. A Nos.866/2009 and connected appeals, if the said judgment is to be upheld, the consequence would be to the consideration of the bail applications under Section 21 of the MCOCA.

33. It is relevant to note that after the order of the Division Bench dated 19.7.2010, the Special Judge dealt with the Bail Applications Nos. 40-42 of 2008 and dismissed all the applications. Thereafter, those orders were the subject matter of challenge in Criminal Bail Application No.333/2011 with Criminal Application No.464/2011 insofar as the appellant in Criminal Appeal No.1969-70/2010 is concerned. One other appellant namely, Ajay Eknath Rahirkar filed Criminal Application No.556/2011 which was allowed by the Bombay High Court and he was granted bail by imposing certain conditions. As far as Criminal Application No.333/2011 was concerned, the said application was rejected and the main Criminal Application No.464/2011 was disposed of by the High Court.

34. The appellant in Criminal Appeal No.1971 of 2010 was one of the respondents in Criminal Appeal No.868 of 2009 which was disposed of by the Division Bench of the Bombay High Court by its order dated 19.07.2010 along with the connected appeals preferred by the State of Maharashtra through ATS which is the prosecuting agency in respect of the Special Case No.1 of 2009 on the file of the Special Judge under MCOCA. The said appellant was also aggrieved by the order of the Division Bench referred to

above in having set aside the order of the Special Judge dated 31.07.2009. The appellant in the appeal arising out of SLP (Crl.) No.8132/2010 is also similarly placed like that of the appellants in Criminal Appeal Nos.1969-70/2010 and Criminal Appeal No.1971/2010.

35. Having thus noted the grievances of the appellants in the above referred to appeals as against the order of the Division Bench dated 19.07.2010 as well as the subsequent order of the learned Single Judge in having declined to grant bail by confirming the order of the Special Court in Bail Application No.42 of 2008, from the above referred to details gathered from the appeal papers as well as the orders impugned in these appeals the scope for consideration in these appeals pertains to the questions:-

(a) Whether the common order of the Division Bench dated 19.07.2010 in having set aside the order of the Special Judge in Special Case No.1 of 2009 discharging the appellants from the said case on the ground that MCOCA was not applicable to the said case and consequently the case was to be tried by the Regular Court under Section 11 of MCOCA calls for interference?

(b) If answer to question No. (a) is in the negative, whether for the purpose of grant of bail under Section 21(4)(b) of MCOCA, can it be held that the application of the said Act is not made out against

the appellants and consequently the rejection of bail by the trial Court and as confirmed by the learned Single Judge of the Bombay High Court is justified?

36. Having thus ascertained the scope involved in these appeals by virtue of the orders impugned herein, when we consider the submissions of learned counsel for the appellants, we find that the sum and substance of the submissions can be summarized as under:

> "That the definition of 'continuing unlawful activity', 'organized crime' or 'organized crime syndicate' as defined under Section 2(1)(d)(e) and (f) of MCOCA was not cumulatively satisfied in order to proceed with the Special Case No.1 of 2009 for the alleged commission of offence of organized crime under Section 3 of MCOCA."

37. In order to find an answer to the said question a detailed reference to some of the provisions of MCOCA, its Objects and Reasons and some other provisions of the Cr.P.C. are required to be noted. The prime provisions which are relevant under MCOCA are Sections 2(1) (d), (e) & (f), 3, 21 (4) (b), 23 (1) & (2) of MCOCA. As far as the Cr.P.C. is concerned, reference will have to be made to Sections 4, 173(2) & (8), 190, 191, 192, 193, 200, 201 and 209. In order to appreciate the said provisions the same are extracted as under:

"The Maharashtra Control of Organized Crime Act, 1999

Section 2 (1)(d) "Continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;

(e) "organized crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;

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

3. Punishment for organized crime. – (1) Whoever commits an offence of organized crime shall –

(i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees one lac;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

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

(3) Whoever harbours or conceals or attempts to harbour or conceal, any member of an organized crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(4) A person who is a member of an organized crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(5) Whoever holds any property derived or obtained from commission of an organized crime or which has been acquired through the organized crime syndicate funds shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs.

21.(4)(b) Where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

23. Cognizance of, and investigation into, an offence.- (1) Notwithstanding anything contained in the Code,-

(a) no information about the commission of an offence of organized crime under this Act, shall be recorded by

a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;

(b) No investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.

(2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police."

Code of Criminal Procedure, 1973

4. Trial of offences under the Indian Penal Code and other laws.- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

173. Report of police officer on completion of investigation:

(1) Xxx

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating –

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under Section 170;

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under Section 376, 376A, 376B, 376C, Section 376D or Section 376E of the Indian Penal Code (45 of 1860)

(ii) the officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of offence was first given.

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, whereupon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-section (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

190. Cognizance of offences by Magistrates.-(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(*a*) upon receiving a complaint of facts which constitute such offence,

(b) upon a police report of such facts, and

(*c*) upon information received from any person other than a police officer, or upon his own

knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

(*a*) upon receiving a complaint of facts which constitutes such offence:

(b) upon a police report of such facts:

(*c*) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

191. Transfer on application of the accused.- When a Magistrate takes cognizance of an offence under clause (c) of sub-section (1) of section 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf.

192. Making over of cases to Magistrates.-(1) Any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him.

(2) Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial.

193. Cognizance of offences by Courts of Session.- Except as otherwise expressly provided by

this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

200. Examination of complainant.— A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(*a*) if a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examined them.

201. Procedure by Magistrate not competent to take cognizance of the case.-(1) If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall.-

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court.

209. Commitment of case to Court of Session when offence is triable exclusively by it.- when in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the

> Magistrate that the offence is triable exclusively by the Court of Session, he shall-
>
> (a) commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Sessions, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;
>
> (b) subject to the provisions of this Code relating to bail, remand the accused to custody, and until the conclusion of, the trial;
>
> (c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;
>
> (d) notify the Public Prosecutor of the commitment of the case to the Court of Session.

38. In the first instance, it will be profitable to examine the scheme of MCOCA by making a cursory glance to the Objects and Reasons and thereafter to make an intensive reading of the above referred to provisions. When we peruse the Objects and Reasons, it discloses that organized crime has been posing very serious threat to our society for quite some years and it was also noted that organized crime syndicates had a common cause with terrorist gangs. In the Objects and Reasons, the foremost consideration was the serious threat to the society by those who were indulging in organized crimes in the recent years apart from organized crime criminals operating hand in glove with terrorist gangs. It is common knowledge that for the terrorist gangs, the

sole object is to create panic in the minds of peace loving members of the society and in that process attempt to achieve some hidden agenda which cannot be easily identified, but certainly will not be in the general interest or well being of the society. Those who prefer to act in such clandestine manner and activities will formulate their own mind-set and ill-will towards others and attempt to achieve their objectives by indulging in unlawful hazardous criminal activities unmindful of the serious consequences and in majority of such cases it results in severe loss of life of innocent people apart from extensive damage to the properties of public at large. It was further found that the existing legal framework, that is the penal and procedural laws and the adjudicatory system, were found to be inadequate to curb or control the menace of 'organized crime'. The Objects and Reasons also states that such 'organized crimes' were filled by illegal wealth generated by contract killing, extrusion, smuggling in contraband, illegal trade in narcotics, kidnapping for ransom, collection of protection money, money laundering etc. Keeping the above serious repercussions referred to in the Objects and Reasons, when we examine Section 2(1)(d)(e)&(f), which defines 'continuing unlawful activity', 'organized crime' or 'organized

crime syndicate', we find that the three definitions are closely interlinked.

39. The definition of 'continuing unlawful activity' under Section 2(1)(d) mainly refers to an activity prohibited by law. The said activity should be a cognizable offence, punishable with imprisonment of three years or more. The commission of such offence should have been undertaken either by an individual singly or by joining with others either as a member of an 'organized crime syndicate' or even if as an individual or by joining hands with others even if not as a member of a 'organized crime syndicate' such commission of an offence should have been on behalf of such syndicate. It further states that in order to come within the definition of 'continuing unlawful activity' there should have been more than one charge-sheet filed before a competent Court within the preceding period of 10 years and that the said Court should have taken cognizance of such offence.

