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

CRIMINAL APPEAL NO.418 OF 2020

Prem s/o Chunnilal Yadav (Gwalwanshi),
Aged about 45 years, Occ: Fabrication work,
R/o Plot No.30, Adiwasi Colony,
Fire College Road, Friends Colony,
Nagpur.

...**APPELLANT**

VERSUS

The State of Maharashtra,
through Police Station Incharge,
Koradi Police Station, Tahsil and
Dist. Nagpur **...RESPONDENT**

Shri Anil S. Mardikar, Senior Advocate with Shri U.P. Dable, Advocate for the appellant.
Shri V.A. Thakare, Addl. P.P. for respondent/State.

CORAM:- M.S. SONAK AND PUSHPA V. GANEDIWALA, JJ.

Reserved on : 28.10.2021
Pronounced on: 09.12.2021

J U D G M E N T (PER: PUSHPA V. GANEDIWALA, J.)

Heard Shri Anil Mardikar, learned Senior Counsel assisted by Shri. U. P Dable learned counsel for the appellant, and Shri V.A. Thakare learned Additional Public Prosecutor for respondent/State.

2. **Admit**.

3. The challenge in this appeal under Section 12 of the Maharashtra Control of Organized Crime Act, 1999 (for short "MCOC Act,1999') is to the order dated 23/01/2019 passed by the Special Judge, Nagpur below Exh.5 thereby rejecting the discharge application filed by the appellant for his discharge in Special MCOCA No. 1/2018, arose out of Crime No. 85/2017, registered at Police Station, Koradi, Nagpur.

4. The facts leading to the filing of the present may be stated as under:

On 08/08/2010 the complainant Saifulla Kalimulla Sayyed purchased a plot bearing No.5 in the layout of Tavakkal Co-operative Society, situated at Mouza, Takli, Nagpur in Khasra No. 110, 111/1 from one Mohammad Saheb Mohammad Akbar vide registered sale-deed No. 5103/2010. He lodged a report on 03/05/2017 with the respondent Police Station – Koradi alleging therein that when he along with other plot owners had been to his aforesaid plot, before 25 days, at around 6:00 pm, Dilip, Pappu, Jitu, and other 7-8 persons obstructed their way and rushed towards them and threatened to kill them if they dare to visit the plot in future and also demanded Rs.3,00,000/- each if they come to their plots again. Based on the report, Crime at Serial No. 85/2017 came to be registered, initially, for the offence punishable under Sections 143, 149, 341,352, and 420 of Indian Penal Code and later offence punishable under Section 3 of the MCOC Act, 1999 came to be added.

5. After investigation, Charge Sheet bearing No.132-A/2017 came to be filed before the Special Judge, Nagpur on 04/01/2018, and Special MCOCA Case No.1/2018 came to be registered for the offence punishable under Sections 143, 149, 341, 352, and 420 of the IPC read with Section 3 of the Maharashtra Control of Organized Crime Act, 1999. The appellant filed an application Exh. 5, claiming discharge in the aforesaid crime, predominantly on the ground that the necessary ingredients for invoking the provisions of MCOCA are conspicuously absent, as far as the case of the present appellant is concerned. The learned Special Judge rejected the prayer for discharge on the ground that there is prima facie material against the appellant showing involvement of the appellant in the present crime.

This order of rejection is impugned in this appeal on the following grounds :

a. The allegations made against the present appellant are not sufficient to attract the provisions of MCOCA inasmuch as he is not shown to be involved in the 'continuing unlawful activity' either as a member of the organized crime syndicate or on behalf of such syndicate.

b. The sanction order dated 01/11/2017 issued by the Additional Director General of Police does indicate that in the past ten years, the applicant is not charged jointly with the other accused and only one charge sheet has been filed against the present appellant that too against his individual capacity.

c. The learned trial Court held that there is no FIR registered against the appellant in the last ten years yet the learned trial Court failed to appreciate the same and observed that the appellant is a member of crime syndicate along with others.

d. Finally, the allegations in the charge-sheet, do not constitute any offence, much less the offences alleged at least against the present appellant.

