BDP-SPS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2560 OF 2019

Vikrant Harish Varandani	)	
Age 37 years Occ: Service	)	
R/o. 22, Diamond Queen Society	)	
West Avenue Road,	)	
Near Arya Samaj, Sanacruz (W)	)	
Mumbai – 400 054	)	
[presently granted bail]	)	…… Petitioner/ Accused No.3

Vs

1] State of Maharashtra	)	
Vide C.R. No.47/2017 registered	)	
with the Anti Extortion Cell,	)	
DCB, CID, Mumbai	)	
(original C.R. No.468 of 2017 registered	)	
with Kandivali Police Station	)	
	)	
2] The Inspector of Police	)	
Anti-Extortion Cell	)	
DCB, CID, Mumbai	)	
	)	
3] The Joint Commissioner of Police	)	
(Crime) Mumbai	)	
	)	
4] The Commissioner of Police	)	
Mumbai	)	…… Respondents.

Mr. Niteen Pradhan a/w Ms. Ameeta Kuttikrishnan i/b Ms. Shubhada D. Khot for the Petitioner.
Mrs. A.S. Pai, APP for the State.

CORAM: S. S. SHINDE &
MANISH PITALE, JJ.

Judgment reserved on 05/04/2021
Judgment pronounced on 29/04/2021

JUDGMENT: (Per Manish Pitale, J.)

1] By this Writ Petition, the Petitioner is seeking quashing of a First Information Report (FIR) registered against him and other accused persons for offence punishable under Section 387 read with Section 34 of the IPC. The Respondent-State has invoked the provisions of the Maharashtra Control of Organized Crimes Act, 1999 ("MCOCA") against the accused persons including the Petitioner and the charge-sheet filed upon completion of investigation specifically raises charges under the provisions of the MCOCA also.

2] The principal contention raised on behalf of the Petitioner is that insofar as he is concerned, the provisions of the MCOCA could not have been invoked, as there is no material on record to show that he could be linked with any organized crime syndicate or any continuous unlawful activity undertaken by such a syndicate. In fact, it is emphasized on behalf of the Petitioner that he is merely an employee of a developer, having no connection with the co-accused persons and that therefore, the FIR as well as the charge-sheet deserve to be quashed, as against him.

3] The FIR dated 28/10/2017 stood registered against the Petitioner and other accused persons on the basis of the information submitted by one Sushilkumar Shinde. According to the informant, he was working as consultant to a Society called Sai-Visava Co-operative Housing Society, which was supposed to be redeveloped under the Slum Rehabilitation Scheme. According to the informant, the said project of redevelopment was to be undertaken for all the members of the Society numbering about 511, while the developer engaged for the project i.e. M/s Ami Corporation was seeking to illegally restrict such development only for about 90 members of the Society. The said developer M/s Ami Corporation in turn had entered into an agreement/joint venture with another developer M/s Paradigm Constructions for the purposes of the said project, which also, according to the informant, was not contemplated under the Scheme of redevelopment.

4] In this situation, it appears that there were differences of opinion between the informant, acting as consultant of the Society, and the developer, leading to the incident on the basis of which the FIR stood registered. According to the informant, when a discussion took place between the informant and the developers in respect of the redevelopment project, the Petitioner herein threatened the informant by stating that he had contacts with the underworld and that if the informant did not fall in line, appropriate steps would be taken with the help of the underworld. On the basis of such information provided by the informant, the FIR stood registered and the investigation was undertaken.

5] The Investigating Agency sought permission for invoking provisions of the MCOCA against all the accused persons, including the Petitioner herein. According to the Investigating Agency, wanted accused was one gangster named Ravi Pujari and that the accused persons herein had acted in concert with the said gangster to carry out the criminal activity. By order dated 15/11/2017, the Joint Commissioner of Police (Crime) Mumbai passed an order granting sanction for invoking MCOCA, by exercising power under Section 23 thereof. Accordingly, Assistant Commissioner of Police was appointed as the Officer to investigate further into the case.

6] Thereafter, the charge-sheet was submitted wherein, apart from invoking Section 387 read with Section 120B of the IPC, Section 3(1)(ii), 3(2) and 3(4) of the MCOCA were invoked against the Petitioner and other accused persons.