40. Before getting into the nuances of the said definition of 'continuing unlawful activity', it will be worthwhile to get a broad idea of the definition of 'organized crime' under Section 2(1)(e) and 'organized crime syndicate' under Section 2(1)(f). An 'organized crime' should be any 'continuing unlawful activity'

either by an individual singly or jointly, either as a member of an 'organized crime syndicate' or on behalf of such syndicate. The main ingredient of the said definition is that such 'continuing unlawful activity' should have been indulged in by use of violence or threat of violence or intimidation or coercion or other unlawful means. Further such violence and other activity should have been indulged in with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. Therefore, an 'organized crime' by nature of violent action indulged in by an individual singly or jointly either as a member of an 'organized crime syndicate' or on behalf of such syndicate should have been either with an object for making pecuniary gains or undue economic or other advantage or for promoting insurgency. If the object was for making pecuniary gains it can be either for himself or for any other person. But we notice for promoting insurgency, there is no such requirement of any personal interest or the interest of any other person or body. The mere indulgence in a violent activity etc. either for pecuniary gain or other advantage or for promoting insurgency as an individual, either singly or jointly as a member of 'organized crime syndicate' or on behalf of

a such syndicate would be sufficient for bringing the said activity within the four corners of the definition of 'organized crime'.

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

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

43. Keeping the above broad prescription as the outcome of the definition of Section 2(1)(d)(e)&(f) in mind, when we refer to Section 3, we find that it is a penal provision under which, the various punishments for the commission of 'organized crime' have been set out and such punishment can be up to life imprisonment and even death, apart from fine subject to

minimum of Rupees one lakh to maximum of Rupees five lakhs. The imprisonment ranges from five years to life imprisonment and can also result in imposition of death penalty. Section 17 prescribes Special Rules of evidence notwithstanding anything contrary contained in Cr.P.C. or the Indian Evidence Act for the purposes of trial and punishment for offences under MCOCA. Section 18 of the Act is again a *non-obstante* clause which states that irrespective of any provision in the Code or in the Indian Evidence Act, and subject to the provisions of said Section, a confession made by a person before a police officer not below the rank of Superintendent of Police and recorded by such police officer either in writing or in any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced shall be admissible in the trial of such person or co-accused abettor or conspirator provided they are charged and tried in the same case together with the accused. Section 20 is yet another provision under MCOCA which prescribes that where a person is convicted of any of the offence punishable under MCOCA, the Special Court may in addition to awarding any punishment, by order in writing declare that any property, movable or immovable or both, belonging to the accused and

specified in the order shall stand forfeited to the State Government free from all encumbrances etc. Under Section 21, which again is a *non-obstante* clause, the provisions of the Act notwithstanding anything contained in the Code or any other law shall be deemed to be a cognizable offence within the meaning of clause (c) of Section 2 of the Code and "cognizable case" as defined in that clause should be constructed accordingly.

44. Under Section 21(4) notwithstanding anything contained in the Code, no person accused of an offence punishable under MCOCA, when he is in custody, should be released on bail on his own bond unless under sub-clause (b) of sub-section (4) even when the Public Prosecutor opposes the application for bail, the Court is satisfied that there are reasonable grounds for believing that the said accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

45. Under Section 22 there is a rebuttable presumption of commission of organized crime punishable under Section 3 unless the contrary is proved. Under Section 23 a safeguard is provided to the effect that under Section 23(1)(a) no information about the commission of an offence of organized crime under MCOCA should be recorded by a police officer without the prior approval

of a police officer not below the rank of Deputy Inspector General of Police. Further under Section 23(1)(b) no investigation of an offence under MCOCA shall be carried out by a police officer below the rank of Deputy Superintendent of Police. Under sub-Section (2) of Section 23, no Special Court should take cognizance of any offence under MCOCA without the previous sanction of the police officer not below the rank of Additional Director General of Police.

46. Reference to the above provisions thus discloses that the Act is very stringent in its operation when it comes to the question of dealing with an 'organized crime' committed by an 'organized crime syndicate' in respect of a 'continuing unlawful activity'. With the above salient features of the provisions of MCOCA in mind, when we consider the various submissions of the learned counsel, the main submissions of the learned counsel for the appellants were five-fold.

47. The first submission was that the present appellants were all alleged to have been involved in a bomb blast which occurred on 29.09.2008 at a place called 'Malegaon'. According to the prosecuting agency, the appellants were either member of an organization called 'Abhinav Bharat' which was registered in

the year 2007 or the commission of the offence was jointly with the members of the said organization for and on its behalf. The contention in the foremost was that in order to rope in the appellants on the above footing, the requirement of Section 2(1)(d), namely, 'continuing unlawful activity' must have been satisfied. In order to demonstrate such compliance, it was contended on behalf of the prosecuting agency that there were two earlier occurrences of bomb blasts one in Parbhani on 21.11.2003 and another at Jalna on 27.08.2004, that on those two earlier occurrences A-7, namely, Rakesh Dattaray Dhawade was involved who is also a member of the present gang and consequently the definition of 'continuing unlawful activity' is satisfied.

48. The learned counsel for the appellants on the other hand contended that A-7 was not a member of the so-called 'Abhinav Bharat', that 'Abhinav Bharat' as an organization was not indisputably involved in the two earlier occurrences in the year 2003 and 2004, therefore, when such clear demarcation existed as between the appellants, the so-called members of Abhinav Bharat and the earlier occurrences of 2003 and 2004, as well as,

the exclusion of A-7 as member of 'Abhinav Bharat' there was no scope to invoke MCOCA.

49. We are, in the first instance, concerned with the appellant's challenge to the order of the Division Bench dated 19.07.2010 wherein the sole question considered pertains to the application of MCOCA based on the definition of 'continuing unlawful activity' under Section 2(1)(d) for the purpose of grant of bail under Section 21(4)(b) of MCOCA. To recapitulate the background of this litigation, it was the order of discharge passed by the Special Judge in Special Case No.1 of 2009 dated 31.07.2009 on the footing that cognizance of two earlier cases within preceding 10 years from the date of third occurrence dated 29.09.2008 was not satisfied and based on the said conclusion the Special Judge passed the order of discharge and also simultaneously passed an order under Section 11 for the transfer of the Special Case No.1 of 2009 to the Regular Court which went before the Division Bench at the instance of the State and the prosecuting agency. The Division Bench while dealing with the said conclusion of the Special Court took a contrary view holding that the Special Judge misdirected himself by stating that the cognizance was with reference to the offender and not the

offence which led to the passing of such an illegal order dated 31.07.2009. The Division Bench took the view that going by the provisions contained in Section 2(1)(d) read along with Sections 190 and 173(3) of the Cr.P.C., as well as the settled principles in the various decisions of this Court, the cognizance of offence was taken as early as on 07.09.2006 in the Parbhani case and 30.09.2006 in the Jalna case, which were within the preceding 10 years from the date of the occurrence of Malegaon case, namely, 29.09.2008 and therefore, the order of discharge passed by the Special Judge was not sustainable and valid in law.

50. Having recapitulated the background to the above extent when we examine the contentions raised, it must be stated that the conclusion of the Division Bench as regards the cognizance aspect cannot be held to be totally erroneous when it struck down the order of the Special Judge dated 31.07.2009. Keeping aside for the present the various other submissions and considering the opening submission of the counsel while assailing the order of Division Bench wherein we confine to the question relating to taking cognizance of the offence as set out apparently in Section 2(1)(d) of MCOCA. In that perception, on the opening submission of the learned counsel for the appellants we too have

no hesitation to hold that the cognizance of the offence as stated to have been rightly taken into account in respect of Parbhani and Jalna based on the charge-sheets dated 07.09.2006 and 30.09.2006 respectively was perfectly in order to apply the definition of 'continuing unlawful activity' for the purpose of invoking MCOCA with reference to Malegaon occurrence. We, however, wish to examine in detail the justification for our above conclusion when we deal with the other contentions where submissions were made *in extenso* with particular reference to the involvement of A-7 in the alleged occurrences of Parbhani and Jalna, more particularly with reference to the date of supplementary charge-sheet, arrest made and the arrest made with reference to Malegaon occurrence and the alleged nexus as between the appellants and A-7 in order to find out whether application of MCOCA could still be held to be validly made by the prosecuting agency. For the present by reaching our conclusion as above on the first submission, we proceed to deal with the next submission of learned counsel for the appellants.

