IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1124 OF 2026

SANJAY S/O. BHAGIRATHMAL AGRAWAL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

WITH

CRIMINAL WRIT PETITION NO.1117 OF 2026

SANJAY S/O. BHAGIRATHMAL AGRAWAL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

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Mr. V. D. Sapkal, Senior Counsel i/b. Mr. Khizer Patel, Mr. Z. H. Farooqui and Mr. Y.A. Jadhav, Advocate for petitioners.
Mr. D. J. Patil, APP for Respondent – State.

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CORAM : HITEN S. VENEGAVKAR, J.
RESERVED ON : 20th AUGUST 2026
PRONOUNCED ON : 21st AUGUST 2026

ORDER :

. Criminal Writ Petition No.1117 of 2026 is not board. Upon mentioning taken on board.

1. With the consent of both the parties heard the matter finally for interim relief and admission.

2. These two petitions are instituted by the same petitioners. Criminal Writ Petition No.1124 of 2026 challenges Crime No. 181 of 2026 registered with Jinsi Police Station,

Chhatrapati Sambhajinagar, for offences punishable under Sections 3 and 7 of the Essential Commodities Act, 1955, Sections 4 and 23 of the Petroleum Act, 1934, Section 287 of the Bharatiya Nyaya Sanhita, 2023 and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999.

Criminal Writ Petition No.1117 of 2026 challenges Crime No.182 of 2026 registered at the same Police Station for offences punishable under Sections 3 and 7 of the Essential Commodities Act, Sections 318 and 3(5) of the Bharatiya Nyaya Sanhita and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short, "MCOCA").

The principal relief in each petition is quashing of the concerned crime and all consequential proceedings, insofar as the petitioners are concerned.

3. The interim prayer in the Petition is for protection from arrest of the petitioners in the aforesaid two crimes which reads as under -.

In Criminal Writ Petition No.1124 of 2026, prayer clause (C) reads as -

> *(C). Enlarge the Petitioners on bail, in the event of their arrest, on such terms and conditions as this Hon'ble Court may deem fit and proper, in connection*

with F.I.R. bearing Crime No.181 of 2026 registered with Jinsi Police Station, Chhatrapati Sambhajinagar, for the offences punishable under Sections 3 and 7 of the Essential Commodities Act, 1955, Sections 4 and 23 of the Petroleum Act, 1934, Section 287 of the Bharatiya Nyaya Sanhita, 2023, and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999, and for that purpose issue necessary orders."

Prayer clause (D) seeks a writ of restraining the State and its Officers 'from arresting the petitioners and/or from taking any other coercive action' in that crime, save and except with the prior leave of this Court.

The pending petition prayer asks that, pending hearing and final disposal, the police authorities and their officers, servants and subordinates be restrained from arresting the petitioners or taking coercive action against them in C.R. No.181 of 2026.

In Criminal Writ Petition No.1117 of 2026, prayer clause (C) reads as -

"(C). Enlarge the Petitioners on anticipatory bail, in the event of their arrest, on such terms and conditions at this Hon'ble Court may deem fit and proper, in connection with F.I.R. bearing Crime No.

182 of 2026 registered with Jinsi Police Station, Chhatrapati Sambhajinagar, for the offences punishable under Sections 3 and 7 of the Essential Commodities Act, 1955, Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999, and Sections 318 and 3(5) of the Bharatiya Nyaya Sanhita, 2023, and for that purpose issue necessary orders."

Prayer clause (D) and the corresponding pending-petition prayer, seek the same restraint against arrest or coercive action in relation to that crime.

Though the Petition was mentioned for urgent hearing on grant of ad-interim relief, on last date the petitioners were heard for sometime and then it was placed today at the request of the Learned APP to take instructions and produce the necessary case papers of the investigation agencies for courts perusal. Today both the Learned counsel agreed that the pending petition prayers had been fully and finally argued as prayers for interim relief, and not merely for a temporary ad-interim arrangement until completion of submissions. This common order decides only those interim prayers pertaining to protection of petitioners from arrest in the above mentioned two crimes. The challenge to the crimes and to the application of MCOCA remains pending for adjudication at the stage of final hearing.

4. The two crimes are registered from searches conducted in the intervening night of 12th and 13th June, 2026 at a godown below M. R. Function Hall, Rehmaniya Colony, Kiradpura. C. R. No.181 of 2026 was lodged at the instance of the Assistant District Supply Officer. The prosecution case recorded in that FIR is that substantial quantities of wheat, rice, sugar, jowar and maize, alleged to be commodities diverted from the Public Distribution System, together with diesel, a weighing scale and an Eicher vehicle bearing registration No. MH-18-BH-7720 were found at the premises. The persons found there were named as accused. It is an admitted position that neither of the present petitioners was named in the said FIR.

