

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

CRIMINAL APPEAL NO.100 OF 2018

Tanaji s/o. Narayan Sathe,
Age : 36 years, Occ.Aгри.,
r/o. Corakhali, Tq. Kallamb,
Dist. Osmanabad
at present in Harsul Central Jail,
Aurangabad ..Appellant

Vs.

The State of Maharashtra,
Through P.S. Yermala and
Dy. S.P. Kallamb, Dist. Osmanabad ..Respondent

**WITH
CRIMINAL APPEAL NO.101 OF 2018**

Sambhaji s/o. Pandurang Sathe,
Age : 20 years, Occ.Aгри.,
r/o. Corakhali, Tq. Kallamb,
Dist. Osmanabad
at present in Harsul Central Jail,
Aurangabad ..Appellant

Vs.

The State of Maharashtra,
Through P.S. Yermala and
Dy. S.P. Kallamb, Dist. Osmanabad ..Respondent

**WITH
CRIMINAL APPEAL NO.170 OF 2019**

Sham s/o. Balbhim Sachane,
Age : 32 years, Occ.Aгри.,

r/o. Corakhali, Tq. Kallamb,
Dist. Osmanabad ..Appellant
Vs.

The State of Maharashtra ..Respondent

**WITH
CRIMINAL APPEAL NO.37 OF 2019**

Ganesh @ Prashant s/o. Shivaji
Shinde,
Age : 24 years, Occ.Aгри.,
r/o. Corakhali, Tq. Kallamb,
Dist. Osmanabad
At present in Harsul Central Jail,
Aurangabad ..Appellant

Vs.

The State of Maharashtra,
Through P.S. Yermala and
Dy. S.P. Kallamb, Dist. Osmanabad ..Respondent

**WITH
CRIMINAL APPEAL NO.146 OF 2019**

Balaji s/o. Bishram Pawar,
Age : 55 years, Occ.Aгри.,
r/o. Yermala, Tq. Kalam,
Dist. Osmanabad
..Appellant

Vs.

1. The State of Maharashtra,
Through District Superintendent
of Police,
Osmanabad

2. The Sub-Divisional Police Officer,
Sub-Division-Kalam,
Dist. Osmanabad
3. The Police Inspector,
Yermala Police Station,
Tq. Kalam ..Respondents

**WITH
CRIMINAL APPEAL NO.35 OF 2019**

Karan s/o. Bapurao Dongre,
Age : 21 years, Occ.Aгри.,
r/o. Corakhali, Tq. Kallamb,
Dist. Osmanabad
At present in Harsul Central Jail,
Aurangabad ..Appellant

Vs.

The State of Maharashtra,
Through P.S. Yermala and
Dy. S.P. Kallamb,
Dist. Osmanabad ..Respondent

**WITH
CRIMINAL APPEAL NO.36 OF 2019**

Ajit s/o. Laximan Sathe,
Age : 21 years, Occ.Aгри.,
r/o. Corakhali, Tq. Kallamb,
Dist. Osmanabad
At present in Harsul Central Jail,
Aurangabad ..Appellant

Vs.

The State of Maharashtra,
Through P.S. Yermala and
Dy. S.P. Kallamb,
Dist. Osmanabad

..Respondent

Mr.G.J.Kore, Advocate for appellants for appellants
in Criminal Appeal Nos.170, 36, 35, 37 of 2019 and
100 and 101 of 2018

Mr.S.A.Gaikwad, Advocate for appellant in Criminal
Appeal No.146 of 2019

Mr.S.B.Joshi, APP for respondents

**CORAM : S.S. SHINDE AND
R.G. AVACHAT, JJ.**

**RESERVED ON : FEBRUARY 18, 2019
PRONOUNCED ON : MAY 02, 2019**

JUDGMENT (PER R.G. AVACHAT, J.) :

Heard.

2. Admit. Learned APP waives notice on behalf
of the respondents. With the consent of learned
Counsel for the parties, appeals are heard finally.

3. These appeals are directed against the
judgments and orders passed by the Special Court

constituted for trial of the offences under the Maharashtra Control of Organised Crime Act, 1999 (M.C.O.C. Act), rejecting discharge applications moved by the appellants herein. The appellants are some of the accused in Special (M.C.O.C.) Case No.4 of 2014.

