IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO.8 OF 2020

Vijay s/o Ratan Nagdeve,
Aged about : 26 years,
Occ : Private, R/o House
No.164/A/406, Kamgar
Colony, Subhash Nagar,
Hingna Road, Nagpur. ... **APPLICANT**

// **V E R S U S //**

1. The State of Maharashtra,
   Through Police Station Officer,
   Sitabuldi Police Station,
   Nagpur.

2. The State of Maharashtra,
   Through Assistant Commissioner of
   Police, Sitabuldi Division,
   Nagpur City, Nagpur.

3. Sunil s/o Tilakchand Meshram,
   Aged about : 30 years,
   R/o Thutera, Ward No.8,
   Tah. Kelwad, Dist. Seoni,
   Madhya Pradesh. ... **NON-APPLICANTS**

Shri U. P. Dable, Advocate for applicant.
Shri T. A. Mirza, Additional Public Prosecutor for Non-applicant Nos.1 and 2.

CORAM: Z.A. HAQ & AMIT B. BORKAR, JJ.
DATED : 25/02/2021.

JUDGMENT : (PER AMIT B. BORKAR, J.)

1. By this application under Section 482 of the Code of Criminal Procedure, the applicant has challenged order dated 1.4.2009

bearing No. ADDL.CP/S/N/Region/M.C.O.C.A/Sanction/189/19 of invocation of Section 3 of the Maharashtra Control of Organised Crime Act, 1999 (for short, "MCOC Act") in Crime no.283/2018 registered with the non-applicant no.1 and also filing of the charge-sheet no.46/2020 dated 17.4.2020.

2. Crime No.283/2018 was registered against the applicant under Section 393 read with Section 34 of the Indian Penal Code. The Police Inspector, Police Station Sitabuldi, Nagpur sent a proposal and documents for addition of Section 3 (1) (ii) and Section 3 (2) and Section 3 (4) of the MCOC Act.

3. The Additional Commissioner of Police, Nagpur City, after considering recommendation against another accused namely Mr. Kailash Suresh Bharadwaj, granted sanction after recording satisfaction that the applicant along with other accused created syndicate and there is enough material available on record to grant prior approval to the investigation under the provisions of MCOC Act. The applicant has challenged the order dated 1.4.2019 by filing present application. This Court, on 13.1.2020 recorded statement of the Advocate for the applicant that the applicant does not want to press prayer clauses (ii), (iii) and (iv) of the application, issued notice to the non-applicants and in the meantime, it was directed that though the investigation may continue, the prosecution shall not file charge-

sheet against the applicant without leave of the Court.

4. The non-applicants, on 13.4.2020, filed an application seeking permission to file charge-sheet against the applicant and this Court by order dated 15.4.2020 granted permission to the non-applicants to file charge-sheet, subject to out-come of the present application.

5. On 27.1.2020, the non-applicant no.1 filed reply staing that the non-applicant no.3 lodged complaint with the non-applicant no.1 - Police Station on 5.9.2018 stating that while he was going to his home, the applicant assaulted him, saying “Terepass Jo bhi rupaye hai, wah hame de de” . The complainant resisted them but, the accused checked pockets of shirt and pant of the complainant. At that time, the police officials of patrolling duty reached the spot and apprehended the applicant alongwith others. Therefore, offence came to be registered against the applicant under Section 393 read with Section 34 of the Indian Penal Code. It is stated that during the course of investigation, it was revealed that the applicant is involved in similar offences and, therefore, the Investigating Agency invoked provisions of MCOC Act against the applicant. The non-applicant no.1, in the reply submitted the details of offences in which the applicant and other members of his syndicates are involved, which are as under:

Sr No.	Police Station	Crime No.	1	2	3	4	5	6	Present Position
			Kailas Suresh Bhardwaj	**Manoj Suresh Bhardwaj**	**Sanjay Kulsing Bhardwaj**	**Vijay Ratan Nagdive**	**Vikki Ramdar Ghorpade**	**Om Prakash**	
1	Pratap Nagar	179/18, 143,147,294,506(b), 427 IPC	√	√	√	√	√	√	Pending
2	Sitabuldi	283/18, 393, 34 of IPC`	√	..	..	√	..	..	Under Investigtation
3	Pratap Nagar	117/17, 376 of IPC r/w. 4, 8 of POCSO	..	..	..	√	..	..	Pending
4	Sonegaon	231/15, 302, 201, 34 of IPC	√	√	√	..	..	..	Pending
5	Pratap Nagar	99/15, 324, 34 of IPC	√	√	√	..	..	..	Pending
6	Pratap Nagar	363/12, 392, 34 of IPC	√	√	..	..	..	..	Acquitted

Sr. No.	Police Station	Crime No.	Sections	Court case no.	Result
1	Pratap Nagar	66/17, dated 08.07.2017	107, 116(3) of Cr.P.C.	117/17	Case is closed, as the result of the Sessions Court in Revision Application is pending and period of 6 months is over.
2	Pratap Nagar	30/18, dated 23.07.2018	110 (e)(G) of Cr.P.C.	35/18	Warrant are issued

6. With the assistance of learned Advocate for the applicant and learned APP for the non-applicant, we have carefully scrutinized the contents of the order dated 1.4.2019 and material produced by the prosecution in the form of charge-sheet.

7. The learned Advocate for the applicant submitted that insofar as the applicant is concerned, the requirement of more than one charge-sheet in the last 10 years to bring the alleged activity of the applicant within Section 2(d) of MCOC Act is not fulfilled against the applicant. He submitted that in relation to the First Information

Report No.117/2020 registered with Pratap Nagar Police Station, the offence is under Section 376 of the Indian Penal Code and the Charge-sheet is filed on 2.3.2019. He submitted that in relation to the First Information Report no.179/2018 for the offence punishable under Section 506-B of the Indian Penal Code has been registered with Pratap nagar Police Station and the charge-sheet is filed on 22.3.2019. He submitted that present First Information Report No.283/2018 is in relation to incident of dated 5.9.2018 for offence under Section 393 of the Indian Penal Code and the Charge-sheet is filed on 17.4.2020. He submitted that the offence under Section 376 of the Indian Penal Code, which is registered under First Information Report no.117/2017 cannot be said to be organized crime for syndicate, as it will not be covered under definition of Section 2 (e) of the MCOC Act. He further submitted that the requirement of filing of charge-sheet has to be in relation to the accused and filing of charge-sheet in relation to other members of syndicate cannot be taken into consideration for invoking provisions of MCOC Act against the applicant. In support of his submissions, he relied upon the judgment of the Apex Court in ***Mahipal Singh Vs. Central Bureau of Investigation and another*** *reported* ***(2014) 11 SCC 282*** and the judgment in the case of ***Govind Sakharam Ubhe Vs. The State of Maharashtra*** reported in ***2009 SCC Online Bom 770***; ***Prasad Shrikant Purohit Vs. State of Maharashtra and another*** reported in ***(2015) 7 SCC 440*** and the judgment in the case of ***Deepak Madhavrao Mankar Vs State of Maharashtra*** reported in ***(2019) SCC Online Bom 8036***.

8. Shri T.A.Mirza, learned Additional Public Prosecutor for the non-applicants submitted that charge-sheets filed against other members of syndicate can also be considered for applying the provisions of MCOC Act. He submitted that the Division Bench of this Court in the case of Govind Sakharam (supra) has categorically held that the charge-sheet against other members can also be taken into consideration while applying the provisions of MCOC Act.

9. At this stage, it is relevant to note the definition of continuing unlawful activity, which has been defined under Section 2 (1)(d) of MCOC Act which reads as under:

2 (1)(d)

*"**2. Definitions**-*

(1) In this Act, unless the context otherwise requires,-

(a) "abet", with its grammatical variations and congnate 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; (ii) the passing on or publication of, without any lawful authority, any information likely lo 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) the rendering of any assistance, whether financial or otherwise, to the 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 field before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence".