5. C. R. No.182 of 2026 was lodged at the instance of the Child Development Project Officer. It concerns take home ration and supplementary nutrition bearing the markings of the Women and Child Development Department and intended for infants, pregnant women and lactating mothers under the Integrated Child Development Services. The FIR alleges unauthorised procurement, removal of these supplementary nutrition from the main distribution stream and then illegally storing them and thereafter

intentionally selling them in black-market . The present petitioners were not named in this FIR either.

6. The case pleaded by the petitioners is that petitioner No.1 is the proprietor of an entity by name Shree Gajanan Agro Sales Corporation and petitioner No.2 is its manager. The firm is engaged in the business of rice milling, processing and trading in agricultural commodities and is an empanelled Custom Rice Milling contractor of the State. The petitions rely upon Government allotment and work orders concerning large quantities of paddy and Custom Milled Rice. On that foundation, the petitioners say that storage of substantial quantities of grain, the presence of weighing equipment and commercial dealings with transporters are ordinary incidents of their lawful business.

7. The petitions place particular emphasis upon the sequence commencing on 14th June, 2026. It is pleaded that police officers visited the factory premises on 14th June, again on 17th June and thereafter on 20th June, 2026. The notice dated 17th June records that an arrested accused had stated that the grain seized at the original godown was to be brought to Gajanan Agro for sale and that grain had allegedly been sold there earlier. The notice called for the CCTV footage and the recording system. The

petitioners assert that the police viewed the footage and removed the DVR/NVR unit. A further notice dated 20th June, 2026 referred to a weighment slip dated 10th June, 2026 and required production of the weighment printer and connected equipments. According to the petitioners, none of these visits yielded any incriminating article against the petitioners.

8. The petitions then refer to a search of the factory premises on 2nd July, 2026 which was undertaken after a memorandum allegedly made by an arrested accused. The search record is stated to show one single sealed packet of Multi Mix Cereals and Protein Premix bearing Government markings. In the premises partly burnt or empty wrappers were also recovered from or near a waste bin along with 1,370 filled bags secured on suspicion for departmental examination. The petitioners contend that the bulk bags contained rice bran, rejected rice and other by-products of lawful milling, used as cattle feed or industrial raw material. They rely upon representations and electronic communications addressed to superior authorities around the time of the search, alleging procedural irregularities, coercion of the manager and planting of the scheme-marked packet and wrappers in the factory premises and alleging high handedness and *mala fides* at the hands of the investigating authorities.

9. The petitions further plead that the names of the petitioners appeared later in the remand reports as wanted accused. In C.R. No.181 of 2026, they rely upon the remand proceedings of 21st July, 2026 and the transfer of custody of arrested accused from the connected crime. They contend that the implication is founded essentially upon statements made by co-accused in police custody alone and that there is no lawful discovery or independent documentary, electronic or financial material connecting them to the goods seized at the original godown. The petitioners contend that the statutory ingredients of continuing unlawful activity, organised crime and organised crime syndicate are absent and that MCOCA has been invoked mechanically to disable the ordinary remedy of anticipatory bail.

10. The learned APP raised a preliminary objection that the petitioners invoke Article 226 of the Constitution to obtain a restraint against arrest although the assignment of this Single Bench is in criminal writ petitions and applications for quashing. It was submitted that an order of pre-arrest protection under Article 226 of the Constitution ought not to be made by this Court when the statutory remedy of anticipatory bail is excluded by MCOCA. According to the Learned APP, the powers to consider and grant

any such relief lies only with the Division Bench of this Court .

11. The objection, insofar as it concerns the roster, cannot be accepted. The extant assignment expressly places before this Court all Criminal Writ Petitions and applications for quashing of FIRs, C.R.s, charge-sheets, orders taking cognizance, discharge orders and orders framing charge from the year 2025 onwards, as also criminal applications under Section 482 of the Code of Criminal Procedure or Section 528 of the Bharatiya Nagarik Suraksha Sanhita other than quashing matters. Both petitions are, in their essential character and principal relief, criminal writ petitions for quashing crimes registered in the year 2026. They therefore fall within the express assignment of this court.

12. The roster determines which Bench of the High Court will exercise the Court's jurisdiction in a class of cases; it does not diminish the constitutional source of that jurisdiction. Once a criminal writ petition for quashing is validly placed before the assigned Single Judge, an interlocutory prayer incidental to that petition does not migrate to another Bench merely because Article 226 of the Constitution is one of the provisions invoked. The Chief Justice is the master of the roster and the assigned Bench alone may transact the judicial business so allocated. This Court thus has

jurisdiction to consider the interim prayer of grant of pre-arrest relief to the petitioners as prayed in the petitions.