Since common questions of law and facts arise, the appeals were heard together and are being decided by this common judgment.

4. Brief facts, giving rise to these appeals, are as follows :-

Dinesh Kumar (first informant) hails from village Manjani, Tq.Atur, Dist.Selum (State of Tamil Nadu). He is a driver by profession. He was employed to drive truck, bearing registration No.TN-34-E-8071. One Punrasu Kannan (deceased) was the co-driver. In the last week of April, 2014, the first informant and deceased Punrasu were carrying 324 bags of Sago,

worth Rs.10,00,000/-, from Selum to Bhilwada (Rajasthan). On 30.04.2014, they were passing through Maharashtra. By 09.00 p.m. on 30.04.2014, the first informant and Punrasu took dinner at Solapur and started for onward journey. It was about 02.00 a.m. on 01.05.2014 they were travelling along Tuljapur – Osmanabad road. Near village Yedshi, one Scorpio vehicle overtook the truck and blocked its way. Four persons alighted from Scorpio vehicle. They entered the truck's cabin; two from driver's side and others from cleaner's. Two of them were armed with wooden rods. The FIR contained their description. Two of them started assaulting the first informant and other two dealt with Punrasu. They tied their hands with a *Lungi*. One of them took control of the truck and proceeded towards Kallam. After proceeding for about 10-12 kms., they robbed two cell-phones of the first informant and Punrasu, besides Rs.15,000/-. Then, the four made the duo to get down from the truck and

board Scorpio vehicle and proceeded towards Yermala. The first informant and Punrasu were severely beaten up and then dropped in a dry well behind Yedeshwari temple. The first informant regained consciousness on the next day by 12.00 noon. Punrasu was not around to be seen. The first informant came up on the road and approached Police Station, Yermala and lodged report of the incident.

5. Crime came to be registered for the offences punishable under Sections 396, 397, 364, 412 and 201 of the Indian Penal Code ("I.P.C.", for short). On the next day, the dead body of Punrasu was found near a pond behind Yedeshwari temple.

6. On completion of investigation of the crime registered under Indian Penal Code, charge-sheet was filed. During further investigation, it was found that the offence was committed by an organised crime syndicate headed by one Raja Pawar. Prior approval

for registration of the offences under the M.C.O.C. Act was, therefore, granted by the competent authority. The Deputy Superintendent of Police took up the investigation. Some of the accused gave confessional statements. It was revealed that Punrasu was murdered. Some of the stolen Sago bags were sold. On completion of investigation and after obtaining sanction for prosecution, charge-sheet for the offences punishable under the M.C.O.C. Act, came to be submitted. The Special Court took cognizance of the offence.

7. The appellants herein moved the applications for discharge. The Special Court rejected the applications by separate orders.

8. Mr.Kore and Mr.Gaikwad, learned Counsel appearing for the appellants, would submit (averred in the appeal memos) that as the FIR was filed against five unknown persons only, how come

involvement of eighteen persons in the offences in question. The appellants were arrested on suspicion. A co-accused, who was similarly situated with most of the appellants herein, has been discharged from the offence under M.C.O.C. Act. His case has been transferred to the regular Court. As such, none of the appellants could be said to have committed an organised crime. Learned Counsel referred to the relevant provisions of the M.C.O.C. Act. According to learned Counsel, the Special Court, in the facts and circumstances of the case, should have discharged the appellants.

9. Learned APP would, on the other hand, submit that during investigation, complicity of the appellants in the offences in question, has been surfaced. Call Data Records (C.D.R.) indicate that they were in contact with each other and the gang-leader before and even after the offence in question was committed. Some of them have been identified by

the first informant in T.I. Parade. The appellants have given confessional statements. All of them were in association with the gang-leader and facilitated commission of the crime.

10. Before adverting to appreciate the factual matrix, it would be apposite to refer to relevant provisions of M.C.O.C. Act.

Section 2.(1) *In this Act, unless the context otherwise requires,-*

(a) "abet", with its grammatical variations and cognate expressions, includes,-

(i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate;

(b)

(c)

(d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either 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-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;

(e) "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;

(f) "organised crime syndicate" means a group of two or more persons who, acting

either singly or collectively, as a syndicate or gang indulge in activities of organised crime;

11. In the case of **Prasad Shrikant Purohit Vs. State of Maharashtra and anr.**, AIR 2015 SC 2514, the Hon'ble Supreme Court observed thus :-

38. In the first instance, it will be profitable to examine the scheme of MCOCA by making a cursory glance to the Objects and Reasons and thereafter to make an intensive reading of the above referred two provisions. When we peruse the Objects and Reasons, it discloses that organized crime has been posing very serious threat to our society for quite some years and it was also noted that organized crime syndicates had a common cause with terrorist gangs.