6. In the affidavit-in-reply filed on behalf of the respondent-State, it is stated that the prosecution agency has rightly invoked Section 3 of the MCOCA in the present crime on the strength of the statements of witnesses and confessional statements under Section 18 of the MCOCA, recorded during investigation. It is further alleged that the present appellant is an active member of the gang run by Dilip Shivdas Gwalvanshi. It is finally urged that the appeal filed by the appellant is devoid of any merits and substance and hence, liable to be dismissed.

7. We have heard Shri Anil Mardikar, learned senior counsel assisted by Shri U.P. Dable, appearing on behalf of the appellant, and Shri V.A. Thakre, learned APP appearing on behalf of the respondent/ State through Police Station – Koradi. We have also perused the record with the assistance of learned counsel.

8. In the impugned order, based on material on record, the learned Special Judge noted that the present appellant is clearly shown to be an active member of unlawful activity along with Dilip Shivdas Gwalvanshi. It is also noted that the appellant, being one of the members of the gang, gave threats to the complainant and other persons on 07/04/2017.

9. The learned senior counsel Shri Mardikar, at the outset, submitted that the learned trial Court failed to appreciate that as far as the provisions of MCOCA are concerned, the allegations made are not sufficient to attract the provisions of MCOCA against the appellant inasmuch as he is not shown to be involved in the 'continuing unlawful activity' either as a member of organized crime syndicate or on behalf of such syndicate. It is further urged that the involvement of the present appellant jointly in previous crimes is one of the criteria for drawing the presumption that they are members of the crime syndicate. Shri Mardikar contends that only one chargesheet has been filed against the present appellant that too had the nature of individuality. Since the appellant is not shown involved in continuing unlawful activity, the provisions of MCOCA have been wrongfully applied to the applicant.

10. Shri Mardikar, learned senior counsel further contended that in order to prosecute the accused under MCOCA, it is necessary for the prosecution to show that the previously registered offence must have some nexus with the offence which is sought to be treated as an organized crime. It is submitted that if

the past offence has no nexus with the present offence, then they cannot be considered under MCOCA. In this context, it is further submitted that the appellant was prosecuted in crime No. 304/2007 in which the allegations were related to the collection of toll tax. It is thus can be seen that there is no nexus between the previous offence and the offence for which the appellant is charged in the present crime.

11. In support of his submissions, learned senior counsel relied on the following authorities :

1. **Rajitsingh Bramhajeetsing Sharma Vs. State of Maharashtra and another** reported in **AIR 2005 SC 2277**
2. **State of Maharashtra and others Vs. Lalit Somdatta Nagpal and another** reported in **(2007) 4 SCC 171**
3. **Prasad Shrikant Purohit Vs. State of Maharashtra and another** reported in **AIR 2015 SC 2514**.
4. **Mahipal Singh Vs. Central Bureau of Investigation, New Delhi and another** reported in **(2014) 11 SCC 282**.
5. **Deepak Madhavrao Mankar Vs. State of Maharashtra** reported in **2019 SCC OnLine Bom 8036**.

12. Learned A.P.P. Shri V.A. Thakre, appearing on behalf of the State refuting the contentions raised by the learned senior

counsel Shri Mardikar, emphatically submitted that a careful examination of the definitions of the term “continuing unlawful activity” defined in Section 2(1)(d) of MCOCA, it is clear that more than one charge-sheets have to be filed in respect of the syndicate and not in respect of the accused in his individual capacity. It is further submitted that the learned trial Court on the basis of material collected by the investigating agency in the form of statements of witnesses and confessional statements recorded under Section 18 of MCOCA has rightly invoked Section 3 of MCOCA in the present crime. The statements of witnesses clearly demonstrate the role of the present appellant that he used to demand money from the plot owners by encroaching upon their plots and was actively involved in the commission of offence, being the active member of the gang run by Dilip Shivdas Gwalvanshi. In support of his submissions, learned A.P.P. relied on the following authorities :

1. **Mrs. Kawalnayan Wazirchand Pathreja Vs. State of Maharashtra** decided by the Principal Bench of this Court in **Criminal Appeal No.58 of 2018**.
2. **Vijay s/o Ratan Nagdeve Vs. State of Maharashtra and others** decided by this Court in Criminal Application (APL) No.8 of 2020.

3. **Kavitha Lankesh Vs. State of Karnatka and others** decided on 21/10/2021 by Hon'ble Apex Court in Criminal Appeal (Diary No.13309 of 2021).