13. The preliminary objection requires four concepts to be kept distinct: first, the constitutional jurisdiction vested in the High Court; secondly, the internal allocation of judicial business under the roster; thirdly, the maintainability of the proceeding as instituted; and fourthly, the entitlement of a litigant to the relief claimed. Article 226 confers jurisdiction upon the High Court as a constitutional court. The roster, framed under the authority of the Hon'ble Chief Justice as master of the roster, identifies the Judge or Bench by whom that jurisdiction is to be exercised in a particular class of proceedings. Maintainability concerns the legal character of the proceeding brought before the Court, whereas entitlement to interim relief concerns the limits governing the exercise of the jurisdiction. An objection belonging to one of these fields cannot be answered by importing a limitation belonging to another. The principles recognised in ***State of Rajasthan v. Prakash Chand***, (1998) 1 SCC 1, and ***Campaign for Judicial Accountability and Reforms v. Union of India***, (2018) 1 SCC 196, must be understood in this institutional framework.

14. For the purpose of assignment, the Court must

ascertain the essential character and principal relief of the proceeding. The present proceedings are criminal writ petitions seeking quashing of crimes registered in the year 2026. That class of proceedings is expressly assigned to this Bench. An interlocutory application does not ordinarily possess an institutional identity independent of the substantive proceeding in which it is made. Unless the roster expressly provides otherwise, the authority to hear the principal cause necessarily carries the authority to consider, grant or refuse such incidental relief as the law permits in that cause. A contrary construction would fragment one criminal writ petition between different Benches merely because different provisions of the Constitution or different forms of relief are invoked at successive stages.

15. This conclusion does not confer upon the assigned Single Judge a freestanding jurisdiction to entertain an anticipatory-bail application prohibited by MCOCA. It means only that the Bench validly seized of the quashing petition is competent to determine whether the exceptional constitutional relief claimed as incidental to that petition is legally available. The question whether the prayer is maintainable before the assigned Bench and the question whether it deserves to be granted are separate. The first is answered by the assignment; the second must be answered

by the Constitution, the special statute and the governing judicial principles. The objection thus stands rejected.

16. On merits of the Petitions, learned Senior Counsel for the petitioners submitted that the admitted documentary chronology itself establishes a colourable exercise of powers during investigation. The notices of 17th and 20th June, 2026 show that the investigating agency knew about Gajanan Agro and about the alleged earlier sales and the weighment slip well before 2nd July, 2026 . It is therefore urged that the subsequent remand narrative, insofar as it projects the memorandum of 2nd July as the source of that knowledge, is demonstrably incorrect and was placed before the Special Court to manufacture a later connection.

17. It was argued that the repeated earlier visits produced no incriminating recovery, whereas during the search on 2nd July the police claimed, within a short time, to have found one scheme-marked packet and burnt or empty wrappers in an industrial premises extending over approximately 50,000 square feet. The petitioners' communications to superior officers, their complaint about the removal of the DVR/NVR, and their allegation that packets were moved and photographed were relied upon as contemporaneous circumstances demonstrating *mala fides* at the

hands of the Investigation Officers rather than an afterthought.

18. Counsel submitted that the Government work orders and allotments explain the possession of grain, weighing facilities, transport dealings and large commercial transactions. The 1,370 bags, according to the pleadings and the supporting photographs and representations, contain milling by-products and not nutrition material diverted from an Anganwadi scheme. He further argued that a solitary one kilogram packet and empty wrappers of disputed origin, cannot connect the lawful business to an organised crime syndicate. It was further submitted that a statement of a co-accused in police custody is not substantive evidence against the petitioners except to the limited extent of a legally proved discovery.

19. The petitioners further contended that they were not named in the original FIRs or the initial remand papers and also they were not named in the material then disclosed. The prosecution has not, according to Learned Senior Counsel, established the required nexus between either petitioner and the alleged syndicate, nor the statutory requirement of continuing unlawful activity has been demonstrated or exits in the present case. He argued in rejoinder that previous cases referred to by the

State are said to be false, unrelated, disposed of, or incapable of constituting the statutory foundation. He submitted that the Daulatabad charge-sheet, it was pointed out, was filed after the prior approval in the present crimes and could not retrospectively sustain the approval order granted by the Competent Authority.

20. Finally, learned Senior Counsel admits that Section 21(3) of MCOCA excludes anticipatory bail under Section 438 of the Code, corresponding to Section 482 of the BNSS. He submitted, however, that the constitutional jurisdiction survives and must be exercised where the action is without jurisdiction, demonstrably *mala fide* or unsupported by the statute. The petitioners seek protection, not on ordinary bail considerations, but to prevent arrest under what is alleged to be a fabricated and jurisdictionally invalid application of MCOCA.