7] In the meanwhile, on the basis of registration of the FIR and consequent investigation, the Petitioner was arrested and his first bail application was rejected. After filing of the charge-sheet, the Petitioner filed subsequent bail application which was also rejected and thereafter, the Petitioner approached this Court by moving a bail application. On 22/01/2019, a learned Single Judge of this Court allowed the bail application of the Petitioner, inter alia observing that the prosecution had failed to establish that the provisions of the MCOCA were applicable to the Petitioner. In this Writ Petition, reliance has been placed on the said observations and relevant portion of the order has also been quoted.

8] Mr. Nitin Pradhan, learned Counsel appearing for the Petitioner, submitted that in the present case, by no stretch of imagination could the provisions of the MCOCA be invoked insofar as the Petitioner was concerned. It was submitted that even registration of offence under Section 387 of the IPC was misplaced insofar as the Petitioner was concerned because a bare reading of the complaint leading to registration of the FIR would show that even as per the informant, the Petitioner was merely an employee of one of the developers. It was significant that although the Petitioner was alleged to have threatened the informant (consultant) on behalf of his employer, the said employer was not made an accused in the FIR. It was submitted that there was hardly any material on record to show any link between the Petitioner and the co-accused persons, much less the gangster Ravi Pujari. The learned Counsel for the Petitioner invited attention of this Court to the statements of witnesses recorded during the course of investigation, which are part of the charge-sheet and he submitted that even if the said statements were to be accepted as it is, there was no link established between the Petitioner on the one hand and the co-accused persons on the other.

9] The learned Counsel for the Petitioner placed much reliance on the judgments of the Hon'ble Supreme Court in the case of *Ranjitsing Brahmhajeetsing Sharma vs State of Maharashtra* reported in **(2005) 5 SCC 294**, *Mahipalsingh vs CBI* reported in **(2014) 11 SCC 282,** as also Judgment of Division Bench of this Court in the case of *State of Maharashtra vs Rahul Ramchandra Taru (Judgment and order dated 28/4/2011* in Criminal Appeal No.239 of 2011).

10] It was submitted on the basis of the said judgments that when the Petitioner was admittedly an accused only in the subject FIR and there were no previous criminal proceedings registered against him, the provisions of the MCOCA could not have been invoked at all. It was submitted that if the definitions of the expressions "continuous unlawful activity", "organized crime" and "organized crime syndicate" are perused, as specified in the MCOCA, it would become clear that the Petitioner does not fit into any of them. As a consequence, according to the learned Counsel for the Petitioner, the provisions of the MCOCA could certainly not have been invoked. It was further submitted that the material that has come on record alongwith the charge-sheet in pursuance of the investigation, does not reveal any of the ingredients of the offence under Section 387 of the IPC and that therefore, the Writ Petition deserves to be allowed.

11] On the other hand, Ms. Aruna Pai, learned APP appearing on behalf of the Respondent-State vehemently submitted that the material on record was sufficient to demonstrate a link between the Petitioner and the co-accused persons. It was submitted that the CDR records in the present case, which were part of the charge-sheet, demonstrated that the Petitioner had been in constant touch with co-accused persons who were involved in threatening persons, like the informant herein, for extorting huge amounts of money and threatening violence. It was further submitted that the co-accused persons alongwith the Petitioner certainly formed an organized crime syndicate and that there was admittedly sufficient material on record to show that in the past 10 years there had been more than one chargesheets submitted against the organized crime syndicate of which the competent court had taken cognizance. Relying on such material, the learned APP submitted that MCOCA clearly applied to the Petitioner also, apart from the fact that the material on record demonstrated that ingredients of the offence in the present case were clearly made out. The learned APP relied upon the judgment of this Court in *Mujahid Ibrahim Pathan vs State of Maharashtra* reported in **2015 ALLMR (Cri) 876**, *Govind Sakharam Ubhe vs State of Maharashtra* reported in **2009 ALLMR (Cri) 1903** and the judgment in the case of *Sachin Bansilal Ghaiwal vs. State of Maharashtra* reported in **2014 Cri.L.J. 4217**.