.....
It was further found that the existing legal framework, that is the penal and procedural laws and the adjudicatory

system, were found to be inadequate to curb or control the menace of 'organized crime'.

39. *The definition of 'continuing unlawful activity' under [Section 2\(1\)\(d\)](#) mainly refers to an activity prohibited by law. The said activity should be a cognizable offence, punishable with imprisonment of three years or more. The commission of such offence should have been undertaken either by an individual singly or by joining with others either as a member of an 'organized crime syndicate' or even if as an individual or by joining hands with others even if not as a member of an 'organized crime syndicate' such commission of an offence should have been on behalf of such syndicate. It further states that in order to come within the definition of 'continuing unlawful activity' there should have been more than one charge-sheet filed before a competent Court within the preceding period of 10 years*

and that the said Court should have taken cognizance of such offence.

40. Before getting into the nuances of the said definition of 'continuing unlawful activity', it will be worthwhile to get a broad idea of the definition of 'organized crime' under [Section 2\(1\)\(e\)](#) and 'organized crime syndicate' under [Section 2\(1\)\(f\)](#). An 'organized crime' should be any 'continuing unlawful activity' either by an individual singly or jointly, either as a member of an 'organized crime syndicate' or on behalf of such syndicate. The main ingredient of the said definition is that such 'continuing unlawful activity' should have been indulged in by use of violence or threat of violence or intimidation or coercion or other unlawful means. Further such violence and other activity should have been indulged in with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for

himself or for any other person or for promoting insurgency. Therefore, an 'organized crime' by nature of violent action indulged in by an individual singly or jointly either as a member of an 'organized crime syndicate' or on behalf of such syndicate should have been either with an object for making pecuniary gains or undue economic or other advantage or for promoting insurgency. If the object was for making pecuniary gains it can be either for himself or for any other person. But we notice for promoting insurgency, there is no such requirement of any personal interest or the interest of any other person or body. The mere indulgence in a violent activity etc. either for pecuniary gain or other advantage or for promoting insurgency as an individual, either singly or jointly as a member of 'organized crime syndicate' or on behalf of a such syndicate would be sufficient for bringing the said activity within the four corners of the definition of

'organized crime'.

41. An 'organized crime syndicate' is a group of two or more persons who by acting singly or collectively as a syndicate or gang indulge in activities of 'organized crime'.

42. By conspectus reading of the above three definitions, if in the preceding 10 years from the date of third continuing unlawful activity if more than one charge-sheet has been filed before a competent Court which had taken cognizance of such offence which would result in imposition of a punishment of three years or more, undertaken by a person individually or jointly either as a member of an 'organized crime syndicate' or on its behalf, such crime if falls within the definition of 'organized crime', the invocation of MCOCA would be the resultant position.

43 to 55

56. Keeping the respective submissions of the learned counsel in mind when we examine the said issue, in the first instance we wish to refer to relevant provisions touching upon this issue, namely, Section 2(1)(d) of MCOCA and Section 173(2) and (8) as well as Sections 190 and 193 of Criminal Procedure Code. When we refer to Section 2(1)(d) of MCOCA the definition of 'continuing unlawful activity' is defined to mean an activity prohibited by law and that it should be a cognizable offence punishable with imprisonment of three years or more. For the purpose of ascertaining the issue relating to cognizance, the other part of the said definition which requires to be noted is that more than one charge-sheet should have been filed before a Competent Court within the preceding period of 10 years and that Court should have taken cognizance of such offence. The offence should alleged to have been committed either

singly or jointly as a member of an organized crime syndicate or on its behalf. In so far as the offences are concerned, if the offence would attract a punishment of three years or more that would suffice for falling within the said definition. The charge-sheet should have been filed before a Competent Court with reference to such offence against the offenders.

