

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

CRIMINAL WRIT PETITION NO. 667 OF 2020

Abhishek S/o. Ashutosh Singh,
Aged about 28 years, Occ. Business,
R/o. Aditya Heritage Apartment,
Nelson Sq., Rajnagar,
Nagpur-440010.

. . . **PETITIONER**

..VERSUS..

1. The State of Maharashtra through
Additional Director General of Police &
Commissioner of Police,
Nagpur City.
2. The Additional Commissioner of
Police (Crime), Crime Branch,
Nagpur City.
3. The Assistant Commissioner of Police,
Crime Branch, Nagpur City.
4. The Police Station, Crime Branch,
Nagpur City.
5. The Police Station Officer,
Police Station Sadar,
Nagpur City.

. . . **RESPONDENTS**

Shri S. K. Mishra, Senior Advocate a/w. Shri Kaustubh Deogade,
Advocate for the petitioner.
Shri T. A. Mirza, A.P. P. for respondents/State.

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

DATED:- 16.12.2021

JUDGMENT (PER: M. S. SONAK, J.):-

1. Heard Shri S. K. Mishra, learned Senior Advocate a/w. Shri Kaustubh Deogade, counsel for the petitioner, and Shri T. A. Mirza learned A.P.P for respondents/State.

2. Rule. The rule is made returnable forthwith at the request and with the consent of the learned counsel for the parties.

3. This petition challenges the sanction order dated 05.11.2020 made by Additional Director General of Police and Commissioner of Police, Nagpur City under Section 23(2) of the Maharashtra Control of Organised Crime Act, 1999 (the said Act) in Crime No. 251/2020 registered by P.S.O. Sadar for the offense under Section 363, 364-A 384, 386, 387, 397, 504 and 506-B of the Indian Penal Code r/w. Section 4/25 of Arms Act r/w. Section 3(1)(i)(ii)(II), (2) and (4) of the MCOC Act.

4. Mr. Mishra, learned Senior Advocate for the petitioner with clinical precision urged that in absence of any satisfaction specifically recorded by the Additional Director General of Police in terms of Section 2(f) of the said Act about the existence of 'organized crime syndicate', the mere satisfaction about the alleged existence of the essential ingredients of Section 2(d) of the said Act, which defines "continuing unlawful activities" and Section 2(e) which defines

“organized crime” is quite insufficient. He submits that the definitions in Section 2(d) and 2(e) of the said Act essentially pre-suppose the existence of an ‘organized crime syndicate’ as defined by Section 2(f) of the said Act. Therefore, unless this vital predicate is fulfilled, there is no question the Additional Director General of Police granting sanction in terms of Section 23(2) of the said Act. He refers to our decision in ***Prem S/o. Chunnilal Yadav Vs. State of Maharashtra*** (Criminal Appeal No. 418/2020, decided on 09.12.2021) to submit that even we have not taken any view different from the one now canvassed by him. He, therefore, urged that the impugned order is *ultra-vires* and warrants interference.

5. Shri Mirza, learned A.P.P. focused on the following portion of the impugned sanction order dated 05.11.2020 to submit that it is not correct to say that the sanction order has not recorded any satisfaction whatsoever about the existence of an organized crime syndicate as defined under Section 2(f) of the said Act:-

“Thus in view of forgoing observations, I am satisfied that all the essential ingredients of the MCOCA particularly of section 2(d) and (e) are fulfilled and this is a fit case to grant Previous sanction for prosecution. Hence, I grant Previous sanction under section 23(2) of MCOCA to file charge sheet in special Court, crime No. 251/2020 of Sadar Police Station u/s. 363, 364-A, 384, 386, 387, 397, 504, 506-B of IPC r/w. Sec. 4/25 of Arms Act r/w. Section 3(1)(i)(ii), 3(2) and 3(4)(5) of MCOCA, against:-

1.

2.

3.

4.

5. *Abhishek Singh S/o. Ashutosh Singh, aged about 28 years, Resident of Aditya Heritage, Nelson Chowk, Chhaoni, Sadar, Nagpur (P. S. Sadar)*

6.

The I.O. to comply with the requirement of section 10 of MCOCA Act. Previous Sanction order be accordingly drawn.”

6. Shri Mirza, learned A.P.P. for the state submits that on a reading of the impugned order dated 05.11.2020 in its entirety, it is quite clear that the sanctioning authority has applied its mind to the existence of organized crime syndicate and recorded the necessary satisfaction in terms of Section 2(f) of the said Act. He submits that in this case, there is ample material on record which not only establishes the existence of an organized crime syndicate but, further that the accused nos. 1 to 6, which includes the petitioner herein (accused no. 5) are the members of such syndicate and have jointly and singly committed the serious and violent offenses for pecuniary benefits. He further submits that there is no infirmity in the impugned sanction order and most of the issues raised by the petitioner in this petition are covered by our decision in ***Prem Yadav*** (supra). Shri Mirza, therefore submits that this petition may be dismissed.

