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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3386 OF 2015

Santosh Balu Gondhale

..Petitioner.

V/s.

State of Maharashtra and Ors.

..Respondents

Mr. Bhavesh Parmar i/by Mr. Devmani Shukla and Vijay Prakash Yadav for the petitioner.

Mr. S.K. Shinde, P.P. a/w Mr. K.V. Saste, A.P.P. for the respondent/State.

**CORAM : RANJIT MORE AND
V.L.ACHLIYA, JJ.**

DATED : 4th DECEMBER, 2015

P.C. :-

Heard Mr. Parmar, learned counsel for the petitioner and Mr. Shinde, learned P.P. For the State.

2. By this petition, the petitioner is challenging the constitutional validity of section 21(3) of the MCOCA Act as ultra vires to the Constitution of India. Mr. Parmar, learned counsel for the petitioner in this regard relied upon the decision of the Apex Court in the case of **Siddhram Satlingappa Mhetre Vs. State of Maharashtra and Ors.**¹

¹ (2011)1 Supreme Court Cases 694

3. Mr. Shinde, learned P.P. opposes the petition vehemently. He submits that the issue in this petition is concluded by the decision of the Apex Court in the case of **Hema Mishra Vs. State of Uttar Pradesh and Ors.**². He also relied on Constitution Bench decision of the Apex Court in **Kartar Singh Vs. State of Punjab**³

4. In **Kartar Singh Vs. State of Punjab** (supra) the constitutional validity of section 9 of Criminal Procedure (Uttar Pradesh) Amendment Act, 1976 was under challenge. By this previous provision of section 438 of Code of Criminal Procedure was specifically omitted to Uttar Pradesh. The Constitution Bench of the Apex Court held that the deletion of application of section 438 in the State of Uttar Pradesh by Section 9 of the Amendment Act does not offend either Article 14, Article 19 or Article 21 of the Constitution of India. The another Division Bench of the Apex Court in the case of Hema Misha (supra) relied upon this judgment and held that the High Court in exercise of powers under 226 of the Constitution can grant relief of anticipatory bail. The Division Bench however, cautioned that the High Court should exercise its powers sparingly and grant relief of anticipatory bail only in appropriate cases. The issue raised in this petition is therefore, squarely covered

² (2014) 4 Supreme Court Cases 453

³(1994) 3 SCC 569

by the decision of Constitution Bench of Apex Court in Kartar Singh (supra).

5. In Sidharam Mhetre, there was no challenge to the provisions similar to section 21 of the MCOCA Act. Apex Court in Sidhram Mhetre laid down the parameters which can be taken into consideration while dealing with anticipatory bail. Reliance cannot be placed on this judgment especially in the light of the decision of the Constitution Bench of the Apex court in the case of Kartar Singh.

6. The petitioner has also challenged the approval order to prosecute him under MCOCA Act. Mr. Shinde, learned PP, however, states that this order was earlier challenged by filing separate Writ Petition No. 2517 of 2014, however, the same was allowed to be withdrawn at the request of the petitioner by order dated 10th August, 2015. A copy of the order is annexed at Exh. D to the petition. We are therefore, not inclined to grant this relief also.

7. Taking overall circumstances into consideration, we do not find any merit in the petition. Hence, the petition is dismissed.

(V.L.ACHLIYA, J.)

(RANJIT MORE, J.)