51. The submission of the learned counsel for the appellants was that under Section 2(1)(d), in order to construe a 'continuing unlawful activity' two earlier charge-sheets in the preceding 10

years should exist and that such charge-sheets should have been taken cognizance by the competent court within the said period of 10 years and it must have been accomplished. It was also contended that for ascertaining the said position, the date of the third occurrence should be the relevant date for counting the preceding 10 years. Insofar as that claim is concerned, it can be straight away accepted that since Section 2(1)(d) uses the expression 'an activity' in the very opening set of expressions, which is prohibited by law, the date of such activity, namely, the third one can be taken as the relevant date for the purpose of finding out the two earlier charge-sheets in the preceding 10 years, in which event in the present case, the preceding 10 years will have to be counted from 29.09.2008 which was the date when the third occurrence of Malegaon bomb blast took place.

52. With reference to Malegaon bomb blast, A-7 is the key person to be noted as it was with reference to his involvement in the earlier two bomb blast cases, namely, Parbhani and Jalna the whole case of the prosecution for invoking MCOCA was developed. Even while examining the various other submissions, we want to once again reiterate that our present endeavour is for examining the correctness of the order of the Division Bench

which stems from the first order of the Special Judge dated 31.07.2009 by which the appellants were discharged and the consequential order under Section 11 transferring the case to the Regular Court. It must also be stated that our endeavour in this respect is also for the purpose of finding an answer to the prescription contained in Section 21(4)(b) of MCOCA.

53. Therefore, what all to be examined is whether cognizance of the earlier two offences as mentioned in the definition of Section 2(1)(d) was duly taken within the preceding period of 10 years. Having stated in uncontroverted terms that 29.09.2008 is the relevant date, namely the date of third occurrence (i.e.) Malegaon bomb blast, when we go back, the question is whether in respect of the bomb blast in Parbhani on 21.11.2003 and similar bomb blast in Jalna on 27.08.2004 the charge-sheets were filed and cognizance was taken by the competent court within the said period of preceding 10 years. There is no controversy as to the date of occurrence of the above two bomb blasts. There is also no dispute that the very first charge-sheet in Parbhani as against A-1 was filed on 07.09.2006 before the Chief Judicial Magistrate. Similarly, the filing of the first charge-sheet on 30.09.2006 in Jalna case is also not in dispute.

The contention put forward is that the supplementary charge-sheet in respect of A-7 in Parbhani case was filed only on 13.11.2008 and on 15.11.2008 in Jalna case and if those two dates with regard to A-7 are taken as the relevant dates, then the requirement of two earlier cases as stipulated under Section 2(1)(d) preceding 10 years period was not satisfied, inasmuch as, the date of third occurrence was 29.09.2008 and the date of charge-sheets as against the A-7 were subsequent to that date and not earlier. The said crucial factor is required to be determined to decide the contention raised on behalf of the appellants. In this context reliance was placed upon the decisions in **Ajit Kumar Palit (supra)** and **Dilawar Singh (supra)** on behalf of the appellants. That apart, reference was also made to Section 173(2)(i)(a) and 173(8) to contend that cognizance referred to in context of MCOCA would only relate to the offender and not to the offence as prescribed under Section 190(1)(b).

54. As against the above submissions Mr. Anil Singh, learned ASG appearing for respondent-State and Mr. Mariarputham, learned Senior Counsel appearing for the State of Maharashtra and NIA contended that the relevant dates are the first charge-sheet filed in Parbhani case on 07.09.2006 and in Jalna case on

30.09.2006. Reliance was placed upon the decisions in **R.R. Chari (supra)**, **Raghbans Dubey (supra), Darshan Singh Ram Kishan (supra), Salap Service Station (supra), CREF Finance Limited (supra), Pastor P. Raju (supra), Videocon International Ltd. (supra)** and **Fakhruddin Ahmad (supra)** in support of the submission. Reliance was also placed upon Section 190 Cr.P.C. to contend that cognizance of offence is relevant and not the offender and, therefore, the initial date of cognizance taken by the Chief Judicial Magistrate on the above dates in respect of Parbhani and Jalna will hold good for invoking MCOCA.

55. It was also contended that cognizance is an act which a Court when first apply its judicial mind with a view to proceed with the matter and, therefore, when in Parbhani and Jalna by virtue of Section 190 read along with Section 173 based on the report of the police when the first charge-sheet was filed on 07.09.2006 and 30.09.2006 respectively in Parbhani and Jalna, the requirement of taking cognizance by the Competent Court in respect of offences under the Indian Penal Code which alone was relevant in respect of the two earlier cases was satisfied and nothing more was required to be shown. Further reliance was

placed upon **R.R. Chari (supra), Darshan Singh Ram Kishan (supra), Mohd. Khalid (supra), Mona Panwar (supra) and Sarah Mathew (supra)** in support of the above submissions.

56. Keeping the respective submissions of the learned counsel in mind when we examine the said issue, in the first instance we wish to refer to relevant provisions touching upon this issue, namely, Section 2(1)(d) of MCOCA and Section 173(2) and (8) as well as Sections 190 and 193 of Criminal Procedure Code. When we refer to Section 2(1)(d) of MCOCA the definition of 'continuing unlawful activity' is defined to mean an activity prohibited by law and that it should be a cognizable offence punishable with imprisonment of three years or more. For the purpose of ascertaining the issue relating to cognizance, the other part of the said definition which requires to be noted is that more than one charge-sheet should have been filed before a Competent Court within the preceding period of 10 years and that Court should have taken cognizance of such offence. The offence should alleged to have been committed either singly or jointly as a member of an organized crime syndicate or on its behalf. In so far as the offences are concerned, if the offence would attract a punishment of three years or more that would

suffice for falling within the said definition. The charge-sheet should have been filed before a Competent Court with reference to such offence against the offenders.

57. One of the contentions raised and which was countered by the respondents was that such two earlier offences should also satisfy the other requirements stipulated under MCOCA, namely, as a member of an organized crime syndicate or on behalf of an organized crime syndicate either singly or jointly. A strict interpretation of Section 2(1)(d) would definitely mean the fulfillment of such requirement since the definition specifically reads to the effect 'undertaken either singly or jointly as a member of an organized crime syndicate or on behalf of such syndicate'. Therefore, even if the earlier offences were not initiated under the provisions of MCOCA such initiations should have been capable of being brought within the provisions of MCOCA, namely, as part of an activity of an organized crime syndicate either by its own members either singly or jointly or though not as a member but such participation should have been on behalf of an 'organized crime syndicate'. As far as filing of the charge-sheet is concerned what all it refers to is such filing before

a Competent Court and that Court should have taken cognizance of such offence.

58. A minute reference to the said Section, therefore, shows that in the event of the fulfillment of the rest of the requirements, namely, the nature of offence providing for punishment of three years and more, the involvement of the offender as required under the said definition, when it comes to the question of filing of the charge-sheet, the requirement of such filing should be before a competent court within a period preceding 10 years and that such court has taken cognizance of such offence. Significantly, when it comes to the question of fulfillment of the requirement of cognizance what is prescribed is the cognizance of such offence and not the offender. As far as the court is concerned, here again the specific reference used is 'competent court' and not 'Sessions Court'. Therefore, keeping aside the rest of the requirements to be fulfilled under Section 2(1)(d) for the present, when we consider the requirement of filing of the charge-sheet before the Competent Court and such Court taking cognizance of such offence, it can be stated without any scope of controversy that two earlier cases which would attract a punishment of more than three years and prohibited by law,

undertaken singly or jointly as a member of an organized crime syndicate or on its behalf, if more than one charge-sheet is filed in respect of such offence before the Competent Court and the said Court had taken cognizance of such offence, the definition of "continuing unlawful activity" would be satisfied.

