

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

Amk

WRIT PETITION NO. 5145 OF 2019

Sagar Balasaheb Gaikwad	]	
Age-29 years, Occ.- Business,	]	
R/at Survey No. 165, Pankaj Park,	]	
Hadapsar, Malwadi, Pune	]	.. Petitioner

Vs.

- | | | | |
|----|--------------------------------------|---|----------------|
| 1. | The State of Maharashtra |] | |
| | Through the Additional Chief |] | |
| | Secretary (Home Department), |] | |
| | Mantralaya, Mumbai. |] | |
| 2. | Director General of Police |] | |
| | Maharashtra State, having address |] | |
| | at Maharashtra Police Headquarters, |] | |
| | Opp. : Regal Cinema, Colaba, |] | |
| | Mumbai. |] | |
| 3. | Additional Director General of |] | |
| | Police (Law & Order), |] | |
| | Maharashtra State, having address |] | |
| | at Maharashtra Police Headquarters, |] | |
| | Opp. : Regal Cinema, Colaba, |] | |
| | Mumbai. |] | |
| 4. | Special Inspector General of Police, |] | |
| | Kolhapur Police Range, having |] | |
| | address at Office of the Special |] | |
| | Inspector General of Police, |] | |
| | Kasba Bawda, Kolhapur. |] | |
| 5. | Sub Divisional Police Officer, |] | |
| | Bhor Sub Division, Pune Rural, |] | |
| | Dist. Pune. |] | |
| 6. | Police Inspector, |] | |
| | Saswad Police Station, |] | |
| | Dist. Pune. |] | |
| 7. | Shri Annasaheb Jadhav |] | |
| | Sub Divisional Police Officer, |] | |
| | Bhor Sub Division, Bhor, |] | |
| | Dist. Pune. |] | .. Respondents |

Mr. Satyavrat Joshi i/b Mr. Sunil S. Kamble for the Petitioner.
Mr. J. P. Yagnik, APP for the Respondent-State.

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

Judgment reserved on : 24th FEBRUARY, 2021.
Judgment pronounced on : 24th MARCH, 2021.

JUDGMENT (*Per Manish Pitale, J.*)

1. By this Writ Petition, the Petitioner has sought quashing of provisions of the Maharashtra Control of Organized Crime Act, 1999 (MCOCA) being applied to C.R. No. 189 of 2018, wherein the Petitioner has been arraigned as accused along with other persons for offences under the Indian Penal Code as well as Bombay Prohibition Act. The Petitioner claims that the sanction order issued under the MCOCA deserves to be quashed qua the Petitioner.

2. The aforesaid crime was registered as per FIR registered at the Saswad Police Station, District Pune against unknown persons for offences under Sections 395, 341, 412 and 120-B of the Indian Penal Code as also provisions of the Bombay Prohibition Act. Upon investigation, it was found that four persons including the Petitioner were involved in the said crime. A proposal was moved for seeking sanction for applying the provisions of MCOCA against the accused persons in the aforesaid crime. By order dated 27.11.2018, the Additional Director General of Police (L & O), Maharashtra i.e. Respondent No.3 herein passed an order granting sanction for applying MCOCA against the accused persons including the Petitioner who was at that stage absconding accused.

3. Later the Petitioner was arrested on 03.12.2018 and he was sent to

judicial custody. The incident leading to registration of FIR occurred on 22.05.2018 when the Complainant, who was working as a driver with the transport company, driving a truck containing bottles of whiskey, was forced to stop the truck due to obstruction by four persons riding motorcycles. The said persons assaulted the Complainant, tied his mouth and forcibly took away the truck thereby committing the said offence. The articles stolen in the process included bottles of whiskey and mobile phones worth Rs.55,33,014/-. Pursuant to registration of FIR, investigation was undertaken.