21. The learned APP for State submitted that the relief must be tested by its legal effect and not by its label. An order restraining arrest for the duration of the quashing petitions would operate as anticipatory bail notwithstanding the legislative command in Section 21(3) of MCOCA Act. The Learned APP agree that the extraordinary jurisdiction is not extinguished but submits that it cannot be employed as a second statutory window. Unless

the petitioners demonstrates, on clear and substantially undisputed material, that MCOCA is wholly inapplicable or that the threatened arrest is a proved abuse, the investigation cannot be restrained or no relief of pre-arrest protection can be granted.

22. The learned A.P.P. disputed the petitioners' factual account. It was submitted that an earlier inquiry into the concern and the later emergence of further incriminating material are not mutually exclusive; he on instructions submitted that investigating officer has not seized by way of a DVR/NVR during the earlier visit. He argued that the emails and complaints relied upon by the petitioners do not establish planting or personal enmity but the same was an desperate effort on the part of the petitioners to make false allegations against the Investigating officers and create undue pressure on the officers. He submitted that the falsity of the allegations in the emails and communications can be perused from the date and time when the allegations are made. According to him the allegations are levelled only after the search and disclosure about the statement of co-accused on 2nd July, 2026 was informed to the petitioners and search was actually carried out in the factory premises. He further submitted that the lawful authority to mill paddy and return custom milled rice does not, according to the State, authorise possession of beneficiary specific nutrition packets

or other diverted welfare commodities. He further submitted that the petitioners or its entity had no licence to deal and possess the commodities that were specialised and specific nutrition packets meant for the welfare of children, pregnant and lactating mothers. The Government licences to the petitioners was in altogether different commodities and for different godown premises. The Godown premises in which the search was carried out was not listed in the licenced premises permitted by the government.

23. The State further submitted that prior approval under Section 23(1)(a) of MCOCA was obtained before MCOCA provisions were added. He argued that that the alleged syndicate has qualifying antecedent charge-sheets; and that the investigation indicates contact and commercial linkage between the alleged members and the petitioners. It was argued that a person whose role emerges during investigation need not have been named in the FIR or in the prior approval order. The investigation into the source, transport, storage, payment and earlier transactions is continuing and custodial interrogation is stated to be necessary.

24. During the hearing, the learned A.P.P. tendered the case papers, an investigation update and a report prepared for the Public Prosecutor for the Court's perusal. Those papers were not

supplied to the petitioners because the investigation is in progress. The Court has therefore not treated their contents as part of the petitioners' pleadings or as material to which their counsel had an opportunity to furnish a factual answer. The details of that material are deliberately not reproduced. They have been looked at only to the limited extent necessary to ascertain whether the State's opposition and the continuing investigation are wholly unsupported. The submissions attributed to the petitioners in this order are confined to the petitions, their annexures and the oral submissions recorded at the hearing.

25. The production of investigation papers for the confidential perusal of the Court presents a distinct procedural situation. At the stage of an incomplete investigation, the Court may legitimately refrain from directing disclosure of material whose disclosure may prejudice the investigation. At the same time, material which has not been disclosed to the affected party cannot be used to return an affirmative finding upon a disputed fact, to pronounce upon guilt, or to reject a factual explanation as false. Judicial perusal of such material and adversarial proof of its contents are not interchangeable processes.

26. The permissible use of such material at this stage is

therefore limited. It may assist the Court in deciding whether the investigation is real and continuing and whether constitutional interdiction is presently indispensable. It cannot cure a patent absence of statutory jurisdiction, nor can it be the sole foundation for an adverse conclusion against the Petitioners. The order refusing protection must remain sustainable upon the nature of the petitioners' own pleaded and annexed case, the FIRs and other disclosed material, and their failure to satisfy the exceptional constitutional threshold. This limitation preserves both the confidentiality of a legitimate investigation and the elementary requirement that no adverse adjudication be founded upon material which the affected person has had no opportunity to meet.

27. Before considering the interim relief on merits of the matters, it is necessary to consider the statutory framework governing the issue in hand. Section 2(1)(d) of MCOCA defines continuing unlawful activity as an activity prohibited by law, constituting a cognizable offence punishable with imprisonment of three years or more, undertaken singly or jointly as a member of an organised crime syndicate or on behalf of such syndicate, in respect of which more than one charge-sheet has been filed before a Competent Court within the preceding ten years and the Court has taken cognizance. Section 2(1)(e) defines organised crime as such

continuing unlawful activity committed by the specified unlawful means with the objective, amongst others, of obtaining pecuniary benefit or undue economic or other advantage. Section 2(1)(f) defines an organised crime syndicate as a group of two or more persons acting singly or collectively as a syndicate or gang and indulging in organised crime.

28. Sections 3(1)(ii), 3(2) and 3(4), invoked here, respectively address the punishment for organised crime not resulting in death, conspiracy or intentional facilitation of organised crime, and membership of an organised crime syndicate. Section 23(1)(a) requires prior approval by the competent police authority before information about an offence of organised crime is recorded. These requirements are safeguards against casual invocation of an exceptionally stringent enactment and must ultimately be shown to have been satisfied.