59. Keeping the said prescription of the definition of "continuing unlawful activity" under Section 2(1)(d) in mind when we examine the question as to taking of cognizance and the Competent Court before whom more than one charge-sheet to be filed, there is no other provision under MCOCA which deals with or prescribes any stipulation for fulfillment of the said requirement. We have to, therefore, necessarily fall back upon the provisions contained in the Criminal Procedure Code. For that purpose reference to Sections 173, 190 and 193 have to be noted. Under Section 173(2)(i), it is stipulated that as soon as the investigation is completed, the officer in-charge of the Police Station should forward to the Magistrate who is empowered to take cognizance of the offence on a police report in the form prescribed by the State Government, which should contain among other things the names of the parties, the nature of information, the names of the persons who appear to be

acquainted with the circumstances of the case and various other details.

60. When we read the said Section 173(2)(i) along with Section 190 of Cr.P.C., it can be seen that any Magistrate of the first class or any Magistrate of the second class specially empowered as provided under sub-section (2) of the said Section may take cognizance of any offence upon a police report of such facts. Therefore, reading Section 173(2)(i) along with Section 190(1)(b), a duty is cast upon the officer in-charge of the police station mandatorily to forward to the Magistrate who is empowered to take cognizance of the offence on a police report. Under Section 190(1)(b) any Magistrate of the first class and for that matter any Magistrate of second class who is empowered by the Chief Judicial Magistrate for taking cognizance under sub-Section (1) can take cognizance of any offence based on filing of a police report furnished with the facts as stipulated under Section 173(2)(i) (a to h). A conjoint reading of Section 173(2)(i) and Section 190(1)(b), therefore, makes the position crystal clear that taking of cognizance of any offence by a Magistrate of the First Class or the Second Class subject to empowerment created under sub-Section (2) of Section 190 can take cognizance upon a

police report. It can be emphasized here that under Section 190 (1) (b) where the Police Report as stated in Section 173(2) (i) is filed before a Magistrate under Section 190(1) (b), irrespective of the nature of offence, the said Magistrate has been invested with all the powers to take cognizance by applying his judicial mind. To be more precise, once the Police Report is filed before a judicial Magistrate as prescribed under Section 190(1) (b), who has been invested with the judicial authority to take cognizance of any offence in the first instance, the requirement of taking cognizance gets fulfilled at that very moment. Further the very fact that proceedings pertaining to Parbhani and Jalna were pending before the Magistrate where such proceedings were initiated by the filing of the police report till the occurrence in Malegaon took place itself was sufficient to demonstrate that judicial mind was very much applied to the proceedings based on the police report consequent upon cognizance taken.

61. Keeping the said prescription of law in mind, when we apply the requirement as stipulated under Section 2(1)(d) of MCOCA, without straining any further on this question, it can be safely held that the requirement of filing of the charge-sheet in two earlier cases before the competent court in respect of an

offence stipulated under Section 2(1)(d) can be held to be satisfied once cognizance is taken by a Judicial Magistrate of first class or for that matter an empowered second class Magistrate, in the event of filing of a police report as prescribed under Section 173(2)(i) by virtue of the power vested under Section 190(1)(b) of Cr.P.C. If the ingredients of the above requirements are fulfilled it will have to be held, that that part of the requirement under Section 2(1)(d), namely, the competent court taking cognizance of the offence as stipulated under Section 2(1)(d) in respect of two earlier cases will get fulfilled.

62. Once we steer clear of the said legal position, to emphasize further, we also wish to refer to Section 193 Cr.P.C. the caption of which specifically states "Cognizance of offences by Courts of Session". The said Section is negatively couched and states that except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of Original Jurisdiction unless the case has been committed to it by a Magistrate under this Code. For our purpose of ascertaining the requirement of competent court and cognizance stipulated under Section 2(1)(d) of MCOCA, we find that under Section 193, the

Court of Session can take hold of the case as a Court of Original Jurisdiction only after committal order is passed to it by a Magistrate under the provisions of Cr.P.C., whereas under Section 190(1)(b), the power of a Magistrate has been pithily stated to mean that he can take cognizance of any offence subject to the fulfillment of the requirements (a), (b) and (c) and no further.

63. We are now pitted with the question as to whether the taking of cognizance of the offence by the Competent Court under Section 2(1)(d) of MCOCA is referable only to the Court of Sessions or even to a Magistrate of first class under Section 190. In this context, when we read Section 2(1)(d) along with 190 and 193 in the absence of any specific stipulation either under Section 2(1)(d) of MCOCA or any other provision under the said Act in the ordinary course of interpretation it can be validly stated that on fulfillment of Section 190, when a Judicial Magistrate of first class or an empowered second class Magistrate, takes cognizance of any offence that would fulfill the requirement of Section 2(1)(d) relating to competent court. We have noted under MCOCA that beyond what has been stipulated under Section 2(1)(d) there is no other provision dealing with the matter relating to a Competent Court for the purpose of taking cognizance. When

under the provisions of Cr.P.C., Judicial Magistrate of first class has been empowered to take cognizance of any offence based on a Police Report, we fail to see any hurdle to state that on taking cognizance in that manner, the said court should be held to be the competent court for satisfying the requirement of Section 2(1)(d) of MCOCA. In this respect, we will have to bear in mind that the implication of MCOCA would come into play only after the third occurrence takes place and only after that it will have to be seen whether on the earlier two such occasions involvement of someone jointly or singly, either as a member of an 'organized crime syndicate' or on its behalf indulged in a crime in respect of which a charge-sheet has already been filed before the Competent Court which Court had taken cognizance of such offence.

64. Therefore, we are able to state the legal position without any ambiguity to the effect that in the event of a Judicial first class Magistrate or an empowered second class Magistrate having taken cognizance of an offence based on a police report as stipulated under Section 173(2)(i), such cognizance of an offence would fulfill the requirement of that part of the definition under Section 2(1)(d) of MCOCA. Once we are able to ascertain

the said legal position by way of strict interpretation, without any ambiguity, we also wish to refer to various decisions relied upon by either party to note whether there is any scope of contradiction with reference to said legal position.

65. Mr. Lalit, learned counsel in the course of his submissions relied upon **Ajit Kumar Palit v. State of West Bengal and another** – AIR 1963 SC 765. In the said decision with reference to the expression 'cognizance' a three-Judge Bench of this Court has explained what is really meant by the said expression in the following words in paragraph 19:

> "……The word "cognizance" has no esoteric or mystic significance in criminal law or procedure. It merely means-become aware of and when used with reference to a court or Judge, to take notice of judicially. It was stated in *Gopal Marwari* v. *Emperor, AIR 1943 PAT 245 (SB)* by the learned Judges of the Patna High Court in a passage quoted with approval by this Court in *R.R. Chari* v. *State of Uttar Pradesh, 1951 SCR 312 at page 320: (AIR 1951 SC 207 at page 210)* that the word "cognizance" was used in the Code to indicate the point when the Magistrate or Judge takes judicial notice of an offence and that it was a word of indefinite import, and is not perhaps always used in exactly the same sense. As observed in *Emperor* v. *Sourindra Mohan Chuekorbutty*, ILR 37 CAL 412 at page 416, "taking cognizance does not involve any formal action; or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence". Where the statute proscribes the materials on which

alone the judicial mind shall operate before any step is taken, obviously the statutory requirement must be fulfilled……"

(Emphasis added)

66. In the above extracted portion the reference made to the earlier judgment in R.R. Chari's case reported in **R.R. Chari (supra)** at page 210 that the word 'cognizance' was used in the Court to indicate the point when the Magistrate or Judge takes judicial notice of an offence throws sufficient light to state that at that very moment when a Magistrate takes judicial notice of an offence, the requirement of cognizance of such offence will get fulfilled. Therefore, the said decision also fully supports our conclusion on the question of taking cognizance by the competent Court.