4. Mr. Joshi, learned Counsel appearing for the Petitioner submitted that in the present case there was no material to connect the Petitioner with the aforesaid incident and that he had been falsely roped in. It was further submitted that MCOCA could not have been applied in the present case, at least in so far as the Petitioner was concerned and that the sanction order dated 27.11.2018 passed by Respondent No.3 deserves to be quashed. It was submitted that in the said order individual role of the Petitioner was not specified and there was nothing to show that material was available with Respondent No.3 to come to a conclusion that the Petitioner was part of continuing unlawful activity or that he could be set to be part of a gang. There was no material to connect the Petitioner with the co-accused persons and that therefore the sanction order deserved to be quashed and the provisions of MCOCA could not be applied as against the Petitioner.

5. On the other hand Mr. Yagnik, learned APP submitted that the contentions raised on behalf of the Petitioner were more in the nature of his

defence and same could be raised at the time of trial. It was submitted that the alleged defects in the sanction order could be demonstrated at the stage of trial and that the sanction order could not be set aside in a casual manner. The material available on record was sufficient for Respondent No.3 to have issued the sanction order to apply provisions of MCOCA to the aforesaid crime and the accused therein including the Petitioner. The learned APP placed reliance upon Judgments of this Court in the case of **(1) Anil Sadashiv Nanduskar Vs. State of Maharashtra, 2008 (12) LJSOFT 156, (2) Govind Sakharan Ubhe Vs. State of Maharashtra, 2009 ALL MR (Cri) 1903 and (3) Farman Imran Shah @ Karu Vs. State of Maharashtra, 2014 ALL MR (Cri) 1571.**

6. We have heard the learned Counsel for rival parties and perused the material on record. Before considering the contentions raised on behalf of the Petitioner, it would be appropriate to refer to the position of law that emerges from the aforesaid Judgments on which learned APP has placed reliance.

7. In the case of **Anil Sadashiv Nanduskar Vs. State of Maharashtra** (supra) a Division Bench of this Court noticed the Judgments of the Hon'ble Supreme Court in connection with the stage at which validity of sanction order could be examined. After taking note of the said Judgments, it was held in the said Judgment as follows:

“13. The settled law by a catena of decisions of the Apex Court is to the effect that it is desirable that every order whether the approval or sanction it should speak for itself, i.e. ex-facie it should disclose consideration of the materials placed before it and application of mind thereto. However, failure to reproduce or refer those recitals in the resolution or order itself would not render the order of

approval or sanction to be invalid unless the prosecution fails to establish by leading evidence that all the materials necessary for the grant of approval or sanction were placed before the concerned authority for due application of mind by such authority before the grant of approval and or sanction. It apparently discloses that question of validity of approval or sanction cannot be decided unless the prosecution is afforded opportunity to lead evidence in that regard. Undoubtedly, an accused desiring to raise objection regarding the defects in such approval or sanction, or grant, he can raise such objection; however, for conclusive decision on the said point the accused has to wait till the trial is complete and on that ground he cannot insist for discharge unless the objection relates to inherent lack of jurisdiction to the concerned authority to grant sanction or approval and such issue can be decided on undisputed facts. The law being well settled to the effect that the prosecution in a case where sanction or the approval order does not ex-facie show consideration of all the materials and/or application of mind, is entitled to establish the same by leading necessary evidence regarding production of materials before the concerned authority, the question of discharge of accused merely on the basis of such objection being raised cannot arise. The decision on the point of defect, if any, in the order of approval or sanction will have to be at the conclusion of the trial.”

8. It was further specifically held in paragraph 24 of the said Judgment as follows:

“24. The contention that the order of approval or order of sanction should disclose consideration of material qua each of the accused sought to be prosecuted is devoid of substance. That is not the import of section 23 of MCOC Act. Section 23(1)(a) as well as section 23(2) with reference to approval and sanction speaks of commission of offence and cognizance of the offence. In fact the law on this aspect is also well settled and reiterated by the Apex Court in Dilawar Singh’s case (supra) itself. It was held therein that, court takes cognizance of offence and not of an offender when a Magistrate takes cognizance of an offence, under Section 190 Cr.P.C. Undoubtedly, it was also held that it was necessary for the Sanctioning Authority to take note of the persons against whom the sanction is sought to be granted. However, those were the requirement under Section 19 of the Prevention of Corruption Act. The said section specifically requires sanction with reference to a particular person. That is not the case under section 23 either in relation to the approval or in relation to the sanction. As already