29. Section 21(3) expressly excludes the application of Section 438 of the Code, corresponding section 482 of BNSS, in relation to an arrest for an offence punishable under MCOCA. Section 21(4), which governs release after arrest, adds to the ordinary bail requirements the familiar twin conditions, including reasonable grounds for believing that the accused is not guilty and

is not likely to commit an offence while on bail. Although the twin conditions do not mechanically operate as a statutory anticipatory-bail test, Sections 21(3) and 21(4) unmistakably disclose a legislative policy of exceptional restraint in matters of liberty once MCOCA is lawfully attracted.

30. The power of judicial review under Article 226 of Constitution of India is part of the basic constitutional structure and is not ousted by Section 21(3) of MCOCA. That proposition, however, is only the beginning of the inquiry. It does not follow that an accused may obtain, through an interim writ, substantially the same relief which the special statute has expressly withheld. The Court must preserve the constitutional power for a truly exceptional case without converting it into a parallel jurisdiction of anticipatory bail.

30. The survival of the power under Article 226 and the manner of its exercise must not be confused. Section 21(3) cannot extinguish the constitutional power of judicial review. Nevertheless, the legislative policy embodied in that provision is a relevant constitutional consideration when the Court determines the form and intensity of interim relief. Respect for that policy is not an abdication of judicial review. Equally, invocation of Article

226 cannot become a means of circumventing a statutory prohibition which the Court is otherwise bound to respect.

32. The stringency of MCOCA operates in two directions. Because the enactment is drastic in its consequences, its definitional requirements, the approval contemplated by Section 23 and the procedural safeguards must be strictly observed when their validity is finally examined. At the same time, because the Legislature has expressly excluded anticipatory bail, interlocutory pre-arrest protection cannot be granted upon the ordinary considerations which govern an application under Section 438 of the Code or Section 482 of the BNSS. Strict scrutiny of the statutory foundation and exceptional restraint in granting pre-arrest immunity are not inconsistent propositions. They are complementary consequences of the same statutory stringency.

33. The distinction may be stated in another manner. A jurisdictional objection asserts that, even if the essential prosecution allegations are provisionally accepted, the law does not permit MCOCA to be invoked. A merits objection asserts that the prosecution allegations are factually false, unreliable or ultimately incapable of proof. A patent jurisdictional objection may, in an exceptional case, invite constitutional protection. A merits

objection which requires selection between rival factual versions ordinarily cannot. Article 226 is not the forum for conducting a pre-arrest trial into which version of a disputed search, recovery, transaction or disclosure is true.

34. An arguable case for issuance of Rule is not, by itself, an exceptional case for protection from arrest. The threshold for entertaining a challenge, the threshold for finally quashing criminal proceedings and the threshold for granting pre-arrest immunity during a MCOCA investigation are related but not identical. The Court may find that the petition raises an issue requiring final consideration and yet decline to suspend, in the meantime, the statutory incidents of the investigation. The pendency of a challenge does not create an independent equity against arrest.

35. In the considered view of this Court, the following questions provide a workable constitutional test when pre-arrest protection is sought in a writ petition involving MCOCA:

(i) whether the alleged defect is patent upon the FIR, prior approval or substantially undisputed documents, rather than dependent upon disputed evidence;

(ii) whether the defect goes to the legal authority to

invoke MCOCA, and not merely to the probable sufficiency of evidence at trial;

(iii) whether the Court can determine the defect without testing a disclosure statement, choosing between rival accounts of a search, assessing electronic or financial records, or conducting a mini-trial;

(iv) whether refusal of protection would produce a total miscarriage of justice or an irreversible constitutional injury which cannot adequately be corrected in the ordinary course; and

(v) whether any protection which may be necessary can be precisely reasoned, narrowly tailored and limited in duration without obstructing a lawful investigation.

Unless the case satisfactorily crosses these requirements, an order restraining arrest would cease to operate as an exceptional constitutional remedy and would become anticipatory bail in substance.

36. In ***Hema Mishra v. State of Uttar Pradesh***, (2014) 4 SCC 453, the Hon'ble Supreme Court considered pre-arrest protection under Article 226 of the Constitution where the statutory provision for anticipatory bail was unavailable. The Court held that the constitutional power survives, but it must be exercised sparingly, in rare and appropriate cases and in extreme circumstances; it cannot be used to open a second route which

defeats the legislative exclusion. Protection may be justified only where refusal would produce a total miscarriage of justice.