67. Reliance was then placed upon the decision in **Dilawar Singh (supra)** in particular paragraph 8. The said paragraph 8 reads as under:

"**8.** The contention raised by learned counsel for the respondent that a court takes cognizance of an offence and not of an offender holds good when a Magistrate takes cognizance of an offence under Section 190 CrPC. The observations made by this Court in *Raghubans Dubey* v. *State of Bihar* were also made in that context. The Prevention of Corruption Act is a special statute and as the preamble shows, this

> Act has been enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. Here, the principle expressed in the maxim *generalia specialibus non derogant* would apply which means that if a special provision has been made on a certain matter, that matter is excluded from the general provisions. (See *Godde Venkateswara Rao* v. *Govt. of A.P.*, *State of Bihar* v. *Dr. Yogendra Singh* and *Maharashtra State Board of Secondary and Higher Secondary Education* v. *Paritosh Bhupeshkumar Sheth*.) Therefore, the provisions of Section 19 of the Act will have an overriding effect over the general provisions contained in Section 190 or 319 CrPC. A Special Judge while trying an offence under the Prevention of Corruption Act, 1988, cannot summon another person and proceed against him in the purported exercise of power under Section 319 CrPC if no sanction has been granted by the appropriate authority for prosecution of such a person as the existence of a sanction is *sine qua non* for taking cognizance of the offence qua that person."
>
> (Emphasis added)

68. By relying upon the said part of the decision it was contended that taking 'cognizance of an offence' cannot be the universal rule and that under special circumstances such cognizance of offence would be qua that person, namely, the offender. It is true that in the said decision while dealing with the requirement of sanction under Section 19 of the Prevention of Corruption Act with reference to an offence under Section 13(2) of the said Act, this Court did say that in the absence of a sanction under Section 19 the taking of cognizance of the offence

qua that person cannot be held to have been made out. When we apply the said decision, it must be stated that it was laid in the context of an offence under Section 13(2) of the Prevention of Corruption Act which Act specifically stipulates the requirement of prior sanction under Section 19 for proceeding against a public servant by way of a sanction and, therefore, it was held that Section 19 of the Act will have an overriding effect over the general provisions contained in Section 190 or 319 of Cr.P.C. For the fulfillment of the requirement to be complied with under Section 2(1)(d) of MCOCA, for ascertaining a 'continuing unlawful activity' in the absence of any such restriction as stipulated under Section 19 of the Prevention of Corruption Act under the provisions of MCOCA we have found that Section 190 will have every effect insofar as taking of cognizance by a competent Court is concerned as stipulated under Section 2(1)(d) and, therefore, as held by us on compliance of the said requirement under Section 190, namely, cognizance of the offence by the competent Magistrate, that part of the requirement under Section 2(1)(d) will get automatically fulfilled.

69. Reliance was then placed upon the decision in **Fakhruddin Ahmad (supra)**, in particular paragraph 17. The said paragraph 17 reads as under:

> "**17.** Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and *applied his mind* to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate *applies his mind* and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender."
>
> (emphasis added)

70. Even here this Court has stated in uncontroverted terms that once the Magistrate applies his mind to the offence alleged and decides to initiate proceedings against the alleged offender, it can be stated that he has taken cognizance of the offence and by way of reiteration. It is further stated that cognizance is in regard to the offence and not the offender. This decision, therefore, reinforces the position that cognizance is mainly of the offence and not the offender.

71. In **R.R. Chari (supra)**, in paragraph 8, this Court made it clear that the word 'cognizance' is used by the Court to indicate the point when the Magistrate or a Judge first takes judicial notice of an offence. Therefore, primarily cognizance of an offence takes place when a Judicial Magistrate applies his mind and takes judicial notice of the offence. In fact that is what has been even statutorily stipulated under Section 190(1) of Cr.P.C.

72. In **Darshan Singh Ram Kishan (supra)**, in paragraph 8, with particular reference to Section 190, this Court has held as under:

> "**8.** As provided by Section 190 of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence either, (*a*) upon receiving a complaint, or (*b*) upon a police report, or (*c*) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report."
>
> (emphasis added)

73. The above passage referred to in the said decision makes the position explicitly clear that cognizance would take place at a point when a Magistrate first takes judicial notice of the offence either on a complaint or on a police report or upon information of a person other than the police officer. Taking judicial notice is nothing but pursuing the report of the police officer, proceeding further on that report by opening the file and thereafter taking further steps to ensure the presence of the accused and all other consequential steps including at a later stage depending upon the nature of offence alleged to pass necessary order of committal to Court of Sessions.

74. In **Salap Service Station (supra)**, the question as to what is the implication of a supplementary report filed by the investigating agency under Section 173(8) Cr.P.C. was considered. While dealing with the same, it has been stated as under in paragraph 2:

> **2**.....It may be mentioned here that in the supplementary charge-sheet allegations are to the effect that there was violation of Direction 12 of the Control Order. <u>The question of taking cognizance does not arise at this stage since cognizance has already been taken on the basis of the main charge-sheet.</u> What all Section 173(8) lays down is that the investigating agency can carry on further investigation in respect of

the offence after a report under sub-section (2) has been filed. The further investigation may also disclose some fresh offences but connected with the transaction which is the subject-matter of the earlier report……The purpose of sub-section (8) of Section 173 CrPC is to enable the investigating agency to gather further evidence and that cannot be frustrated. If the materials incorporated in the supplementary charge-sheet do not make out any offence, the question of framing any other charge on the basis of that may not arise but in case the court frames a charge it is open to the accused persons to seek discharge in respect of that offence also as they have done already in respect of the offence disclosed in the main charge-sheet. The rejection of the report outright at that stage in our view is not correct."

(emphasis added)

75. The above statement of law with particular reference to Section 173(8) Cr.P.C. makes the position much more clear to the effect that the filing of the supplementary charge-sheet does not and will not amount to taking cognizance by the Court afresh against whomsoever again with reference to the very same offence. What all it states is that by virtue of the supplementary charge-sheet further offence may also be alleged and charge to that effect may be filed. In fact, going by Section 173(8) it can be stated like in our case by way of supplementary charge-sheet some more accused may also be added to the offence with reference to which cognizance is already taken by the Judicial Magistrate. While cognizance is already taken of the main offence

against the accused already arrayed, the supplementary charge-sheet may provide scope for taking cognizance of additional charges or against more accused with reference to the offence already taken cognizance of and the only scope would be for the added offender to seek for discharge after the filing of the supplementary charge-sheet against the said offender.

76. In **CREF Finance Limited (supra)** paragraph 10 is relevant wherein this Court has held as under:

> **10**……Cognizance is taken of the offence and not of the offender and, therefore, once the court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence. One should not confuse taking of cognizance with issuance of process. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed……"
>
> (emphasis added)

77. The said statement of law reinforces the legal position that cognizance is always of the offence and not the offender and once the Magistrate applies his judicial mind with reference to the commission of an offence the cognizance is taken at that very moment.

78. To the very same effect is the judgment in **Pastor P. Raju (supra)**. Paragraph 13 is relevant for our purpose, which reads as under:

> "**13.** It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out."
>
> (emphasis added)

79. The above principle has been reiterated again in **Videocon International Ltd. (supra)** in paragraph 19. Paragraph 19 can be usefully extracted, which reads as under:

> "**19.** The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone."
>
> (emphasis added)

80. In **Mona Panwar (supra)** at paragraph 19 what is meant by 'taking cognizance' has been explained as under:

> "**19.** The phrase "taking cognizance of" means cognizance of an offence and not of the offender. Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint or on a police report or upon information of a person other than a police officer. Before the Magistrate can be said to have taken cognizance of an offence under Section 190(1)(*b*) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done so for the purpose of proceeding under Section 200 and the provisions following that section. However, when the Magistrate had applied his mind only for ordering an investigation under Section 156(3) of the Code or issued a warrant for the purposes of investigation, he cannot be said to have taken cognizance of an offence."
>
> (emphasis added)

81. The above statement of law makes the position amply clear that cognizance is of an offence and not of the offender, that it does not involve any formal action and as soon as the Magistrate applies his judicial mind to the suspected commission of offence, cognizance takes place.