12] Having considered the contentions raised on behalf of the rival parties and upon perusal of the material placed on record, it needs to be determined, whether the Petitioner is justified in seeking quashing of the criminal proceedings instituted against him. In the present case, a perusal of the statement leading to registration of the FIR would show that specific allegation has been made against the Petitioner about threats given by him by claiming that he had connections with the underworld and telling the informant to act in a particular manner. There are clear allegations of threats given by the Petitioner and the manner in which he flaunted his connections with the underworld. It is necessary to peruse the statements of witnesses recorded during the course of investigation to analyze as to whether the Petitioner can be said to be having any link with an organized crime syndicate for invoking provisions of the MCOCA.

13] But, before embarking on the said exercise, it would be relevant to first refer to the judgments relied upon by the learned Counsel for the rival parties, to understand the position of law and then to apply the same to the facts of the present case, as they emerge from the material available on record.

14] While the learned Counsel for the Petitioner has relied upon the aforementioned judgments of the Hon'ble Supreme Court and a Judgment of the Division Bench of this Court, the learned APP has relied upon the three above mentioned judgments of Division Benches of this Court. The judgment in the case of *Ranjitsing Brahmhajeetsing Sharma vs. State of Maharashtra* (supra) arose out of rejection of a bail application filed by the Petitioner therein. In the context of whether the Petitioner therein deserved to be enlarged on bail, since provisions of the MCOCA had been invoked, the Hon'ble Supreme Court had an occasion to refer to provisions of the MCOCA and to comment upon them. A perusal of the said judgment shows that the Statement of Objects and Reasons of the MCOCA has been referred to and thereafter the Hon'ble Supreme Court has deliberated upon the true purport of the expressions, “continuing unlawful activity”, “organized crime” and “organized crime syndicate” in the context of Section 3(2) of the MCOCA.

15] In the facts of that case, in the context of Section 24 of the MCOCA, the Hon’ble Supreme Court came to a conclusion that prima facie the provisions of the MCOCA could not have been invoked in the case of the Petitioner therein. The emphasis in the said case was more on what could be the ingredients involved when an allegation was made against a public servant in the context of Section 24 of the MCOCA and how the Petitioner therein could not be covered under the said expressions. Therefore, the observations made in the said judgment do not *ipso facto* apply to the facts of the present case.

16] Insofar as the judgment in the case of *Mahipalsingh vs. CBI* (supra) is concerned, the Hon’ble Supreme Court laid down that the procedural requirement for prosecution of a person can be satisfied later but ingredients constituting the offence must exist on the date the crime is committed or detected. It was further held that submission of charge-sheets in more than one case and taking cognizance in such number of cases are ingredients of the offence under MCOCA and have to be satisfied on the date the crime was committed or came to be known. On facts, the Hon'ble Supreme Court found in the said case that the basic requirement of there being more than one charge-sheet filed before the competent court and cognizance thereof being taken, were not satisfied and therefore, the Petitioner therein deserved a favourable order. But, in none of the aforesaid two judgments rendered by the Hon'ble Supreme Court was the question concerning organized crime syndicate raised or decided.

17] Therefore, much emphasis was placed by the learned Counsel appearing for the Petitioner on Division Bench Judgment of this Court in the case of *State of Maharashtra vs. Rahul Ramchandra Taru* (supra) wherein it was laid down that for satisfying the expression "continuing unlawful activity", it was necessary for more than one charge-sheet being submitted in the competent court and cognizance thereof being taken against the accused who was before the court and merely because more than one charge-sheet was submitted against an organized crime syndicate of which the accused concerned was said to be a member, it would not amount to satisfaction of the expression "continuing unlawful activity" for the provisions of the MCOCA to be invoked.

18] It is crucial that the conclusions reached in the said judgment were specifically found to be *per incuriam* by another Division Bench Judgment of this Court in the case of *Sachin Bansilal Ghaiwal vs. State of Maharashtra* (supra). It was found in this judgment that earlier judgments of this Court in which such question was specifically raised and decided were not brought to the notice of the Division Bench which rendered the judgment in the case of *State of Maharashtra vs. Rahul Ramchandra Taru* (supra). In this context, the two relevant judgments are, judgment in the case of *Govind Sakharam Ubhe vs State of Maharashtra* (supra) and *Mujahid Ibrahim Pathan vs. State of Maharashtra* (supra). In the case of *Govind Sakharam Ubhe vs. State of Maharashtra* (supra), the Division Bench decided the question as to what could be the true purport of the expressions "continuing unlawful activity", "organized crime" and "organized crime syndicate" in the context of invoking Section 3(2) of the MCOCA. It was categorically found that even if the accused in question before the court was found to be arraigned as an accused only in the crime in question, as long as he was having link or nexus with an organized crime syndicate and there were more than one previous charge-sheets filed in the last 10 years and cognizance thereof taken by the Court against the organized crime syndicate, the provisions of the MCOCA would certainly apply. It was specifically held in the said judgment, after referring to the definitions of the aforesaid expressions, as follows: -