seen above section 23(1)(a) of MCOC Act speaks of approval for recording of information about commission of offence of organized crime under MCOC Act, whereas sanction is for initiating proceeding for the offence under MCOC Act. The sanction order or the approval order on the face of it need not speak of the individual role of each of the accused. Being so, contention that the order of approval or sanction should reveal consideration of the overt acts or otherwise of each of the accused while granting approval or sanction is totally devoid of substance. Of course, the involvement in organized crime of each of the persons sought to be prosecuted should necessarily be considered by the concerned authority before the grant of approval or sanction, but need not be specifically stated in the order and the consideration thereof can be established in the course of trial.”

9. In the case of **Govind Sakharan Ubhe Vs. State of Maharashtra** (supra) a Division Bench of this Court held that even where name of an accused was not mentioned in the sanction order issued under the MCOCA, prosecution against such an accused could not be said to be vitiated. It was specifically held that once such a sanction order was issued, investigation commenced and those who are subsequently found to be involved in commission of an organized crime could very well be proceeded against.

10. In the case of **Farman Imran Shah @ Karu Vs. State of Maharashtra** (supra) another Division Bench of this Court while relying upon the aforementioned Judgment in the case of **Anil Sadashiv Nanduskar Vs. State of Maharashtra** (supra) held that the prosecution has to be offered an opportunity to lead evidence with regard to subjective satisfaction recorded by the Competent Authority while issuing the sanction order.

11. The position of law that emerges from the aforesaid Judgments of this Court is that a sanction order cannot be held to be bad merely because the

material considered by the Competent Authority while issuing the sanction order is not specifically stated in detail in the order. The question as to whether a sanction order can be said to be defective has to be answered after giving an opportunity to the prosecution to lead evidence and therefore, it must await trial. A sanction order concerns initiation of proceedings for offence under MCOCA and such an order on the face of it need not speak of the individual role of each of the accused.

12. In the present case, a perusal of the material placed on record by the Petitioner himself shows that he was an accused in an earlier FIR bearing C.R. No. 131 of 2018, under the provisions of Bombay Prohibition Act and that he was also arrested in connection with same. This indicates that the Petitioner does have criminal antecedents. As regards emphasis placed by the learned Counsel for the Petitioner on the alleged absence of material to show his involvement in the present crime bearing No. 189 of 2018, we are of the opinion that such findings can be rendered only after prosecution is granted an opportunity to lead evidence. The material placed on record is, *prima facie*, sufficient to connect the Petitioner with the crime in question.

13. The Petitioner can also not take any advantage of the fact that he was absconding when the sanction order dated 27.11.2018 was issued by Respondent No.3. If the contention raised on behalf of the Petitioner is accepted, then every absconding accused would claim that the sanction order was vitiated while he was avoiding the process of law. Such cannot be the interpretation of the position of law in so far as the application of MCOCA is concerned. As noted above, it has already been held in the

aforementioned Judgments of this Court that individual role of an accused need not be stated in the sanction order and that as long as there is material with the Competent Authority while issuing the sanction order, such an order cannot be set aside, unless the matter goes to trial and the prosecution is granted opportunity to lead evidence in that regard.

14. Therefore, we are of the opinion that the available material on record, *prima facie*, indicates that there is a link between the Petitioner and the crime in question. The matter needs to go to trial even on the question of alleged defect in the sanction order issued by Respondent No.3 for applying MCOCA. At this stage, the Petitioner has not been able to make out a case for setting aside the sanction order and seeking quashing of application of the provisions of MCOCA to C.R. No. 189 of 2018, qua the Petitioner.

15. Since we have found that there is no merit in the present Writ Petition, it deserves to be dismissed. Accordingly, the Writ Petition is dismissed.

[MANISH PITALE, J.]

[S. S. SHINDE J.]

Balaji
G.
Panchal
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Balaji G.
Panchal
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