37. In ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra***, (2021) 19 SCC 401, the Hon'ble Supreme Court reiterated that investigation of a cognizable offence is the statutory right and duty of the police. During an ongoing investigation, when the facts are incomplete and disputed, an order of 'no coercive steps' or 'no arrest' cannot be made routinely or in vague terms. Even where an exceptional case is shown, the High Court must record reasons demonstrating why interference is indispensable. The test for such interim intervention is informed by the same circumspection that governs the extraordinary power to quash.

38. Though the factual framework in ***State of Maharashtra v. Pankaj Jagshi Gangar***, (2022) 2 SCC 66, concerned post-arrest interim bail, the constitutional principle is instructive: writ jurisdiction cannot be used at an interlocutory stage to confer substantially the same liberty which the special statutory regime withholds, particularly by virtually deciding the validity of the MCOCA prosecution before final adjudication.

39. The controlling inquiry is therefore not whether the

petitioners have roots in society or are willing to attend the police station, or can be subjected to suitable conditions. Those are ordinary anticipatory bail considerations. The writ Court asks whether, on the FIRs, the petitions, their annexures and substantially undisputed material, the invocation of MCOCA or the threatened arrest is demonstrably without jurisdiction, founded on established *mala fides*, or so plainly abusive that constitutional intervention is the only means of preventing a total miscarriage of justice. If answering the prayer requires the Court to choose between rival submissions of a search, determine whether an article was planted, test a panchanama, assess call or financial records, or decide the evidentiary weight of a disclosure, the case ordinarily falls outside that narrow class amenable to writ jurisdiction.

40. It is equally necessary to clarify what rejection of the present prayer does not mean. Section 21(3) excludes anticipatory bail; it does not make arrest an automatic consequence of the registration of every MCOCA offence. The investigating officer continues to be governed by Articles 21 and 22, the applicable provisions of the BNSS and the settled requirements governing a lawful arrest. The power to investigate must not be confused with a duty to arrest in every case. Correspondingly, refusal by the writ

Court to grant pre-arrest immunity is neither a direction to arrest nor judicial approval of a mechanical arrest. It merely leaves the investigating agency free to exercise its statutory powers in accordance with law.

41. Two further principles are material. In ***Kavitha Lankesh v. State of Karnataka***, (2022) 12 SCC 753, the Hon'ble Supreme Court held, while construing *pari materia* organised-crime legislation, that prior approval is in respect of the offence and need not name every person whose role may emerge during investigation. Absence of the petitioners' name from the FIRs or the approval, though factually relevant, is therefore not by itself fatal. In ***State of Gujarat v. Sandip Omprakash Gupta***, (2024) 14 SCC 401 : 2022 SCC OnLine SC 1727, the Court explained that qualifying earlier charge-sheets and cognizance establish the element of continuing unlawful activity, while a later incident of continuation is necessary to constitute the substantive organised-crime offence. Thus the existence of earlier cases alone is insufficient, but the Court cannot at the interim stage insist that every later participant must personally be named in each predicate case if the prosecution otherwise shows a real nexus with the syndicate. The existence and sufficiency of that nexus remain open to final scrutiny.

42. The statutory architecture further reveals two distinct inquiries. “Continuing unlawful activity” is substantially activity- and syndicate-centric: its existence may be founded upon qualifying charge-sheets and cognizance concerning the activities of the alleged syndicate. Criminal liability under Sections 3(1), 3(2) or 3(4), however, remains person- and conduct-centric. The prosecution must ultimately establish the particular accused’s connection with the continuing unlawful activity and the degree of conscious participation, facilitation or membership required by the provision invoked. It is therefore neither necessary that every later accused should personally figure in every predicate offence, nor sufficient that the prosecution merely shows that such person had commercial acquaintance with an alleged member of the syndicate.

43. The same distinction assumes significance where an otherwise lawful commercial undertaking is alleged to have been used as an interface for organised crime. A licence, Government contract or legitimate business activity does not confer immunity if the undertaking is knowingly employed for receiving or processing diverted welfare commodities. Conversely, the possession of large stocks, weighing equipment, banking turnover, transport

arrangements or commercial communications are facts intrinsically compatible with the licensed business and cannot, without more, establish membership of or intentional facilitation to an organised crime syndicate. The necessary bridge must consist of circumstances capable of connecting the particular transaction and the particular accused with the unlawful activity. Whether such a bridge is ultimately established is a matter of proof; the interim writ inquiry is confined to whether its existence is demonstrably impossible or the prosecution's assertion of it is a mere pretence.

44. Considering the aforesaid legal and constitutional position lets proceed to analyze the case of the petitioners. The petitioners' strongest circumstance is the documentary chronology of 17th and 20th June, 2026. Those notices establish that the investigating agency knew before 2nd July about Gajanan Agro and also about the allegation of proposed and earlier sales, and of a weighment slip attributed to the said entity. Any subsequent remand applications suggesting that the said entity itself came to light for the first time on 2nd July, 2026 according to petitioner therefore would be inaccurate. This aspect of the petitioners requires a clear explanation in the investigation and will be relevant when the challenge to the proceedings is finally examined.