82. Again in a recent decision of this Court in **Sarah Mathew (supra)** in paragraph 34, the position has been reiterated as under:

> "**34.** Thus, a Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed. This is the special connotation acquired by the term "cognizance" and it has to be given the same meaning wherever it appears in Chapter XXXVI. It bears repetition to state that taking cognizance is entirely an act of the Magistrate. Taking cognizance may be delayed because of several reasons. It may be delayed because of systemic reasons. It may be delayed because of the Magistrate's personal reasons."

83. Therefore, having regard to the overwhelming decisions of this Court in having repeatedly expressed what is meant by cognizance and in majority of the decisions by making specific reference to Section 190, we are clear that the interpretation has to be to the cognizance of the offence to be taken note of by the Judicial Magistrate as prescribed under Section 190 and if it takes place that would satisfy and fulfill the requirement of cognizance of offence by the filing of more than one charge-sheet before the Competent Court as stipulated in Section 2(1)(d) of MCOCA.

84. Having considered the scope of the definition of "continuing unlawful activity" as defined under Section 2(1)(d) with reference to the competent court and the cognizance of more than one earlier case, when we apply the said principles to the facts of this case, as noted in the initial part of this judgment, the two earlier cases were the bomb blast in Parbhani and Jalna. In Parbhani, the occurrence was on 21.11.2003 and in Jalna it was on 27.08.2004. In the Parbhani case, the first charge-sheet was filed as early as on 07.09.2006 before the Chief Judicial Magistrate and in Jalna it was filed on 30.09.2006 before the concerned Chief Judicial Magistrate and in both the cases, cognizance was taken and the proceedings before the respective Magistrates concerned were continued. Therefore, having regard to our conclusion that the cognizance taken by the Judicial Magistrate under Section 190(1) of Cr.P.C. based on the police report under Section 173(2)(i) of Cr.P.C. the same would fulfill the requirement of 'cognizance' as well as, the 'competent court'. It will have to be, therefore, held that to that extent, the definition under Section 2(1)(d) relating to "continuing unlawful activity" in respect of more than one case of an offence punishable for more than three years is fully satisfied. Once we come to the said

conclusion, we do not find any substance in the third submission of the appellants that cognizance by competent court would only mean cognizance of such offences which can be dealt with only by the Sessions Court and not by a Judicial Magistrate. Therefore, the said submission that the cognizance was taken by Sessions Court much later after its committal (i.e.) in the case of Parbhani only on 29.04.2009 that is after the bomb blast in Malegaon and thereby the definition of 'continuing unlawful activity' in respect of more than one case under Section 2(1)(d) is not satisfied cannot be accepted. The said submission, therefore, deserves to be rejected.

85. The next submission made on behalf of the appellants was that in order to constitute the earlier two offences to fall within the definition of 'continuing unlawful activity' for invoking the provisions of MCOCA after the third occurrence, the involvement of the accused must have been by the same gang. In other words, even if it were to be held that a member of an 'organized crime syndicate' singly or jointly participated or on behalf of an 'organized crime syndicate' with reference to such participation taken place, what is to be ensured is that in all the three cases the same gang, namely, the 'organized crime

syndicate' must have been involved. Based on the said contention it was submitted that in the case on hand after A-7 was arrested on 02.11.2008 he was produced in Parbhani case on 11.11.2008 and supplementary charge-sheet was filed against him on 13.11.2008 and in Jalna case a supplementary charge-sheet was filed on 15.11.2008 while none of the other accused had any role to play either in Parbhani or in Jalna, nor was the so-called 'Abhinav Bharat' was involved in either Parbhani or Jalna occurrences. The contention was that though A-7 was implicated both in Parbhani and Jalna such implication was not in pursuance of his role as a member of an 'organized crime syndicate' pertaining to Malegaon bomb blast nor was the position that the gang involved in Malegaon blast was also responsible for the bomb blast in Parbhani and Jalna. It is, therefore, contended that even as regards to A-7 he only alleged to have gathered certain materials and procured at the request of one Devle who was the prime accused in Parbhani and Jalna. It was contended that even as per the counter affidavit of the second respondent herein there was no nexus shown for the involvement of any of the accused in the Malegaon bomb blast case to do anything with

Parbhani or Jalna bomb blast either individually or jointly as a member of gang or on behalf of the gang.

86. In this context, reliance was placed upon the decision in **Lalit Somdatta Nagpal & Anr. (supra)**. A similar contention was raised before this Court in that case to the effect that isolated incidents spread over a period of 10 years involving different types of offences would not attract the provisions of MCOCA and that such activity must be such as to have a link from the first to the last offence alleged to have been undertaken in an organized manner by an organized crime syndicate. The contention was that continuing unlawful activity would necessarily mean continuous engagement in unlawful activity where there would be a live link between all the different offences alleged. The said contention was refuted on behalf of the State in the said case by contending that no live link need exist between the different cases for the application of MCOCA and that such nexus theory was not contemplated by the legislature. While dealing with the said contention, this Court in the facts of that case held as under in paragraph 63:

> "**63.** As has been repeatedly emphasised on behalf of all the parties, the offence under MCOCA must

comprise continuing unlawful activity relating to organised crime undertaken by an individual singly or jointly, either as a member of the organised crime syndicate or on behalf of such syndicate by use of coercive or other unlawful means with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. In the instant case, both Lalit Somdatta Nagpal and Anil Somdatta Nagpal have been shown to have been involved in several cases of a similar nature which are pending trial or are under investigation. As far as Kapil Nagpal is concerned, his involvement has been shown only in respect of CR No. 25 of 2003 of Rasayani Police Station, Raigad, under Sections 468, 420 and 34 of the Penal Code and Sections 3, 7, 9 and 10 of the Essential Commodities Act. In our view, the facts as disclosed justified the application of the provisions of MCOCA to Lalit Nagpal and Anil Nagpal. However, the said ingredients are not available as far as Kapil Nagpal is concerned, since he has not been shown to be involved in any continuing unlawful activity. Furthermore, in the approval that was given by the Special Inspector General of Police, Kolhapur Range, granting approval to the Deputy Commissioner of Police (Enforcement), Crime Branch, CID, Mumbai to commence investigation under Section 23(1) of MCOCA, Kapil Nagpal has not been mentioned. It is only at a later stage with the registering of CR No. 25 of 2003 of Rasayani Police Station, Raigad, that Kapil Nagpal was roped in with Lalit Nagpal and Somdatta Nagpal and permission was granted to apply the provisions of MCOCA to him as well by order dated 22-8-2005."

(underlining is ours)

87. When we refer to the said line of reasoning stated therein, we find that in the case of one accused, namely, one Kapil Nagpal, since he was not shown to be involved in any of the

earlier cases, his case required to be dealt with differently and he cannot be said to have been involved in any continuing unlawful activity. We do not find any other specific reason for excluding him.

88. In this context a three Judge Bench decision of this Court, which throws much light on this issue is **Ranjitsing Brahamjeetsing Sharma (supra)**. Paragraphs 31, 36 and 37 are relevant for our purpose which read as under.

> "**31.** The High Court does not say that the appellant has abetted Telgi or had conspired with him. The findings of the High Court as against the appellant are attributable to allegations of abetting Kamat and Mulani. Both Kamat and Mulani were public servants. They may or may not have any direct role to play as regards commission of an organised crime but unless a nexus with an accused who is a member of the organised crime syndicate or an offence in the nature of organised crime is established, only by showing some alleged indulgence to Kamat or Mulani, the appellant cannot be said to have conspired or abetted commission of an organised crime. Prima facie, therefore, we are of the view that Section 3(2) of MCOCA is not attracted in the instant case.
>
> **36.** Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the court to record such a finding? Would there be any machinery available to the court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?