> "35. …………………….. Thus, for an activity to be a 'continuing unlawful activity'-
>
> a) the activity must be prohibited by law;
>
> b) it must be a cognizable offence punishable with imprisonment of three years or more;
>
> c) it must be undertaken singly or jointly;
>
> d) it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate ;
>
> e) in respect of which more than one charge-sheet have been filed before a competent court.
>
> 36. The words 'in respect of which more than one charge-sheet have been filed' cannot go with the words 'a

member of a crime syndicate' because in that case, these words would have read as 'in respect of whom more than one charge-sheet have been filed'.

37. But even otherwise, if all provisions are read together we reach the same conclusion. Section 2(1)(d) which defines 'continuing unlawful activity' sets down a period of 10 years within which more than one charge-sheet have to be filed. The members of the crime syndicate operate either singly or jointly in commission of organized crime. They operate in different modules. A person may be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situations, the MCOCA can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOCA. This is evident from section 3(4) of the MCOCA which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum of fine of Rs. 5 lakhs. The charge under the MCOCA ropes in a person who as a member of the organized crime syndicate commits organized crime i.e. acts of extortion by giving threats, etc. to gain economic advantage or supremacy, as a member of the crime syndicate singly or jointly. Charge

is in respect of unlawful activities of the organized crime syndicate. Therefore, if within a period of preceding ten years, one charge-sheet has been filed in respect of organized crime committed by the members of a particular crime syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOCA against him even if he is involved in one case. The organized crime committed by him will be a part of the continuing unlawful activity of the organized crime syndicate. What is important is the nexus or the link of the person with organized crime syndicate. The link with the 'organized crime syndicate' is the crux of the term 'continuing unlawful activity'. If this link is not established, that person cannot be roped in."

19] The aforesaid judgment in the case of *Govind Sakharam Ubhe vs. State of Maharashtra* (supra) was specifically relied upon in the subsequent judgment of the Division Bench of this Court in the case of *Mujahid Ibrahim Pathan vs. State of Maharashtra* (supra). In this judgment also, it was specifically held in the context of the aforesaid question as follows: -

"10. From the above referred fact what is established before this Court is, against the said gang leader more than one charge-sheets are pending and in most of the charge-sheets offences alleged, are punishable with more than three years of imprisonment. It is also required to be taken note of the fact that the offences alleged to have been committed by the gang leader of which present applicants are alleged to be members are for financial gain. It is also required to be taken note of the fact that the investigation in the matter is incomplete and same is under progress. In view of above, the invocation of the provisions of MCOCA, in our opinion, at this stage, *prima facie* appears to be justified as the requirement of clause (d) of section 2 of MCOCA is very much justified. What is contemplated under said section is a situation where a group of persons as members of organised crimes syndicate indulge in organized crime who use the violent means to gain pecuniary benefit or un-due economic or other advantage for themselves or any other persons. The clause which defines the 'continuing unlawful act' which is prohibited by law and must be cognizable offence punishable with imprisonment for three years or more. Such unlawful activity can be undertaken by 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. The words "in respect of which more than one charge-sheets have been filed", in our opinion, cannot be stretched to the extent that minimum one charge-sheet is required to be pending against each member of the crime syndicate. A reading of the entire scheme of the Act reflects that pendency of more than one charge-sheets within a period of ten years is enough qualification for invoking the provisions of the MCOCA, provided same is pending against the members of the crime syndicate, who operates as individually or jointly in commission of organised crime. What is required to be taken note of is the very involvement, attachment, nexus or the link of such member/person with the organised crime syndicate while commission of the offence, the very link of such member of the crime syndicate is considered to be the crux of the term "continuing unlawful activity". It is also required to be taken note of the fact that if the contention of the learned Counsel for the applicants i.e. the requirement of the statute, in their submission, is the pendency of the minimum two charge-sheets for an offence punishable with more than three years imprisonment in the last period of ten years is to be accepted, the same shall take the very object and intention of the statute to illogical end. What is contemplated under section 2(1)(d) of MCOCA is the activities prohibited by the law have been undertaken either singly or jointly, as a member of an organised crime syndicate and as such the requirement of one or more charge-sheets is in relation to the unlawful activity of the unlawful crime syndicate and not of each and every member of such syndicate. We are fortified in our view, in the light of the law laid down by this Court in the case of *Govind Sakharam Ubhe* (cited supra)………"