13. On the basis of the rival submissions put forth on behalf of both the sides and the material on record, the following point arises for the consideration of this Court :

> *"Whether the appellant is entitled to be discharged from the offence under Section 3 of the MCOC Act, 1999, he, being not shown to have involved in the 'continuing unlawful activity' either as a member of organized crime syndicate or on behalf of such syndicate?"*

14. At the outset, we are conscious that at the stage of consideration of an application for discharge, we are not expected to embark upon roving inquiry or detailed appreciation of the material and the evidence on record which can only be done at the trial. (See : Union of Indian Vs. Prafulla Kumar Samal, AIR 1979 SC 366). In Govind Sakharam Ubhe Vs. State of Maharashtra, 2009 ALL MR Cri. 1903, the Division Bench of this Court, while considering the issue of discharge of the appellant

therein, surveyed a series of decisions of the Apex Court on the point of discharge and concluded that at the stage of Section 227 of the Code, the Court has the power to sift the materials collected by the prosecution to find out whether there is prima facie case against the accused or not. The Court has to be satisfied that there is ground for presuming that the accused has committed offence or that there is no sufficient ground for proceeding against him. The Court can consider whether the material collected by the prosecution if accepted as it is without being subjected to cross-examination gives rise to strong and grave suspicion for presuming that the accused has committed the offence. Now, we propose to examine the present case in light of the above principles.

15. The perusal of charge-sheet would reveal that prior approval of the Additional Commissioner of Police, North Region, Nagpur to register crime for involving provisions of the MCOCA has been obtained on 09.06.2017 vide No.82/2017. Having regard to the material collected during the investigation against each of the accused, the Additional Commissioner of Police, Nagpur City applied his mind and on his satisfaction, accorded sanction for

prosecution on 01.11.2017 under Section 23(2) of MCOC Act. Accordingly, the charge-sheet bearing No.130/2017 dated 07.11.2017 came to be filed against five accused namely 1. Dilip Shivdas Gwalbanshi, 2. Ishwar Bapurao Supretkar, 3. Ignashas alias Anthony alias Nilu John Swamy, 4. Prem Chunnilal Yadav and 5. Rahul alias Pappu Ramashri Yadav, all resident of Nagpur, before the Special Court for the offence punishable under Sections 143, 341, 352, 387, 420 read with Section 149 of Indian Penal Code and Section 3 (1)(2)(5) of MCOC Act, 1999. Based on this charge-sheet, Special MCOC Case No.01/2018 came to be registered.

16. The present appellant/accused no.4 filed an application seeking his discharge before the Special Court, Nagpur vide application dated 04.08.2018 below Exhibit – 5. The discharge is sought on the ground that the provisions of MCOC Act have been wrongly invoked against the appellant as the allegations made against him are not sufficient to attract the provisions of MCOC Act, inasmuch as the appellant is not shown to be involved in the continuing unlawful activity either as a member of organized crime syndicate or on behalf of such

syndicate. It is also stated that in order to prosecute the appellant under MCOC Act, the prosecution must show that the previously registered offence must have some commonness with the offence which is sought to be treated as an organized crime. It is stated that in the case of the appellant it is an admitted fact that one charge-sheet which was filed against the appellant was in his individual capacity sans commonness with the offence which is sought to be treated as an organized crime.

17. The application below Exhibit- 5 came to be rejected by the learned Special Judge on the ground that the present appellant is clearly shown to be an active and continuing member of unlawful activity along with Dilip Shivdas Gwalwanshi. The learned Special Judge recorded that though the name of the appellant is not appearing in the F.IR. dated 03.05.2017, however, the detailed statements of the witnesses including the informant recorded thereafter, reflect the name of the present appellant as a member of the crime syndicate. The learned Special Judge also recorded that the appellant is shown to have been present on the spot and abetted the crime, which was committed by the main accused – Dilip Shivdas Gwalwanshi. This impugned order is

challenged in this appeal.

18. Before proceeding to consider the rival contentions, it would be appropriate to have a glance at the background in which the Act of 1999 came to be enacted. The MCOC Act was enacted, being felt expedient to make special provision for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang, or for matter connected therewith or incidental thereto. “Organized crime syndicate” is defined in Section 2(1)(f) of the MCOC Act, which means a group of two or more persons, who acting either singly or collectively, as a syndicate or gang indulged in an activity of organized crime.