> **37.** Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on record only for grant of bail and for no other purpose."
>
> (emphasis added)

89. A reading of paragraph 31 shows that in order to invoke MCOCA even if a person may or may not have any direct role to play as regards the commission of an organized crime, if a nexus either with an accused who is a member of an 'organized crime syndicate' or with the offence in the nature of an 'organized crime' is established that would attract the invocation of Section 3(2) of MCOCA. Therefore, even if one may not have any direct role to play relating to the commission of an 'organized crime', but when the nexus of such person with an accused who is a member of the 'organized crime syndicate' or such nexus is related to the offence in the nature of 'organized crime' is established by showing his involvement with the accused or the offence in the nature of such 'organized crime', that by itself would attract the provisions of MCOCA. The said statement of law by this Court, therefore, makes the position clear as to in what circumstances MCOCA can be applied in respect of a person depending upon his involvement in an organized crime in the manner set out in the said paragraph. In paragraphs 36 and 37, it

was made further clear that such an analysis to be made to ascertain the invocation of MCOCA against a person need not necessarily go to the extent for holding a person guilty of such offence and that even a finding to that extent need not be recorded. But such findings have to be necessarily recorded for the purpose of arriving at an objective finding on the basis of materials on record only for the limited purpose of grant of bail and not for any other purpose. Such a requirement is, therefore, imminent under Section 21(4)(b) of MCOCA.

90. Having regard to the said legal position with reference to the requirement to be fulfilled in respect of an 'organized crime' with particular reference to the past two instances and the present one in order to find out as to whether a person was involved in a 'continuing unlawful activity', when we refer to the facts before us, in the case on hand insofar as A-7 Rakesh Dattaray Dhawade is concerned, he has been charge-sheeted in Parbhani, Jalna as well as, the Malegaon bomb blast. The materials available on record disclose that he furnished certain materials at the asking of the prime accused involved in Parbhani and Jalna, which also related to bomb blasts in both the places. Going by the charge-sheet filed against A-7 in Malegaon his direct

involvement has been alleged. A conspectus consideration of the above facts discloses that insofar as A-7 was concerned, he had a nexus with the member of an 'organized crime syndicate' and also had every nexus with the offence in the nature of an 'organized crime' of the two earlier cases, namely, Parbhani and Jalna and also direct involvement in the present bomb blast at Malegaon. In such circumstances, there is no difficulty in coming to a definite conclusion that insofar as, A-7 is concerned, his activity and involvement in all the three occurrences, namely, Parbhani, Jalna and Malegaon disclose nexus with the crime and also with the other accused involved in the crime and thereby the satisfaction of the definition of 'continuing unlawful activity' of an 'organized crime' on behalf of an 'organized crime syndicate' is satisfactorily shown. In such circumstances, by virtue of Section 21 (4) of MCOCA he is not entitled for the grant of bail and that he does not fall within the excepted category stipulated in sub-clause (a) or (b) of the said sub-Section (4) of Section 21.

91. Having stated the said position relating to A-7, when we come 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 a 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.

92. But, for the purpose of the requirement under Section 21(4) (b) having regard to the absence of any material as on date to disclose any nexus with the accused of an 'organized crime syndicate' or with the offence in the nature of an 'organized crime', in Parbhani and Jalna as of now we can state that in respect of appellants other than A-7 i.e. appellant in Criminal

Appeal No.1971/2010, their application for bail can be considered by the Special Court. Therefore, on this issue, namely, in all cases same gang must be involved, our answer is to the above limited extent based on the earlier statement of law as declared in **Ranjitsing Brahamjeetsing Sharma (supra)** in paragraph 31.

93. With that when we come to the next submission, namely, that in order to characterize the past occurrence as well as the present occurrence as an 'organized crime' falling under section 2 (1) (e) of MCOCA, in each of such occurrence, violence should have played a key role and that such violence etc. should have been for pecuniary gain. The submission was made on behalf of the appellants that there was no material to show that any of the appellants had any pecuniary advantage from anybody. The contention was that all the attributes of Section 2(1)(e), namely, an 'organized crime' must be present in all the three cases. It was further contended that in the occurrence relating to Parbhani and Jalna, there was no allegation of pecuniary advantage and they were all just mere cases of violence. It was, also contended that 'promoting insurgency' was also not the specific case of the

prosecution in all the three cases, even assuming it may arise in Malegaon blast, the same was not present in Parbhani or Jalna.

94. To appreciate the said contention, it will be necessary to make a detailed reference to Section 2(1)(e) of MCOCA. As far as the nature of activity is concerned, in Section 2(1)(e), it is stated that 'organized crime' means continuing unlawful activity by use of violence or threat of violence or intimidation or coercion or other unlawful means with the object of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. If we make a detailed reference to the said provision, the use of violence etc. should have been carried out with the object of either gaining pecuniary benefits or for gaining undue economic or other advantage for oneself or for any other person or for promoting insurgency. We find that the violent activity need not necessarily be for pecuniary advantage in all acts of 'continuing unlawful activity'. Indulging in such violent activity can be for gaining pecuniary advantage or for gaining any other undue economic or other advantage or for promoting insurgency. Therefore, at the very outset, we do not find any scope to interpret Section 2(1)(e), namely, an 'organized crime' to mean

that in order to come within the said expression indulging in such violent or other activity should always be for pecuniary gain. On the other hand, we can safely hold that such indulgence in violent activity can be either for pecuniary gain or for economic advantage or for any other advantage either for the person who indulged in such activity or for any other person or for promoting insurgency. In that respect, we find that expected benefit for indulging in any violent or related activity could be for any of the above purposes independently and one such purpose may be for promoting insurgency.

95. When once we are able to state the definition of 'organized crime' under Section 2(1) (e) with such clear precision, the other question is what is meant by 'promoting insurgency'. In fact, the said expression has already been considered by some of the judgments of this Court, and, therefore, we can make useful reference to those judgments to understand what is insurgency and whether there was any act of insurgency prevalent in the case on hand when the alleged activity of violence etc. alleged against the appellants. The dictionary meaning of expression 'insurgent' is raising an active revolt or a revolutionary. Therefore, going by the dictionary meaning, promoting

insurgency would mean creating a revolution and thereby disturb the peaceful atmosphere. In fact, in the decision of this Court in **Zameer Ahmad Latifur Rehman Sheikh (supra)** a reference has been made to this very expression and has been dealt with in a detailed fashion in paragraphs 26 to 29. We can usefully refer to the said paragraphs to understand the expression insurgency. Paragraphs 26 to 29 are as under:

> "**26.** The term "insurgency" has not been defined either under MCOCA or any other statute. The word "insurgency" does not find mention in UAPA even after the 2004 and 2008 Amendments. The definition as submitted by Mr Salve also does not directly or conclusively define the term "insurgency" and thus reliance cannot be placed upon it. The appellants would contend that the term refers to rising in active revolt or rebellion. Webster defines it as a condition of revolt against the Government that does not reach the proportion of an organised revolution.
>
> **27.** In *Sarbananda Sonowal* v. *Union of India* this Court has held that insurgency is undoubtedly a serious form of internal disturbance which causes grave threat to the life of people, creates panic situation and also hampers the growth and economic prosperity of the State.
>
> **28.** We feel inclined to adopt the aforesaid definition for the current proceedings as there does not appear to exist any other satisfactory source.
>
> **29.** Although the term "insurgency" defies a precise definition, yet, it could be understood to mean and cover breakdown of peace and tranquility as also a grave disturbance of public order so as to endanger the security of the State and its sovereignty."

.(Emphasis added)

96. It has been more succinctly described in paragraphs 45 to 47 which can also be usefully referred to:

> "**45.** Now that we have examined under what circumstances a State law can be said to be encroaching upon the law-making powers of the Central Government, we may proceed to evaluate the current issue on merits. Let us once again examine the provision at the core of this matter:
>
> "2. (1)(*e*) 'organised crime' means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;"
>
> After examining this provision at length, we have come to the conclusion that the definition of "organised crime" contained in Section 2(1)(*e*) of MCOCA makes it clear that the phrase "promoting insurgency" is used to denote a possible driving force for "organised crime". It is evident that MCOCA does not punish "insurgency" per se, but punishes those who are guilty of running a crime organisation, one of the motives of which may be the promotion of insurgency.
>
> **46.** We may also examine the Statement of Objects and Reasons to support the conclusion arrived at by us. The relevant portion of the Statement of Objects and Reasons is extracted hereinbelow:
>
> "*1*. Organised crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fuelled by illegal wealth generated by contract, killing, extortion,

smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organised crime being very huge, it has had serious adverse effect on our economy. It was seen that the organised criminal syndicates made a common cause with terrorist gangs and foster narcoterrorism which extends beyond the national boundaries. There was reason to believe that organised criminal gangs have been operating in the State and thus, there was immediate need to curb their activities.

