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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.453 OF 2018

Chandrakant Vishnu Sawant & Anr

..Applicants

Vs

The State of Maharashtra

..Respondent

Mr. Chaitanya Sakhare for applicants.

Ms. Rutuja Ambekar, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 28th November 2018.

P.C.:

1] This is an application under section 438 of Cr. P.C for pre-arrest bail in CR No.2 of 2018 dated 1.1.2018 registered with Pusegaon Police Station, Satara under sections 143, 147, 384, 452, 504, 506 and 507 of Indian Penal Code.

By an Order dated 19th March 2018, the applicants were granted interim relief.

2] Heard Mr. Sakhare, the learned counsel for the applicants and the learned APP for State. Perused the record.

3] The learned APP submitted that, the Investigating Officer has filed an affidavit dated 27th June 2018. It is stated therein that, during the

course of investigation, it is revealed that, the crime in question has been committed by an organised crime syndicate and therefore the Inspector General of Police, Kolhapur region by its Order dated 14.3.2018 has granted prior approval as contemplated under section 23(1)(a) of the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act) to investigate the crime under the said Act and the provisions of MCOC Act are applied to the present crime. She further on instructions submitted that, an Order granting sanction as contemplated under section 23(2) of MCOC Act has also been passed by the Competent Authority in the present case. She submitted that, in view of section 21(3) of MCOC Act, the present application for pre-arrest bail under Section 438 of Cr. P.C. is not maintainable and may be rejected.

4] The learned counsel for the applicant submitted that, the Co-Ordinate Bench of this Court (Smt. Anuja Prabhudessai, J.) by its Order dated 11.12.2015 passed in A.B.A. No.1642 of 2015 has granted pre-arrest bail to an accused under the MCOC Act by recording finding on merits and therefor the present application under 438 of Cr. P.C is maintainable.

5] Section 21(3) of the MCOC Act reads as under:

“Nothing in section 438 of the Code shall apply in relation to

any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act.”

6] The preamble of the said Act states that, it is an Act to make special provisions for Prevention and Control of Organised Crime and for coping with, the criminal activity of organised crime syndicate or gang and for matters connected therewith or incidental thereto. It is further stated that, it was expedient to make special provisions for prevention and control and for coping with criminal activities by organised crime syndicate or gang and for matters connected therewith or incidental thereto.

Thus it is the special statute enacted by the Legislature with the aforestated intention and it is for this reason the provision of section 21(3) is added therein. It is to be noted here that, the MCOC Act is not a benevolent statute enacted by the legislature to construe and interpret the provisions of it liberally and therefore the intention of the legislature has to be literally construed and not otherwise. Under the MCOC Act for grant of regular bail under section 21(4) stringent rigours are prescribed and the legislature has deliberately barred the application of section 438 of Cr. P.C. therein.

7] It is the settled position of law that, singular unlawful activity would attract the provisions of ordinary law and if it is the continuing one, and to wit, third offence of specified type which fulfills the requirement of the provisions of the MCOC Act, it becomes organized crime to be registered as an offence under the MCOC Act. It is the settled position of law by a catena of judgments that, a statute is an edict of the Legislature and the conventional way of interpreting or construing a statute is to seek the 'intention' of its maker. A statute is to be construed according to the intent of them, that make it and the duty of judicature is to act upon the true intention of the Legislature. If a statutory provisions is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature, in other words the 'legal meaning' or 'true meaning' of the statutory provision. The statute must be read as a whole in its context. It is now firmly established that the intention of the Legislature must be found by reading the statute as a whole. The statute to be construed to make it effective and workable and the Courts strongly lean against a construction which reduces a statute to futility. A statute or any enacting provisions therein must be so construed as to make it effective and operative. The Courts should therefore reject that

construction which will defeat the plain intention of the Legislature even though there may be some inaccuracy or inexactness in the language used in a provision. Every provision and word must be looked at generally and in the context in which it is used. Elementary principle of interpreting any word while considering a statute is to gather the intention of the legislature. The Court can make a purposeful interpretation so as to effectuate the intention of the legislature wholly or in part.

8] Full Bench of this Court in the case of *Sate of Maharashtra Versus Jagan Gagansingh Nepali @ Jagya & Anr. Reported in 2011 (5) Mh. L.J.*], while dealing with the provisions of MCOC Act has observed as under:

32. The Preface would show that it was also found that the criminal activities like murders of tycoons related to film industry as well by builders, extortion of money from businessmen, abduction etc. showed that criminal gangs are active in the State. It can, thus, be seen that it was hoped that with the passing of this law, unlawful elements spreading terrorism in the society can be controlled to a great extent and it will go a long way in minimizing the feeling of fear spread in the society.

33. . It is pertinent to note that in both Statement of Objects and Reasons and the Preface, though certain activities have been mentioned the same are followed by the term "etc". It is, thus, clear that the activities mentioned in the Statement of

Objects and Reasons and the Preface are only illustrative in nature and not exhaustive. It is, thus, clear that the legislative intent is not only to curb only the activities mentioned in the Statement of Objects and Reasons or Preface but to curb various other activities of the organised crime syndicate so that unlawful elements spreading terrorism in the society can be controlled to a great extent, with an intention that the feeling of fear spread in the society is minimised.

34. It can, thus, clearly be seen that the purpose behind enacting the MCOCA was to curb the activities of the organised crime syndicates or gangs. The perusal of the Preamble and the Statement of Objects and Reasons and Preface, in our considered view, does not lead to any narrower meaning that MCOCA has been enacted only for the purpose of curbing activities which involve pecuniary gains or undue economic advantages. The mischief which is sought to be cured by enactment of MCOCA is to curb and control menace of organised crime. The law has been enacted with the hope that the elements spread by the organised crime in the Society can be controlled to a great extent and for minimizing the fear spread in the society. If a narrower meaning as sought to be placed is accepted, it will frustrate the object rather than curing the mischief for which the Act has been enacted.

9] A minute perusal of Order dated 11th December 2015 passed by the Co-Ordinate Bench would indicate that, the said Order was passed without taking into consideration the mandate of law under Section 21(3) of MCOC Act and the aforestated intention of legislature. Therefore the said

Order does not have binding effect on subsequent decisions of this Court, inter alia, the said Order dated 11.12.2015 is *per incuriam* to Section 21(3) of MCOC Act.

In view of clear mandate of the section 21(3) of MCOC Act, an application under section 438 of Cr. P.C is not maintainable.

10] In view of the above, this Court is of the view that the present application for pre-arrest bail under section 438 of Cr. P.C. is not maintainable and is accordingly dismissed in limine.

11] At this stage, the learned counsel for the applicants submitted that, the applicants intend to question the correctness of the present Order before the Honourable Supreme Court and submitted that, the interim relief granted by this Court by its Order dated 19th March 2018 may be continued for a period four weeks from today.

Interim relief granted by an Order dated 19th March 2018 shall remain in force for a period five weeks from today.

(A.S.GADKARI, J.)