45. That chronology of events put up by the petitioners, according to them however, lead inexorably to the conclusion that the search on 2nd July, 2026 was fabricated. It must be noted that knowledge of the identity and location of a business entity are different from acquisition of later material said to relate to a particular transaction or articles. Earlier visits of investigating agency without recovery do not make a subsequent recovery legally impossible. To accept the petitioners' submission at this stage, the Court would have to find that the packet and wrappers were planted, reject the search record and the State's denial, and accept the petitioners' averments of the DVR/NVR recovery controversy. Those are disputed questions of fact which cannot fairly be concluded upon affidavits and submissions in an interim writ inquiry.

46. Secondly, representations made by the petitioners to superior authorities are undoubtedly relevant. Their timing prevents the allegation of police impropriety from being brushed aside merely as a defence devised after arrest. They require preservation and objective examination of the contemporaneous electronic and official record. Yet a contemporaneous allegation is not, by that fact alone, proof of the allegation. The petitioners'

communications and the official search record remain competing versions. The present record does not permit a finding that *mala fides* or planting stand established on substantially undisputed material.

47. The petitioners reliance The Government work orders and allotments also have real explanatory value. They render the presence of large quantities of paddy or rice, milling by-products, weighing machinery, transport payments and routine commercial contacts consistent with lawful business. At this stage, no adverse conclusion can be drawn merely from the scale of the petitioners' stock or turnover. But those documents do not, by themselves, answer the allegation concerning the scheme-marked packet and wrappers said to have been found at the managed premises. Whether those articles were genuinely recovered, how they came there, and whether they have any transaction-level connection with the petitioners are matters for investigation and later judicial scrutiny.

48. The argument based on the custodial statement of a co-accused is likewise not sufficient to grant the present relief. The Petitioners are correct that such a statement is not substantive evidence against them except within the limits prescribed by the law of evidence. But an investigation may lawfully follow

information received from an accused and collect independent material. At the present stage, the Court is not deciding admissibility at trial. The question is whether the entire investigation against the Petitioners is demonstrably founded on nothing except an inadmissible statement. On the Petitioners' own annexures, including the prior notices, it cannot presently be concluded that the investigation rests exclusively upon an inadmissible custodial statement. The investigation papers, examined only for the limited purpose stated in paragraph 20, also do not justify treating the continuing investigation as wholly fictitious or as a mere pretence.

49. The absence of the petitioners' names from the original FIRs and the prior approval does not create a jurisdictional bar to their later implication. The law laid down in case of ***Kavitha Lankesh*** (Supra), answers that submission. The State must ultimately prove a genuine nexus between each Petitioner and the alleged organised crime; ordinary commercial acquaintance or isolated business contact will not suffice. At the present stage, however, the allegations of earlier supply to the concern, the weighment material and the disputed search prevent the Court from declaring that no such nexus can possibly exist.

50. The challenge to the statutory predicates under Section 2(1)(d) is important and remains open. At this stage the State asserts that the approval was based upon qualifying charge-sheets of alleged members of the syndicate and not merely upon antecedents personal to the present petitioners. Whether those cases meet every statutory requirement is a mixed question of fact and law reserved for final consideration; the material presently available does not render the approval non est on its face.

51. The plea of *mala fides* raised by the petitioners is serious but has not crossed the exceptional threshold. The petitions contain allegations against named police officers and refer generally to business rivals. They do not presently disclose a clear pre-existing personal or legal animus which, on admitted facts, makes the prosecution explicable only as retaliation. The complaints may justify inquiry into the fairness of the search, but they do not enable the Court to hold, without testing evidence, that the entire application of MCOCA is a colourable exercise and *mala fides* on the part of the investigation agency.

52. The submission that petitioner No.2 was present during the search but was not then arrested, and that no notice under Section 35(3) of the BNSS was served before his name appeared in

later remand papers, does not establish an enforceable immunity from arrest. The statutory safeguards governing arrest remain binding upon the investigating agency. Their alleged breach may be examined in the appropriate proceeding. But the fact that immediate arrest was not made during an earlier stage of inquiry does not preclude arrest if the investigating officer later records lawful reasons on further material.

53. The Court has also kept in view the undisclosed investigation papers tendered for its limited perusal. Since the petitioners had no opportunity to meet their factual contents, the rejection of relief cannot rest upon treating every assertion in those papers as proved. Equally, the Court cannot ignore that the investigation is live and that the State's assertion of further links is not shown to be a mere pretense. The proper course is to refrain from publishing or conclusively evaluating that material and to decide whether the petitioners have established the exceptional constitutional case from their own pleaded and annexed record. In the present case the petitioners have failed to establish the same.

