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

CRIMINAL BAIL APPLICATION NO. 1909 OF 2021

DASHARATH GOVIND TANDEL

....APPLICANT

V/s.

THE STATE OF MAHARASHTRA

.....RESPONDENT

Mr. Aditya Sharma a/w Mitali Devkar for the applicant

Ms. A. A. Takalkar APP for the State

Mr. Pravin Bhosale, API, Virar Police Station

CORAM : NITIN W. SAMBRE, J.

DATE: DECEMBER 15, 2021.

P.C.:

1] Applicant was arrested under the stringent provisions of Maharashtra Control of Organised Crime Act on 15/09/2016 in C.R. No. I-50/2016 registered with Virar Police Station for offence punishable under Sections 392, 411 r/w 34 of the Indian Penal Code subsequently charge sheet filed pending before Sessions Court Thane bearing Spl. M.C.O.C. Case No. 11/2016 whereas sanction was accorded against him so as to investigate and prosecute him under the said Act on 07/12/2016.

2] Section 23 of the said Act reads thus:

“23. Cognizance of, and investigation into, an offence –

(1) Notwithstanding anything contained in the Code.-

(a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;

(b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.

(2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional director of General of Police.”

3] In the backdrop of the language used in Section 23, provisions of the said Act ought not to have been invoked against the applicant without prior sanction.

4] The issue is squarely covered by Division Bench of this Court in the matter of **John D'Souza V/s. Assistant Commissioner of Police and others** in **Criminal Writ Petition No. 147 of 2007** decided on 30/04/2007. Para 8 & 9 are worth referring to which read thus:

*“8. The provisions of Section 23 of MCOCA fell for the consideration of the Full Bench of this Court in **Ashok Gyanchand Vohra and ors Vs. State of Maharashtra and Anr, 2006 All MR (Cri) 740**, to which one of us (D.B. Bhosale, J.) was party. After considering the scheme of the said section the Full Bench observed that a bare perusal of section 23 makes it explicitly clear that it provides thereefold protections/safeguards before the Special Court takes cognizance of any offence under MCOCA, namely, (i) “prior approval” for recording and/or registration of an “information”; (ii) investigation by a competent police officer under section 23(1)(b); and (iii) “prior sanction” by a police officer not below the rank of Addl. Director General of Police, that is, the Commissioner of Police in the city of Mumbai for taking cognizance of an offence under MCOCA.*

9. It is clear that granting “prior approval” is an act which the officer competent under section 23(1)(a) has to perform whereas carrying out an investigation is an

act which the competent officer under section 23(1)(b) has to perform. Without prior approval further acts contemplated under section 23(2) cannot be performed. Similarly, sanction contemplated in sub-section (2) of section 23 is a condition precedent for prosecuting a particular person for the offence under MCOCA. The sanction is not granted to the Special Court to take cognizance of the offence, but it is granted to the prosecuting agency to approach the court concerned for enabling it to take cognizance of the offence and to proceed to trial. Thus a valid sanction is sine-qua-non for enabling the prosecuting agency to approach the Court in order to enable the court to take cognizance of the offence under MCOCA as disclosed in the report. The corollary is that, if there is no valid sanction the Special Court gets no jurisdiction to try a case against any person mentioned in the report as the Court is forbidden from taking cognizance of the offence without such sanction. It is thus clear that every act in this section depends upon the other and even if the one act is not performed, as provided for in this section, the court would not have jurisdiction to take cognizance, and any proceeding adopted thereunder would also be without jurisdiction and would vitiate the trial. We have to, therefore, see in the present case, whether all the three acts have been performed in the manner aforestated and the sanction is valid or not".

5] In that view of the matter, in my opinion, case for bail is made out.

(i) Applicant be released on bail in C.R. No. I-50/2016 registered with Virar Police Station for offence punishable under Sections 392, 411 r/w 34 of the Indian Penal Code subsequently charge sheet filed pending before Sessions Court Thane bearing Spl. M.C.O.C. Case No. 11/2016 upon furnishing P.R. bond in the sum of Rs. 50,000/- with one or more local sureties in the like amount.

(ii) Applicant shall neither influence the witnesses nor tamper with evidence in any manner.

(iii) Applicant shall attend the Investigating Officer in first week of every English calendar month till the conclusion of trial.

6] Application stands disposed of.

[NITIN W. SAMBRE, J.]

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