19. “Organized crime” is further defined in Section (2)(1)(e) of the MCOC Act which 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.

20. “Continuing unlawful activity” is further defined in Section (2)(1)(d) of the MCOC Act which means an activity prohibited by law for the time being n 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-sheet have been filed before a competent Court within preceding period of ten years and that Court has taken cognizance of such offence.

21. An offence falling within the definition of ‘organized crime’ and committed by an ‘organized crime syndicate’ is the offence contemplated by the statement of Objects and Reasons. An organized crime means any ‘continuing unlawful activity’ undertaken by a person either singly or jointly as a member of an organized syndicate or on behalf of the crime syndicate in respect of which more than one charge-sheet has been filed preceding a period of ten years and the Court has taken cognizance of such offence.

22. A conjoint reading of definitions of these three terms i.e. ‘organized crime’, ‘organized crime syndicate’ and ‘continuing

unlawful activity' it is unambiguous that for invoking the provisions of MCOC Act, against an accused, it is necessary to show that the accused has indulged in;

(i) an activity, which is prohibited by law,

(ii) which is a cognizable offence punishable with imprisonment for three years or more,

(iii) undertaken either singly or jointly,

(iv) as a member of organized crime syndicate or on behalf of such syndicate,

(v) in respect of similar activities of the syndicate, more than one charge-sheets have been filed before the competent Court,

(vi) and the cognizance has been taken of such activity (offence)

(vii) the 'activity' as contemplated under the MCOC Act means use of violence or threat of violence or intimidation or coercion, or other unlawful means,

(viii) with the object of (a) gaining pecuniary benefits (b) or gaining undue economic or other advantage for himself or any other person,

(ix) or with the object of promoting insurgency.

23. Interestingly, there are several offences defined and punishable under the Indian Penal Code and other Special Statutes. However, the 'activity' as contemplated under the provisions of MCOC Act, is with respect to the activity/offence

involving use of violence or threat of violence or intimidation or coercion, or other unlawful means with the object of gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person. Such offence/activity shall be a cognizable offence punishable with imprisonment for three years more. Such activity/offence has to be undertaken by the member of the organized crime syndicate or on behalf of the syndicate either singly or jointly. And finally, in respect of similar activities of such syndicate, more than one charge-sheets have been filed before the competent Court.

24. In the instant case, the appellant amongst other accused is charge-sheeted for the offence punishable under Section 3(1)(2)(5) of the MCOC Act. In order to examine as to whether the allegations against the appellant in the present crime fall within the ambit of Section 3 of the MCOC Act, it would be apposite to see the text of Section 3 of the Act, which is reproduced below:

> *"3. Punishment for organised crime*
>
> *(1) Whoever commits an offence of organised crime shall,—*
>
> *(i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be*

liable to a fine, subject to a minimum fine of rupees one lac;

(ii) in any other case, be punishable 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 a fine, subject to a minimum fine of rupees five lacs.

(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(3) Whoever harbours or conceals or attempts to harbour or conceal, any member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extent to imprisonment for life, and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(4) Any person who is a member of an organised crime syndicate shall be punishable 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 a fine, subject to a minimum fine of rupees five lacs.

(5) Whoever holds any property derived or obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs."

25. Precisely, Section 3(1) contemplates punishment for the substantive offence of 'organized crime'.

Section 3(2) provides punishment for conspiracy or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime.

Section 3(3) provides punishment for harboring or concealing or attempts to harbor or conceal, any member of crime syndicate.

Section 3(4) provides punishment for being a member of an organised crime syndicate.

Section 3(5) provides punishment for holding any property derived or obtained from commission of an organised crime or through the organised crime syndicate funds.