54. The interim relief sought by the petitioners would remain operative throughout the pendency of the quashing petitions. In practical effect it would confer the very pre-arrest

immunity which Section 21(3) withholds. Granting it would require this Court to accept the petitioners' commercial explanation as conclusive, adjudge the disputed recovery to be planted, reject the State's account of the investigation, and hold the MCOCA foundation invalid before the full record is available. That would amount to an interlocutory trial of the defence and would trench upon the investigation in the manner disapproved in the case of ***Hema Mishra, Neeharika Infrastructure*** and ***Pankaj Jagshi Gangar*** (Supra).

55. The Court is therefore unable, at this stage, to hold that the invocation of MCOCA is demonstrably without jurisdiction and that *mala fides* as alleged by the petitioners stands established on admitted or incontrovertible material. On the petitioners' pleaded and annexed record, and having regard to the initial stage of investigation, it cannot be held that the asserted nexus is demonstrably impossible or that the prosecution is a mere pretense. The petitioners have raised matters in particular the prior documentary chronology, the statutory predicates and the fairness of the disputed search. Those matters do not, however, satisfy the much higher threshold for constitutional pre-arrest protection during a pending MCOCA investigation.

56. In C.R. No.181 of 2026, the Petitioners were not present at the original godown and were not named in the FIR. No Public Distribution System commodity was initially recovered from them. Those circumstances are important. Nevertheless, the Petitioners' own annexures disclose that, before their implication, the investigation had proceeded upon allegations of intended or earlier sales to their concern and upon a weighment slip attributed to the concern. Determination of the truth, admissibility and transaction-level significance of that material would require examination of the investigation record. The case cannot therefore presently be placed in the category where the asserted connection with C.R. No.181 is legally impossible on admitted facts.

57. In C.R. No.182 of 2026, the Petitioners directly dispute the search of 2 July 2026 and allege planting of the scheme-marked packet and wrappers. The chronology relied upon by them gives the allegation sufficient seriousness to require examination at the final hearing. But granting protection now would require the Court to accept the allegation of planting, disbelieve the official search record and determine the character of the articles and bulk bags without evidence. The very nature of that exercise places the case outside the narrow class in which constitutional pre-arrest protection can be granted.

58. The legal position emerging from the above discussion may be summarised thus:

"(i) where the assignment expressly entrusts criminal writ petitions seeking quashing of FIRs or crimes to a Single Bench, that Bench is competent, unless the roster provides otherwise, to consider every incidental interim prayer made in such proceedings;

(ii) the competence to consider the prayer does not convert the proceeding into an anticipatory-bail application and does not dilute Section 21(3) of MCOCA;

(iii) Article 226 remains available as a constitutional safety valve, but not as a statutory substitute for anticipatory bail;

(iv) pre-arrest protection in a MCOCA matter may be considered only where the absence of jurisdiction, established mala fides or abuse of process is apparent from admitted or incontrovertible material and can be determined without undertaking a factual or evidentiary adjudication;

(v) an arguable challenge to the application of MCOCA, sufficient for issuance of Rule, is not by itself sufficient to restrain arrest during the pendency of the petition;

(vi) confidential investigation material may be perused for the limited purpose of deciding whether immediate constitutional interdiction is necessary, but cannot be used to return an adverse factual finding against a person who has had no opportunity to meet it; and

(vii) refusal of constitutional pre-arrest protection neither directs arrest nor relieves the investigating officer of the constitutional and statutory safeguards governing the exercise of the power of arrest."

59. Tested upon these principles, the Petitioners have raised issues which deserve consideration at the final hearing, particularly concerning the pre-existing documentary chronology, the statutory predicates and the fairness of the disputed search. They have not, however, established upon admitted or incontrovertible material that either prosecution is a jurisdictional nullity, that the application of MCOCA is a mere pretence, or that refusal of protection would produce a total miscarriage of justice. The interim prayers must therefore fail.

ORDER

(i) Rule. Rule is made returnable. The learned A.P.P. waives service for the Respondent-State.

(ii) The prayer in Criminal Writ Petition No.1124 of 2026

to restrain the police authorities from arresting the petitioners or taking coercive action against them in connection with C.R. No.181 of 2026, pending hearing and final disposal of the petition, is rejected.

(iii) The corresponding prayer in Criminal Writ Petition No.1117 of 2026 to restrain the police authorities from arresting the petitioners or taking coercive action against them in connection with C.R. No.182 of 2026, pending hearing and final disposal of the petition, is rejected.

(iv) The Registry shall list both petitions together for final hearing in accordance with their turn.

(v) All observations in this order are pri*ma faci*e confined to the interim relief, and shall not prejudice the investigation, the Special Court, or the final adjudication of the petitions.

(HITEN S. VENEGAVKAR)
JUDGE

Tandale