57. One of the contentions raised and which was countered by the respondents was that such two earlier offences should also satisfy the other requirements stipulated under MCOCA, namely, as a member of an organized crime syndicate or on behalf of an organized crime syndicate either singly or jointly. A strict interpretation of [Section 2\(1\)\(d\)](#) would definitely mean the fulfillment of such requirement since the definition specifically reads to the effect 'undertaken either singly or jointly as a member of an organized crime syndicate or on behalf of such

syndicate'. Therefore, even if the earlier offences were not initiated under the provisions of MCOCA such initiations should have been capable of being brought within the provisions of MCOCA, namely, as part of an activity of an organized crime syndicate either by its own members either singly or jointly or though not as a member but such participation should have been on behalf of an 'organized crime syndicate'. As far as filing of the charge-sheet is concerned what all it refers to is such filing before a Competent Court and that Court should have taken cognizance of such offence.

58. *A minute reference to the said Section, therefore, shows that in the event of the fulfillment of the rest of the requirements, namely, the nature of offence providing for punishment of three years and more, the involvement of the offender as required under the said definition, when it comes to the question of filing of the charge-sheet,*

the requirement of such filing should be before a competent court within a period preceding 10 years and that such court has taken cognizance of such offence.

63.

In this respect, we will have to bear in mind that the implication of MCOCA would come into play only after the third occurrence takes place and only after that it will have to be seen whether on the earlier two such occasions involvement of someone jointly or singly, either as a member of an 'organized crime syndicate' or on its behalf indulged in a crime in respect of which a charge-sheet has already been filed before the Competent Court which Court had taken cognizance of such offence.

12. The police papers/charge sheet undoubtedly indicate that against the appellants herein, not a

single charge-sheet had been filed before competent Court within preceding period of ten years next before the crime in question came to be registered. It could, thus, be seen that involvement, if any, of the appellants in the crime could not be termed to be their continuing unlawful activity and resultantly, being an offence of organised crime within the meaning of Sections 2(d) and 2(e), respectively, of the M.C.O.C. Act.

13. The charge-sheet indicates that against accused nos.1, 2, 6 and 9, there have been more than one charge-sheets filed before the competent Court within the preceding period of ten years next before the present crime came to be registered. Needless to mention that those charge-sheets pertain to cognizable offences punishable with imprisonment of three years or more, undertaken with an objective of gaining pecuniary benefits. Accused Nos.1, 2, 6 and 9 are not before this Court. Prima facie finding as

to whether the crime is an organised crime, is required to be given. True, these accused may take exception to the crime, contending it to be not an offence of organised crime or any other offence under M.C.O.C. Act. It is reiterated that in spite of those accused being not before this Court, a tentative finding as to the offence being an organised crime is required to be given for deciding these appeals. It, therefore, cannot be said that it is not an offence of organised crime under M.C.O.C. Act.

14. It is now to be considered whether involvement of the appellants constitute an offence of abetment of organised crime.

Section 2(1)(a) defines the term "abet", to mean - (i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in

any manner, an organised crime syndicate; (ii) the passing on or publication of, without any lawful authority, any information likely to assist the organised crime syndicate and the passing on or publication of or distribution of any document or matter obtained from the organised crime syndicate; and; (iii) rendering of any assistance, whether financial or otherwise, to the organised crime syndicate.

In the case of **Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and anr., 2005 SCC (Cri.) 1057**, the Hon'ble Supreme Court observed thus :-

22. The interpretation clause as regard the expression 'abet' does not refer to the definition of abetment as contained in [Section 107](#) of IPC. It refers to such meaning which can be attributed to it in the general sense with grammatical variations and cognate

expressions. However, having regard to the cognate meaning, the term may be read in the light of the definition of these words under [Sections 107 and 108](#) of the Indian Penal Code. The inclusive definition although expansive in nature, "communication" or "association" must be read to mean such communication or association which is in aid of or render assistance in the commission of organized crime. In our considered opinion, any communication or association which has no nexus with the commission of organized crime would not come within the purview thereof. It must mean assistance to organised crime or organised crime syndicate or to a person involved in either of them. It, however, includes (a) communication or (b) association with any person with the actual knowledge or (c) having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate. Communication to, or association with, any person by itself, as was contended

by Mr.Sharan, would not, in our considered opinion, come within meaning of the aforementioned provision. The communication or association must relate to a person. Such communication or association to the person must be with the actual knowledge or having reason to believe that he is engaged in assisting in any manner an organised crime syndicate. Thus, the offence under Section 3(2) of MCOCA must have a direct nexus with the offence committed by an organised crime syndicate. Such abetment of commission of offence must be by way of accessories before the commission of an offence.It is interesting to note that whereas Section 3(2) having regard to the definition of the term 'abet' refers directly to commission of an offence or assisting in any manner an organised crime syndicate.....