20] It is relevant that Special Leave Petition filed against the said judgement of Division Bench of this Court, bearing Special Leave Petition (Crl.) No. 4204 of 2015 (Mujahid s/o Ibrahim Pathan Vs. State of Maharashtra and Ors.) was dismissed by the Hon'ble Supreme Court on 07/10/2016.

21] As noted above, in the case of *Sachin Bansilal Ghaiwal vs State of Maharashtra*, another Division Bench of this Court not only relied upon the aforesaid judgments in the case of *Govind Sakharam Ubhe vs State of Maharashtra* (supra) and *Mujahid Ibrahim Pathan vs. State of Maharashtra* (supra) but in the context of the discordant note in the case of *State of Maharashtra vs. Rahul Ramchandra Taru* (supra), it was observed as follows: -

> "30. After having given our earnest consideration, we are of the firm opinion that the judgment in the case of State of Maharashtra v. Rahul Ramchandra Taru reported in (2011) 6 AIR Bom R 177, does not have binding effect as the said case can be

> termed as an 'obiter dictum' and certainly not a 'ratio decidendi' in view of the judgment of the Supreme Court in the case of Arun Kumar Aggarwal v. State of Madhya Pradesh and others reported in AIR 2011 SC 3056."

22] In view of the aforesaid position of law, we find that there cannot be any debate about the fact that merely because the Petitioner in the present case has been arraigned as an accused only in the subject FIR, it cannot be said that the provisions of the MCOCA could not be invoked. As long as the Investigating Agency is able to place material on record to show link between the Petitioner and the co-accused persons, who can be said to have formed an organized crime syndicate, since admittedly more than one charge-sheets have been filed against the organized crime syndicate and cognizance thereof has been taken by the competent court in the past 10 years, the provisions of the MCOCA can certainly be invoked. Therefore, the real area of examination which remains in the present Petition is, as to whether there is sufficient material brought on record by the Respondent-State to prima facie show that the Petitioner is having link with and can be said to be member of the organized crime syndicate so as to justify invoking the provisions of the MCOCA.

23] In this context, learned Counsel for the Petitioner as well as the learned APP have invited attention of this Court to statement of the informant as also statements of witnesses recorded during the course of investigation. The learned Counsel have given their own interpretations to the same and therefore, we need to refer to the statements and to examine as to whether the learned APP is justified in claiming that sufficient material is available on record for invoking the provisions of the MCOCA.

24] As noted above, in the statement of the informant leading to registration of the FIR, it is clearly stated that the Petitioner herein had specifically stated that he had links with the underworld and he had threatened the informant of drastic consequences if he did not fall in line. The statements of other witnesses include those given by the developers, on whose behalf the Petitioner was allegedly involved in the project and other persons who had come in contact with the Petitioner.

25] A perusal of the statement of witness Prakash Mhatre shows that he was associated with informant as consultant for the redevelopment project. He had accompanied the informant while visiting the office of the developer M/s Ami Corporation when the petitioner gave the aforesaid threat to the informant by claiming connection with the underworld. The statement of witness Gorakh Chide shows that he was associated with accused Dashrath Shinde, who in turn was associated with and financed by accused gangster Ravi Pujari. This witness stated that the Petitioner had visited the premises of the Court at Thane when co-accused persons were present and it was the Petitioner who had given the number of the informant to the accused Daya Jadhav who connected the number from his mobile and handed it over to co-accused person Dashrath Shinde. It is this accused person who on the phone had threatened the informant. This incident of the Petitioner directly acting in concert with the co-accused persons is stated in the statements of other witnesses recorded by the police i.e. Siddharth Gajgathe, Vipul Ranka and Mahesh Shinde. The presence of the Petitioner in the Thane Court at the relevant time and date is confirmed by the mobile phone record and the location of the mobile phone of the Petitioner brought on record during the investigation.