10. The plain reading of Section 2 (1) (d) of the MCOC Act makes it clear that it is necessary for the prosecution to prove that the accused is involved in the activities prohibited by law, which are cognizable offences punishable with imprisonment of three years or more and in respect of such offences more than one charge-sheets have been filed against such accused before the Court within the preceding period of ten years and that Court has taken cognizance of such offence.

11. Taking into consideration chart produced on record by the non-applicants, it appears that prior to registration of the First Information Report no.283/2018, two FIRs bearing Nos. 117/2017 and 179/2018 were registered against the applicant on 7.3.2017 and 18.3.2018. The First Information Report No.117/2017 was registered for commission of offence under Section 376 of the Indian Penal Code read with Sections 4 and 8 of POCSO Act. The First Information Report No.179/2018 was registered for offences punishable under Sections 143, 147, 294, 506-B and 427 of the Indian Penal Code. In relation to First Information Report No.179/2018, Charge-sheet was filed on 22.3.2019 and in relation to the First Information Report no.117/2017, Charge-sheet was filed on 2.3.2019. The Division Bench

of this Court in the case of Govind Sakhram Ubhe (supra) in paragraph nos. 35 and 36 held as under:

> "**35.** It is now necessary to go to the definition of `continuing unlawful activity'. Section 2 (1) (d) defines `continuing unlawful activity' to mean 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 organized crime syndicate or on behalf of such syndicate in respect of which more than one charge- sheet have been filed before a competent court within the preceding ten years and that court have taken cognizance of such offence. 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'."

12. The Division Bench of this court in paragraph 37 of the said judgment further observed that if within period of preceding ten years, one charge-sheet has been filed in respect of organised crime committed by the members of particular crime syndicate, the said charge-sheet can be taken against the member of the said crime syndicate for the purpose of application of the MCOC Act against him

even if he is involved in one case. It is further observed that the organized crime committed by him will be a part of the continuing unlawful activity of the organised crime syndicate. It is further observed that what is important is the nexus or the link of the person with organised crime syndicate. The link with the `organised crime syndicate'; is the crux of the term `continuing unlawful activity'. If this link is not established, that person cannot be roped in.

13. In view of the judgment of the coordinate Bench of this court, we are of the view that the prosecution must be given opportunity to lead evidence in support of the case of prosecution against the applicant to ascertain whether crimes committed by the applicant were undertaken either singly or jointly as a member of organised crime syndicate or on behalf of such syndicates. The prosecution has alleged that the team leader has committed following offences jointly involving other different members of his syndicate, in which more than one charge sheets have been filed in respect of their crime syndicate, which are as under :-

i. Crime No. 231/15, under Sections 302, 201, 34 of IPC of Sonegaon P.S.(Accused No. 1 and 2 different members)

ii. Crime No. 363/12, under Sections 392 and 34 of IPC, Pratap Nagar Police Station (Committed by Team leader and his real elder brother Manoj Suresh Bhardwarj).

iii. Crime No. 99/2015, under Sections 342 and 34 of IPC (Team leader and 2 other different members of his syndicate).

iv. Crime No. 179/18, under Sections 143, 147, 294, 506-B and 427 of IPC (Committed by Team Leader, accused no. 2 and other 4 different members of his syndicate).

In all the above 4 cases, charge-sheets have been filed in the Court and the Court has also taken cognizance. Thus, more than one charge-sheet have been filed in respect of their crime syndicate. These are the questions which requires trial. We are, therefore, of the view at this stage the applicant has failed to make out ground to interfere with the impugned order dated 1.4.2019. There is no merit in the application.

The application is, therefore, dismissed.

Cri. Application (APPP) No.41/2020

In view of the disposal of Criminal Application (APL) No. 8/2020, this application for filing certified copy of the order dated 3.1.2018 does not survive. Hence, it is disposed.

JUDGE **JUDGE**