15. We have, therefore, now to appreciate, whether the police papers, *prima facie*, make out a

case of abetment of organised crime. We propose to take case of each of the appellants separately.

**APPELLANT IN CRIMINAL APPEAL NO.100 OF 2018
(Tanaji s/o. Narayan Sathe)**

16. This appellant has made confessional statement before the Superintendent of Police (S.P.), Beed, on 14.08.2014. The legal position regarding admissibility of confessional statement would be stated lateron. The appellant was on the driver's seat of Scorpio vehicle. It is he, who had blocked the way of the truck driven by the first informant. We do not propose to reproduce the entire confessional statement of the appellant, suffice it to say that the appellant has confessed his involvement in the offence. He has been identified by the first informant in his identification parade. There are C.D.Rs. to indicate the appellant to have been in continuous contact with the others involved

in the crime. The confessional statements of some of the co-accused further indicate involvement of this appellant.

**APPELLANT IN CRIMINAL APPEAL NO.101 OF 2018
(Sambhaji s/o. Pandurang Sathe)**

17. This appellant is sought to be tied with his own confessional statement recorded by the S.P., Beed on 14.08.2014. We have carefully perused the confessional statement to find him to have been in the company of the leader of the organised crime syndicate and the co-accused during commission of the crime. His confessional statement, however, undoubtedly, indicate him to have not made any overt-act. There is also nothing to suggest him to have done anything to facilitate commission of the organised crime. The confessional statement of some of the co-accused are on the lines of the confessional statement of this appellant. This appellant has been identified by the first informant

in the test identification parade.

**APPELLANT IN CRIMINAL APPEAL NO.170 OF 2019
(Sham s/o. Balbhim Sachane)**

18. So far as regards this appellant is concerned, we have before us his own confessional statement and the confessional statement of one Vinod Harbhare. Admittedly, there is nothing to indicate the appellant's involvement in the main offence in question. He came on the scene post commission of the offence. The main offence is of road robbery, wherein one of the victims had been murdered. The robbery is of 324 bags of Sago worth Rs.10,00,000/-. The appellant runs a grocery shop. He has made confessional statement before S.P., Beed, on 12.08.2014. It is, *prima facie*, evident from his confessional statement that two days after the robbery, accused Vinod Harbhare contacted him on cell-phone and inquired, whether he (appellant) would like to purchase Sago. The appellant readily

agreed. The co-accused – Vinod Harbhare, therefore, took 60 bags of Sago to the house of the appellant. The appellant paid him Rs.25,000/- towards cost of 10 bags of Sago. He allowed Vinod Harbhare to keep the remaining 50 bags in his house.

19. On the same lines is the confessional statement of Vinod Harbhare. It is in his statement that on the request of co-accused – Popat Pawar, he contacted the appellant herein to see, whether he (appellant) would like to buy Sago. There is no material to indicate the appellant to have been in the know that the Sago bags were property derived or obtained from commission of an organised crime, being an offence punishable under Section 3(5) of M.C.O.C. Act.

20. In our view, the Special Court erred in observing that the material creates strong and grave suspicion leading to presume the appellant to be a

member of the organised crime syndicate and has involved in its continuous activities. The Special Court also observed the appellant to have abetted unlawful activities of organised crime syndicate.

21. The observations made by the Special Court are incongruous with the material on record. Section 2(1)(f) of the M.C.O.C. Act defines the term "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang, indulge in activities of organised crime. To constitute an offence of being member of organised crime syndicate, it is, therefore, required to be shown that the member is involved in organised crime i.e. continuing unlawful activity.

As already observed herein above, the offence of abetment can be committed by being accessory before, or at the most, during the offence.

It is reiterated that there is no material even slightly to suggest the appellant to have been wary of the offence in question and he consciously bought the Sago bags. He could only be said to have committed the offence of dishonestly receiving the stolen property, punishable under Section 411 of the I.P.C.

