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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.153 OF 2016

Bhimrao s/o Baburao Gaike,
Age : 30 years, Occ. Agriculture,
R/o Rajapur, Ta. Gevrai, Dist. Beed ..APPLICANT

VERSUS

The State of Maharashtra through
Sub-Divisional Police Officer Gevrai ..RESPONDENT

Mr S.A. Gaikwad, Advocate for applicant;
Mr N.T. Bhagat, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 24th August, 2016

ORAL ORDER :

The applicant is booked in C.R. No.91 of 2012, registered with Talwada police station, Dist. Beed, for offences punishable under sections 395, 397 of the Indian Penal Code and under section 3 (1) (ii) and 3 (2), 3 (4) of the Maharashtra Control of Organized Crimes Act, 1999 (for short "MCOC Act").

2. The applicant is named as accused no.5 in the initial charge-sheet that was filed on 9th April, 2013, for offences under the Indian Penal Code and MCOC Act.

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3. The applicant is shown to be accused no.5 in the initial charge-sheet and since he was absconding, the charge-sheet came to be filed under section 299 of the Code of Criminal Procedure.

4. In the above background, the applicant moved an application (Exh.42) at paper-book page 30, styling the same to be under section 167 (2) of the Code of Criminal Procedure before the Special Judge, MCOC Act, Aurangabad, seeking regular bail pursuant to the provisions of section 167 (2) of the Code of Criminal Procedure, as according to him, he was arrested on 15th November, 2014 in the crime in question and prosecution has not filed the charge-sheet against him.

5. The aforesaid application came to be rejected by learned Special Judge, MCOC Act, Aurangabad on 18th June, 2016. Thus, present revision.

6. Mr Gaikwad, learned Counsel appearing on behalf of the applicant made two-fold submissions; (a) that in absence of any sanction order against the applicant, he is entitled to be released and (b) pursuant to the provisions of section 23 (2) of the MCOC Act since the Court is not entitled to take cognizance in absence of a proper sanction, the applicant is entitled to be released on bail.

7. The claim of the applicant is opposed by the learned Addl. Public Prosecutor on merits.

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8. Upon evaluating the material as is placed on record by the learned Counsel for the applicant, it is required to be noted that what is canvassed by the applicant through application Exh. 42 is grant of bail pursuant to non-compliance of section 167(2) of the Code of Criminal Procedure. It is required to be noted that already the applicant himself has produced a copy of charge-sheet at page 13, which was presented against him under section 299 of the Code of Criminal Procedure on 9th April, 2013 before the competent Court.

9. So far as sanction order is concerned, there are hardly any pleadings in the application for grant of default bail as to how the order of sanction is defective. No such pleadings could be noticed in the application for grant of bail in default.

10. This Court was inclined to grant liberty to the applicant to raise said issue independently, however, learned Counsel appearing on behalf of the applicant insisted that this Court must look into the said aspect of the matter even in absence of pleadings in that regard.

11. It is to be noted that the learned Special Court in paragraph No. 3 of the order, has observed that, it was canvassed by the applicant in absence of pleadings that there is no sanction by the competent authority. If the said submissions are tested qua the observations made by the learned trial Court, then it pre-supposes that there exist a sanction order and that was

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not issued by the competent authority. Whether the authority which has issued the sanction under section 23(2) of the MCOC Act is competent or not, is an issue which can be gone into at the stage of recording of evidence and not in a revision filed before this Court, which is to be confined to grant of default bail. Apart therefrom, it is also required to be noted that in absence of specific grounds to that effect in the application for bail, there is hardly any material to appreciate the same by this Court.

12. The applicant has relied upon the judgment of the Division Bench of this Court, in the matter of **John Dsouza Vs. Assistant Commissioner of Police & ors.** reported in **2007(2) Bom. C.R.(Cri.) 256**, so as to canvass that in absence of sanction under section 23 (2) of MCOC Act, a sanction given for presenting the case before the special court was required and in absence thereof, the prosecution will get vitiated. It is to be noted that the said issue is not subject-matter of the present proceedings to be gone into in exercise of the revisional jurisdiction. Apart therefrom, it is to be noted that even if there is no sanction under the MCOC Act, the applicant can be independently tried for an offence punishable under the provisions of the Indian Penal Code and in present crime it is under sections 395 and 397 of the Indian Penal Code. Admittedly, based on the said issue, the applicant has not sought bail before the Court below.

13. The learned Additional Public Prosecutor was right in objecting the claim of the applicant on the above referred issue, as according to him, the prosecution loses an opportunity to question the issue as regards grant of

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bail and the prosecution was taken by surprise in absence of pleadings to that effect in the application.

14. In view thereof, no case for interference in the revisional jurisdiction is made out.

15. It is made clear that the applicant is at liberty to take such steps as are available in law including that of seeking discharge for want of proper sanction under section 23 (2) of the MCOC Act and the competent Court shall decide the same without being influenced by the observations made herein-above.

With the above observations, Criminal Revision Application stands rejected.

(N.W. SAMBRE, J.)

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