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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINALWRIT PETITION NO. 637 OF 2016**

Jagdish Balwant Thete ... Petitioners

Versus

The State of Maharashtra and Ors. ... Respondents

Mr. Rajiv Patil, Sr. Advocate i/by Mr. A.R. Pitale for the petitioner.

Mrs. M.M. Deshmukh, APP for the State.

Mr. Saurabh Butala i/by Harshad Bhadbhade for the Intervenor.

**CORAM: NARESH H. PATIL &
A.M. BADAR, JJ.**

DATED : MARCH 16, 2016.

P.C.

1. Petitioner's grievance is that the application of provisions of MCOC Act, 1999 cannot be made applicable to the crime in this case in which he is made accused. The FIR was registered on 25/12/2015 under sections 307, 302, 143, 144, 147, 148, 149, 341 and other offences.

2. Learned senior counsel for the petitioner submitted that the trial Court was misled by the prosecution in making a statement relating to sanction to prosecute the petitioner under the MCOC Act. On merits, order passed by the Additional Police Commissioner, Eastern Regional Division,

Kalyan dated 27th January, 2006 at Exh,. “K” calls for interference as it does not exhibit the ingredients for making the provisions of MCOC Act applicable to the present crime. Learned counsel submits that even order passed by Assistant Commissioner of Police, Ambernath Division at Exh. “L” dated 27.1.2015 also calls for interference. In the submissions of the learned senior counsel, provisions of section of 23(1)(a) are not complied with. In other words, submission of the learned counsel is that by making the MCOC Act provisions applicable to the present crime, the prosecution is denying right to the petitioner to apply for anticipatory bail. Learned counsel appearing for the petitioner submits that the petitioner shall be deprived of his right if the MCOC provisions are made applicable.

3. Learned APP submits that as per the provisions of section 23(1)(a) approval has been granted by the concerned officer and accordingly investigation has begun by the investigating agency by making the provisions of MCOC Act applicable to the said crime. Learned APP further submits that it will be premature at this stage for this Court to interfere in the matter as the investigation is in progress and the stage of taking cognizance of offence has not yet reached as the investigation is not complete.

4. We have perused the order passed by the learned Judge

on 28th January, 2016. While passing the order, learned Judge observed that it was argued on behalf of the State that the application for anticipatory bail was not maintainable as the provisions of MCOC Act are made applicable to the present crime. The Judge thereafter while making reference to the provisions of section 21(3) of the MCOC Act rejected the application by vacating the interim order.

5. In the facts, we are not inclined to interfere at this stage in the orders passed at Exh. “K” and “L”. These orders refer to grant of approval for applying the penal provisions of MCOC Act by police officer and add those offences to the case diary which was already registered by the police on 25/12/2015. The investigation agency will have to be given some time to investigate as to whether there was organized crime or syndicate formed for committing crime.

6. As regards application of provisions of Section 23(2) of the MCOC Act, the said issue could be looked into at the stage of taking cognizance by the Special Court. That stage has not yet reached. We therefore, need not consider the issue of application of provisions of section 23(2) of the MCOC Act in this petition.

7. In the facts, we are not inclined to exercise our extra ordinary writ jurisdiction. There is no merit in the petition. The petition is dismissed.

We make it clear, that dismissal of this petition would not affect the rights of the petitioner to agitate the issue at the appropriate stage.

(A.M. BADAR, J.)

(NARESH H. PATIL,J.)