26] Apart from this, one witness Parth Mehta who is a businessman and owner of one of the developer-firms involved in redevelopment of the aforementioned Society stated in his statement that the Petitioner was supposed to look after the documents concerning the said project and that the Petitioner was to get 30% share out of the profit in the said project. This witness also stated that it was the Petitioner who was interested in the project being completed at the earliest so that he would get his 30% share in the profit. This prima facie indicates that the petitioner was engaged by builders and developers for expediting projects and the statements of the other witnesses prima facie indicate that the petitioner was acting in concert with other accused persons in threatening those associated with such development projects. It is also relevant that in the statement of one of the witnesses i.e Deepak Begania, a driver who was employed by the Petitioner, it was stated that the Petitioner had given one of the sites for development to be looked after by Daya Jadhav i.e. one of the co-accused persons and that the said Daya Jadhav was picked up from the site of such development project, taken to the court premises at Thane where the Petitioner as well as Daya Jadhav met the main accused person

Dashrath Shinde, who in turn gave the threatening call to the informant from the mobile phone of the accused Daya Jadhav.

27] In this backdrop, the material on record pertaining to CDR records is significant. The statements of witnesses recorded in this context show not only that the location of the mobile phone of the Petitioner on the relevant date and time was indeed that of the Court premises of Thane, but further that the Petitioner and the aforesaid co-accused person Daya Jadhav had been in touch with each other on mobile phone between 01/06/2017 to 28/10/2017, on as many as 347 occasions. This material clearly indicates that prima facie the Petitioner was all-along in touch with the aforesaid co-accused persons, that he was acting in concert with them in order to extend threats to the informant herein and that he was extracting profits from the developer while indulging in such activity.

28] In the face of the aforesaid material placed on record, we are of the opinion that prima facie link is established between the Petitioner and the co-accused persons. In that context when the expressions “continuing unlawful activity”, “organized crime” and “organized crime syndicate" as defined in Section 2(d), (e) and (f) of the MCOCA are perused and the law as laid down by the aforementioned judgments is applied, we find that prima facie a case for invoking the provisions of the MCOCA is made out.

29] There is no dispute about the fact that insofar as the organized crime syndicate is concerned, there are more than one charge-sheets filed before the competent court within the preceding period of 10 years and that such Court has taken cognizance of the offences.

30] Consequently, we find that there is no substance in the contentions raised on behalf of the Petitioner in the present Writ Petition.

31] Insofar as reliance placed on the order dated 22/1/2019 passed by the learned Single Judge of this Court granting bail to the Petitioner is concerned, we are of the opinion that the observations made therein are obviously limited to the question of granting of bail and not beyond that. In any case, the question of whether MCOCA would apply in the facts of the present case as against the Petitioner has been squarely raised in this Writ Petition and we have answered it on the basis of material available on record and by application of the law laid down in the context of the MCOCA. Therefore, reliance placed on the said order granting bail to the Petitioner cannot be of any assistance, in so far as the prayers in the present Petition are concerned.

32] As regards the contention raised on behalf of the Petitioner that ingredients of the offence under Section 387 of the IPC are not made out, suffice it to say that bare reading of the statement given by the informant, as also the material that has come on record pursuant to the investigation clearly shows that the ingredients of the offence under Section 387 of the IPC pertaining to putting a person in fear of death or grievous hurt in order to commit extortion, are prima facie made out against the Petitioner. Therefore, we are of the opinion that the contentions raised in this context on behalf of the Petitioner are wholly untenable and they do not deserve to be accepted. Since we have found that ingredients of the aforesaid offence are prima facie made out and that it cannot be said that the provisions of the MCOCA could not have been invoked in the facts and circumstances of the present case, we find that the Writ Petition is without any merit and it deserves to be dismissed.

33] Accordingly, the Writ Petition is dismissed.

(MANISH PITALE, J.) **(S.S. SHINDE, J.)**