**APPELLANT IN CRIMINAL APPEAL NO.37 OF 2019
(Ganesh @ Prashant s/o. Shivaji Shinde)**

22. This appellant made confessional statement before the S.P., Beed, on 14.08.2014. He was aware that the gang-leader and other co-accused have been involved in the offences of road-robbery, house breaking, etc. The co-accused Tanaji Sathe (appellant in Crime No.100 of 2018) was employed by this appellant as a driver on his Scorpio vehicle. The vehicle involved in the crime belongs to this appellant. He was, however, not in the know that his vehicle was being used in commission of the offence.

He joined the co-accused at his brick-kiln from the midnight of 01.05.2014. He remained in the company of the co-accused thereafter. His confessional statement, however, suggest him to have not made any overt-act in the commission or facilitating commission of the offence in question. The facts, however, indicate him to have consciously remained in the company of the co-accused during commission of the offence. He allowed his place (brick-kiln) to be used to keep the victims thereat for a while. True, the material relied on against this appellant may be shaky. We are, however, considering his claim for discharge. We only hope that the Trial Court would consider his claim, if any, for bail.

**APPELLANT IN CRIMINAL APPEAL NO.146 OF 2019
(Balaji s/o. Bishram Pawar)**

23. This appellant is father of accused nos.4, 6 and 12. The police papers undoubtedly indicate the appellant to have not been involved in commission of

the main offence. He appears to have not made any confessional statement. What is relied on against him is the confessional statement of co-accused - Govind @ Rama Pawar. The only incriminating material against this appellant is - "मी आमराई कडून घराकडे पायी जात असताना वाटेत बालाजी बिसराम पवार हा भेटला व त्याने पण मला झालेला प्रकार कोणाला सांगू नको असे म्हणून चापट मारल्या व धमकी दिली."

This appellant can only be said to have concealed proof of the organised crime syndicate of the accused in this case. He could, at the most, be said to have committed an offence punishable under Section 3(3) of the M.C.O.C. Act. We hope that the Special Court would consider his case for bail, if any, uninfluenced by our observations herein.

In our view, the Special Court erred in observing the appellant to have been a member of organised crime syndicate and involved in the organised crime. This appellant even cannot be said to have abetted the organised crime as he came at the

scene post commission of the offence.

**APPELLANT IN CRIMINAL APPEAL NO.35 OF 2019
(Karan s/o. Bapurao Dongre)**

24. This appellant too, made a confessional statement on 14.08.2014 before S.P., Beed. Also, There are confessional statements of some of the accused suggesting this appellant's involvement. Those confessional statements indicate the appellant to have been associated with the gang-leader and three others since beginning. His role appears to be of the facilitator of the organised crime. He has been identified by the first informant in the T.I. parade. As such, the appellant could not make out a case for discharge altogether.

**APPELLANT IN CRIMINAL APPEAL NO.36 OF 2019
(Ajit s/o. Laximan Sathe)**

25. This appellant too, has made confessional statement on 14.08.2014 before S.P., Beed. He was in

the company of the gang-leader and others during commission of the main offence. He has been identified in the T.I. parade. True, the appellant appears to have not made any overt-act. There is, however, material to indicate that his conscious presence, *prima facie*, facilitated commission of the organised crime. No case for altogether discharge, thus, could be made out by him.

26. If the material relied upon by the prosecution remained unrebutted, it may warrant conviction of the appellants in one or the other offence. None of the appellants, therefore, could be said to have made out a case for discharge from one and all offences.

27. We are conscious of the fact that the FIR has been lodged against unknown persons. It has been lodged by a Tamil Nadu based person, who did not understand Marathi. One may be amazed of the fact

that when the FIR was against five unknown person, how-come involvement of nine more. This could only be made out due to the confessional statements. Under Section 18 of the M.C.O.C. Act, confessions made to the police officer are to be taken into consideration.

Section 18. Certain confessions made to police officer to be taken into consideration.- (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (I of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator.

Provided that, the co-accused,

abettor or conspirator is charged and tried in the same case together with the accused.