26. Having regard to the facts of this case, it is necessary to see the definition of the term 'abet'. The MCOC Act does specifically define the term 'abet' and it does not relegate to the definition of 'abetment' under IPC. As per Section 2(1)(a) of the Act the term "abet" *inter alia* includes 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 or rendering of any assistance, whether financial or otherwise, to the organised crime syndicate. For ready reference Section 2(1)(a) of the Act is reproduced below:

> *"(a) "abet", with its grammatical variations and cognate expression, 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 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) the rendering of any assistance, whether financial or otherwise, to the organised crime syndicate;"*

27. Now coming to the facts of the present case, the material collected during the investigation and found a place in the charge sheet, *prima facie* indicates that the group leader Dilip Shivdas Gwalwanshi and his associates are running an organized crime syndicate to forcibly grab the immovable properties of

others, ultimately for pecuniary benefits. It appears that the members of the syndicate are involved in the use of violence, intimidation, and other coercive means. It appears that multiple charge sheets have been filed against the syndicate during the preceding period of 10 years indicating their involvement as members of the crime syndicate. In all these charge sheets, at least accused no.1 Dilip Shivdas Gwalwanshi is shown as the common active member. The charge-sheet also states that the accused in commonality have mostly committed offences in order to grab immovable properties/real estate and have established themselves to be land mafia in the concerned area of Nagpur City. The charge sheet reveals the following data of charge sheets have been filed against the members of the syndicate.

1. Accused No. 1 and 2 ------3 charge sheets
2. Accused No. 1 and 3 ------9 charge sheets
3. Accused No. 1, 2, 3 -------3 charge sheets
4. Accused No. 1, 3, 5 ------ 1 charge sheet
5. Accused No. 1 to 5 ------- present charge-sheet

The Charge sheet further reveals the following data showing the number of charge sheets filed individually against the accused.

1. Accused No. 1 -------------11 charge sheets
2. Accused No. 2 ------------- 05 charge sheets
3. Accused No. 3 ------------- 09 charge sheets
4. Accused No. 4 -------------01 charge sheet
5. Accused No. 5 -------------01 charge sheet

28. So far as the present appellant is concerned, the above data reveals that during the investigation, the police could not find any charge-sheet filed against him as a member of the organized crime syndicate or on behalf of such syndicate having Dilip Shivadas Gwalwanshi as its leader during the period of preceding 10 years. One charge-sheet which was allegedly filed against the appellant, was filed in his individual capacity, having no nexus with the offence which is sought to be treated as an organized crime. However, there appears material against him in the present crime, showing his presence along with other members of the gang on the spot and intimidating and extorting

the complainant and witnesses, who are the plot owners of Tawakkal Society. Much emphasis has been laid by Shri. Mardikar about the absence of the name of the appellant in the FIR. It is difficult to accept this argument inasmuch as the Charge Sheet reveals that, the complainant, later on, mustered courage and stated the name of the appellant, for being present on the spot with the other members of the syndicate.

29. It is alleged that the appellant along with other active members of the syndicate obstructed the way of the complainant and the persons accompanied him and extended threats of life and demanded Rs.3,00,000/-from each of them if they want to come to their plots again. It is also alleged that the syndicate including the appellant projected Dilip Gwalwanshi as the owner of the plots of Tawwakkal Society and allowed the poor people to use the lands of the plots of the complainant and the witnesses for construction of their hutments by taking 10 to 20 thousands from each of them.

30. In this context, the Hon'ble Apex Court in the case of Ranjitsingh Bramhajeetsing Sharma (*supra*) has held that in order

to invoke MCOCA even if a person may or may not have any direct role to play as regards the commission of an organised crime, if a nexus either with an accused who is a member of an "organised crime syndicate" or with the offence in the nature of an "organised crime" is established that would attract the invocation of Section 3(2) of MCOCA. Their Lordships in this case further observed that even if one may not have any direct role to play relating to the commission of an "organised crime", but when the nexus of such person with an accused who is a member of the "organised crime syndicate" or such nexus is related to the offence in the nature of "organised crime" is established by showing his involvement with the accused or the offence in the nature of such "organised crime", that by itself would attract the provisions of MCOCA.

31. In the case in hand, as stated earlier, the appellant is allegedly present on the spot along with other co-accused who are members of the gang/syndicate including its leader Dilip Gwalwanshi and threatening, intimidating, and extorting by use of violence the complainant and witnesses, who are the plot owners of Tawakkal Society. It is also alleged that the members of the gang including the appellant allowed the poor people to construct

their hutments on the plots of the complainant and the witnesses by taking pecuniary benefits from them. There are statements of witnesses and confessional statements of the accused demonstrating the aforesaid allegations. There is material in the charge-sheet showing huge unaccountable immovable properties in the name of accused No. 1-Dilip Gwalwanshi. At this stage, it can safely be inferred that for proceeding further in the trial against the appellant, there is *prima facie* material in the chargesheet showing his nexus with the members of the gang/syndicate and was assisting, abetting or facilitating or attempting or advocating the commission of an organized crime.