2. The existing legal framework i.e. the penal and procedural laws and the adjudicatory system are found to be rather inadequate to curb or control the menace of organised crime. The Government has, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of organised crime."

47. We find no merit in the contention that MCOCA, in any way, deals with punishing insurgency directly. We are of the considered view that the legislation only deals with "insurgency" indirectly only to bolster the . definition of "organised crime". However, even if it be assumed that "insurgency" has a larger role to play than pointed out by us above in MCOCA, we are of the considered view that the term "promoting insurgency" as contemplated under Section 2(1)(*e*) of MCOCA comes within the concept of public order."

(Emphasis added)

97. Therefore, 'insurgency' has been understood to mean raising an active revolt or rebellion in the common parlance. It is also stated that it could be understood to mean and cover

breakdown of peace and tranquility as also a grave disturbance of public order so as to endanger the security of the State and its sovereignty. While making specific reference to Section 2(1)(e), it was pointed out that MCOCA though does not punish insurgency per se, punishes those who are guilty of running a crime organization and one of the motive of which may be the promotion of insurgency. Therefore, it is not necessary that promoting insurgency should always be linked to pecuniary advantage. Whenever an organized gang indulges in a violent act, such indulgence in violence or threat of violence or intimidation or coercion or other unlawful means can be for promoting an insurgency.

98. In the light of such line of thinking already expressed by this Court with particular reference to Section 2(1)(e), we do not find any different meaning to be attributed to the definition of 'organized crime', much less to the extent to which the appellants seek to interpret the said definition and state that the indulgence in any violent and related activity for promoting insurgency, the element of pecuniary advantage should be present. We, therefore, reject such a contention and hold that indulging in any violent or other related activity by an organized

gang and thereby an effort to promote insurgency i.e. to damage the peace and tranquility in the State is made, that by itself would fall within the four corners of the definition of “organized crime” under Section 2(1)(e).

99. In the light of our above conclusions on the various submissions, we are convinced that in respect of the appellant in Criminal Appeal No.1971/2010, namely, A-7, there is no scope even for the limited purpose of Section 21(4)(b) to hold that application of MCOCA is doubtful. We have held that the said appellant A-7 had every nexus with all the three crimes, namely, Parbhani, Jalna and Malegaon and, therefore, the bar for grant of bail under Section 21 would clearly operate against him and there is no scope for granting any bail. Insofar as the rest of the appellants are concerned, for the purpose of invoking Section 21(4)(b), namely, to consider their claim for bail, it can be held that for the present juncture with the available materials on record, it is not possible to show any nexus of the appellants who have been proceeded against for their involvement in Malegaon blast with the two earlier cases, namely, Parbhani and Jalna. There is considerable doubt about their involvement in Parbhani

and Jalna and, therefore, they are entitled for their bail applications to be considered on merits.

100. When once we are able to steer clear of the said position, the other question to be considered is the grant of bail on its own merits. For which purpose, the submission of Mr. Mariarputham, learned senior counsel who appeared for the State of Maharashtra and NIA based on the decision relied upon by him in **State of U.P. Through CBI v. Amarmani Tripathi -** 2005 (8) SCC 21 should be kept in mind, in particular paragraph 18, which reads as under:

> "**18.** It is well settled that the matters to be considered in an application for bail are (*i*) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (*ii*) nature and gravity of the charge; (*iii*) severity of the punishment in the event of conviction; (*iv*) danger of the accused absconding or fleeing, if released on bail; (*v*) *character, behaviour, means, position and standing of the accused*; (*vi*) likelihood of the offence being repeated; (*vii*) *reasonable apprehension of the witnesses being tampered with*; and (*viii*) *danger, of course, of justice being thwarted by grant of bail* [see *Prahlad Singh Bhati* v. *NCT, Delhi* and *Gurcharan Singh* v. *State (Delhi Admn.)*]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be

refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*: (SCC pp. 535-36, para 11)

> *11*. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:
>
> (*a*) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
>
> (*b*) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
>
> (*c*) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay* v. *Sudarshan Singh* and *Puran* v. *Rambilas*.)"

101. Even the other contentions submitted by the learned senior counsel that the appellants are not entitled for bail, are all matters which the prosecuting agency will have to place before the Special Court for consideration while considering the appellants' application for bail. For the same reason, the various other contentions raised on behalf of the appellant in Criminal

Appeal Nos.1969-70/2010 as well as the appeal arising out of SLP(Crl.) No.8132 of 2010 by making reference to their personal grievances are all matters which will have to be placed before the Special Judge for consideration. We are not expressing any opinion on those aspects and we leave it for the Special Judge to consider the bail application on merits and pass appropriate orders.

102. Accordingly, on question No.(a) in paragraph 35, we hold that the judgment of the Division Bench in holding that cognizance is of the offence and not of the offender is perfectly justified and the same does not call for any interference. Therefore, Criminal Appeal Nos.1969-70 of 2010, Criminal Appeal No.1971 of 2010, Criminal Appeal Nos.1994-98 of 2010, appeal arising out of SLP(Crl) No.8132 of 2010 and Criminal Appeal No.58 of 2011 are dismissed. As far as the order dated 30.12.2010, rejecting bail, passed by the learned Special Judge, which was also confirmed by the learned Single Judge of the Bombay High Court by order dated 09.11.2011 in Criminal Bail Application No.333 of 2011 with Criminal Application No.464 of 2011 of the appellant in appeals arising out of SLP (Crl.) Nos.9370-71 of 2011, the said orders are set aside with the

observation that there is enough scope to doubt as to the application of MCOCA under Section 21(4)(b) for the purpose of grant of bail and consequently the Special Judge is directed to consider the application for bail on merits keeping in mind the observations in paragraphs 100 and 101 of this judgment and pass orders. Consequently, the appeals arising out of SLP(Crl.) Nos.9370-71 of 2011 are partly allowed. The order impugned in these appeals is set aside and the application for bail in Bail Application No.42 of 2008 is restored to the file of the Special Judge for passing orders on merits. Similarly, for the reasons stated in paragraph 99, we hold that the appellant in appeal arising out of SLP(Crl.) No.8132 of 2010 is also entitled for the same relief as is granted to the appellant for consideration for grant of bail in the appeals arising out of SLP(Crl.) Nos.9370-71 of 2011. We thus answer question No.(b) of paragraph 35 and the trial Court is, therefore, directed to apply the same principle and consider the bail application pending or filed afresh, if so advised, by the appellant in the appeal arising out of SLP(Crl.) No.8132 of 2010 and pass orders on merits. Consequently, Criminal Appeal No.1971 of 2010, Criminal Appeal Nos.1994-98 of 2010 and Criminal Appeal No.58 of 2011 are dismissed.

103. Since the occurrence is of the year 2008 and nearly seven years have gone by, it is imperative that the Special Court commence the trial at the earliest and conclude the same expeditiously. We direct the Prosecuting Agency to ensure that the necessary evidence i.e. oral, documentary as well as other form of evidence placed before the Court to enable the Special Court to commence the trial early and conclude the same expeditiously. It is stated that no officer has been posted for the Special Court as on date. We, therefore, request the Chief Justice of the High Court of Bombay to pass appropriate orders either for posting these cases before a learned Judge by way of special order or appoint a Presiding Officer exclusively for deciding these cases in order to ensure speedy trial. We also direct the Presiding Officer of the Special Court to dispose of the bail applications expeditiously, preferably within one month from the date of his/her assumption of Office as Special Judge. The Registry is directed to transmit the records forthwith.

104. Since, we have not heard arguments on the question as to the claim of NIA in seeking custody covered by SLP (Crl.) No.9303 of 2011 and SLP (Crl.) No.9369 of 2011 the same are delinked and shall be listed in due course.

.....J.
[Fakkir Mohamed Ibrahim Kalifulla]

.....J.
[Abhay Manohar Sapre]

New Delhi;
April 15, 2015