(2) to (6)

There are the Maharashtra Control of Organised Crime Rules, 1999 prescribing procedure for recording of confession under Section 18 of the M.C.O.C. Act. Rule 3(6) mandates that the confession recorded under sub-rule (5) shall, if it is in writing, be signed by the person who has made such confession and by Police Officer, who has recorded the said confession. Such Police Officer shall, under his own hand, also make a memorandum at the end of the confession to the following effect :-

" I have explained to (name of the confessor) that he is not bound to make a confession and that, if he does so, any confession that he makes, may be used as evidence against him and I am satisfied that this confession has been voluntarily. It has been made before me

and in my hearing and has been recorded by me in the language in which it is made and as narrated by, the confessor. I have read it over to the confessor and he has admitted it to be verbatim and correct, and containing also full and true account of the confession/ statement made by him."

28. Upon perusal of the confessional statements available on record, it is found that there is non-compliance of this Rule except in case of the confessional statement of accused - Govind @ Rama Pawar. A confessional statement, sans memorandum under Rule 3(6), is not admissible in evidence. [Bharatbhai Vs. State of Gujarat, 2003 ALL MR (Cri.) 164 (SC)] and [Mohammad Iqbal Shaikh Vs. State of Maharashtra, 2007 ALL MR (Cri.) 631]. It would, however, be a question of appreciation of the evidence during trial of the case. A contemporaneous record about satisfaction of recording officer after

writing of confession that confession was voluntarily made may cure the defect. We have, therefore, looked into the confessional statements at this stage. The offence dates back to April, 2014.

The offence is serious one. Without making any observation about the evidenciary value of the material relied upon, suffice it to say that it is necessary to direct the Special Court to frame Charge and conclude trial within a period of one year. The Special Court may simultaneously consider bail applications, if any, that may be filed by the appellants or any one of them or even by the co-accused, presently not before this Court.

29. Since we, *prima facie*, found it to be a case of organised crime, the case in respect of one and all the accused connected with the crime, need to be tried by the Special Court only. This observation is required to be made because, in our opinion, accused

- Sham s/o. Balbhim Sachane (appellant in Criminal Appeal No.170 of 2019) can only be charged with the offence under Section 411 of I.P.C. or any other related offence under the I.P.C. His case cannot be separated and sent to the regular Court for trial. Law does not expect more than one simultaneous trial based on the same evidence against different accused. Section 7(1) of the M.C.O.C. Act permits the Special Court to try any other offence, with which the accused may, under the I.P.C., be charged with at the same trial, if the offence is connected with such other offence, when trying any offence punishable under this Act.

Section 11 of M.C.O.C. Act states – “Where, after taking cognizance of an offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any Court having

jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence."

Terminology of Section 11 undoubtedly indicates that, if the Special Court finds that it is not an offence punishable under any of the Sections of M.C.O.C. Act, but it makes out an offence under Indian Penal Code or any other Statute, then only it shall transfer the case for trial of such offence to any Court having jurisdiction under the Code to try the same.

When we have prima facie found it to be an organised crime, the Special Court has jurisdiction to try the same, the persons accused of different offences committed in the course of same transaction need to be charged and tried together. Section 7 of the M.C.O.C. Act gives the Special Court jurisdiction

to try persons accused of different offences committed in the course of same transaction.

30. For the reasons given hereinabove, the Appeals partly succeed in terms of the following order :-

O R D E R

- (i) Criminal Appeals No.100/2018, 101/2018, 170/2019, 37/2019, 146/2019, 35/2019 and 36/2019 are partly allowed.
- (ii) The appellants stand discharged of offences of organised crime and being members of the organised crime syndicate.
- (iii) The appellants namely – Tanaji Sathe, Sambhaji Sathe, Ganesh Shinde, Karan Dongre and Ajit Sathe shall be charged with the offence of abetment of organised crime.
- (iv) Appellant – Balaji Pawar is also discharged of the offence of abetment of the organised crime. He shall, however, be charged with an offence

punishable under Section 3(3) of M.C.O.C. Act and any other offence as may be made out against him from the police papers.

- (v) Appellant – Sham Sachane stands discharged of offences punishable under M.C.O.C. Act. He shall, however, be charged and tried for offence punishable under Sections 411 and 414 of the Indian Penal Code and/ or any other offence that may be made out against him.
- (vi) Rest of the appellants may also be charged and tried for offences punishable under Indian Penal Code or any other law, as may be made out against them from the police papers.

[R.G. AVACHAT, J.]

[S.S. SHINDE, J.]