32. In the context of the submission of Shri. Mardikar with regard to absence of material in the charge-sheet against the appellant for ‘continuing unlawful activities’, i.e. filing of more than one charge sheet, the Hon’ble Apex Court, recently, in ***Kavitha Lankesh*** (*supra*), made the position of law clear and held that for the latter category of the offence punishable under Section 3(2), 3(3) or 3(4) of MCOC Act, it is not essential that more than two charge-sheets have been filed against the persons so named, before a competent Court within a preceding period of

ten years and that Court had taken cognizance of the offence. It is further observed that the requirement applies essentially to an offence punishable only under Section 3(1) of the Karnataka Control of Organized Crime Act of 2000.

33. It is worthwhile to note that provisions of Maharashtra Control of Organized Crime Act, 1999 are in *para-materia* with the provisions of Karnatka Control of Organized Crime Act, 2000.

34. The authorities cited by Shri. Mardikar in support of his submissions, in the cases of ***Ranjitsingh, Lalit Nagpal*** and ***Prasad Shrikant Purohit*** (*supra*), have been referred to by the Apex Court in ***Kavitha Lankesh*** (*supra*) and clarified the position that requirement of more than one charge-sheets is in reference to the continuing unlawful activities of the organized crime syndicate and not qua individual member in their individual capacity having no nexus with the syndicate. Moreover, in our opinion, Lalit Nagpal's case would not be applicable to the issue involved in the present case. In that case, the issue whether the words "more than one chargesheet" referred to the unlawful activities of an organised crime syndicate or to the individual members was neither raised nor canvassed.

35. In the case of ***Mahipal Singh v. CBI*** (*supra*) relied on by Shri. Mardikar, the Apex Court held that "*the procedural requirement for prosecution of a person for an offence can later on be satisfied but ingredients constituting the offence must exist on the date the crime is committed or detected. Submission of charge-sheets in more than one case and taking cognizance in such number of cases are ingredients of the offence and have to be satisfied on the date the crime was committed or came to be known".* There is no doubt about this proposition and it is based on the constitutional principle of protection against *ex post facto law.*

36. The ratio in the case of ***Deepak Mankar*** (*supra*), however, relied on by Shri. Mardikar, would not be of any assistance to the appellant. In Deepak Mankar, the Division Bench of this Court while examining the issue about legality of prior approval granted under Section 23(1)(a) of the Act, for grant of interim bail to the accused, prima facie observed that the authority has not considered the fact that the petitioners therein were shown accused only in one of the crimes, therefore, the provisions of MCOCA have been wrongly invoked by the

Additional Commissioner of Police while granting approval against the petitioners and in the circumstances, this Court granted the interim relief in the nature of bail. However, the Hon'ble Apex Court in the case of ***Kavitha Lankesh*** (*supra*) in para 27 has clarified that the prior approval is qua offence and not the offender and therefore, the competent authority is not required to wade through the material placed by the Investigating Agency before him along with the proposal for grant of prior approval to ascertain the specific role of each accused. The competent authority has to focus essentially on the factum whether the information/material reveals the commission of a crime which is an organized crime committed by the organized crime syndicate.

37. Shri Mardikar, learned senior counsel, to pursuade this Court to hold that the role attributed to the appellant in the charge-sheet is not sufficient to invoke provisions of MCOCA, invited our attention to the order of bail granted to the appellant by the learned Single Bench of this Court on 21/08/2021 in Criminal Application (BA) No. 436/2021. In our opinion, the reliance of Shri Mardikar on the observations of learned Single Judge in deciding the appellant's bail application is misplaced as it

is well settled that the considerations for grant or denial of bail are entirely different from the considerations for deciding discharge application (See: **Kawalnayan** (*supra)).*

38. In the background of the above discussion, in our considered view, no case is made out to interfere with the impugned Order. The appeal will have to be dismissed. Our observations are only prima facie and therefore need not influence the conclusion after evidence is led by the parties. There shall be no order for costs.

(PUSHPA V. GANEDIWALA, J.) **(M.S. SONAK, J.)**

Wagh