7. The rival contentions now fall for our determination.

8. The impugned sanction order dated 05.11.2020 issued under Section 23(2) of the said Act pertains to six accused persons including the present petitioner. The impugned order records that the sanctioning authority has gone through the file notings of *crime syndicate chart*, proposal sent by A.C.P. Nandanwar, Crime Branch in Crime No. 251/2020 of Sadar P.S. and the investigation papers. The impugned sanction order then records that on detailed perusal of such material it was revealed that since the year 2012, the team leader Roshan Shaikh and five other accused persons including the petitioner herein, either singly or jointly have been involved in several offenses under Chapter XVI and XVII of the Indian Penal Code and the Arms Act. There is a particular reference to the petitioner being involved in the offenses under the Arms Act amongst others.

9. The impugned sanction order records that preventive action has been taken against the team leader and the petitioner herein but this has not deterred them from continuing to indulge in such heinous offenses mainly for pecuniary and other benefits. The impugned sanction order then refers to not less than nine offenses concerning the team leader, the details of which were annexed as Annexure-A. There is a reference to yet another chart at Annexure-B indicating the charge sheets jointly filed in respect of the *crime syndicate* that includes the team leader, the petitioner, and some other

persons of this syndicate. There is a reference to the preventive action taken against the team leader and details have been set out in chart-C.

10. The impugned sanction order, in the context of the petitioner, sets out the following.

*“The Accused No. 5 Abhishek has committed total 7 offences, out of which, he has committed 3 offences **jointly with Team Leader** i.e. crime No. 482/15 of Nandanwan P. S., Crime No. 196/16 Sitaburdi P. S. and crime No. 83/17 Sitaburdi and one offence **jointly with their present crime syndicate**. The accused no. 5 has committed remaining 2 offences U/s. 307 of IPC of Burdi P.S. **with other different members of their crime syndicate** and one offence under Section 4/25 of Arms Act of Ambazari P. S. **with other different members of their crime syndicate** and charge sheets have been filed in all above cases against the accused No.5. The accused No. 5 had obtained Anticipatory Bail on registration of present FIR and after application of the MCOCA he is absconding. The chart showing total 7 offences committed by the accused No. 5 is annexed herewith as Chart-F*

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*It is further revealed that the Preventive action also has been taken against Team Leader and accused No. 5 Abhishek, but in vain. Offences under Arms Act are also found registered **against the Team Leader and accused No. 5** and 6 but could not deter them from committing such offences for pecuniary benefit. It is thus appears that there is fulfillment of the essential ingredients of the section 2(d) and (e) of the MCOCA.”*

11. The impugned sanction order then refers to the evidence collected in relation to the present offense that includes *inter alia*

confession, seizure of mobile phones and data therein, seizure of car that one of the accused persons sold; recovery statements, pen drives, voice samples, knives, details of bank transactions, digital evidence in the form of CDR and SDR, statement of eye-witnesses and an identity parade. Based on all these, the sanctioning authority has opined that there is sufficient evidence against the crime syndicate and the accused persons including the petitioner are part of this organized crime syndicate i.e. involved in the present offense.

12. The impugned sanction order, most importantly records the following satisfaction:-

“I am satisfied that the accused No. 1 to 6 are members of an “Organized crime syndicate” and have jointly and singly committed serious and violent offences for pecuniary benefit. I am satisfied that the Team leader Roshan Sheikh and above named other co-accused No. 2 to 6 in the present crime No. 251/2020 of Sadar P. S., are involved in “Continuing Unlawful Activity”, defined in section 2(1)(d) and (e) of MCOC i.e. they are indulging in use of violence, threats of violence, intimidation to gain pecuniary benefit or undue economic or other advantage for themselves or any other person, by committing cognizable offences, punishable with imprisonment of 3 years or more, singly or jointly, and also undertaken as members of syndicate, in respect of which more than one charge sheets have been filed in competent Court.”

13. It is only after the record of satisfaction in the aforesaid terms that the sanctioning authority, in terms of Section 23(2) of the

said Act, has proceeded to record further satisfaction in terms of focus by Mr. Mishra, learned Senior Advocate and quoted at para no. 5 of this order. Even the quotation makes it clear that satisfaction about the existence of the essential ingredients is “*in view of the forgoing observations*”. The satisfaction is not restricted to the ingredients of Section 2(d) and 2(e) of the said Act but to the ingredients of the said Act in general though, particular reference may have been made in the above-quoted portion to Section 2(d) and 2(e) of the said Act.

14. Therefore, based upon the reading of only the above-quoted portion, it will not be proper to hold that the sanctioning authority has either not applied its mind and failed to record any satisfaction about the existence of “organized crime syndicate” as defined under Section 2(f) of the said Act or satisfaction that these accused persons including the petitioner herein are a part of or are the members of this organized crime syndicate. The impugned sanction order is to be read in its entirety and based on some truncated portion, no contention can be advanced or at least sustained about any alleged non-application of mind by the sanctioning authority to the requirements of Section 2(f) of the said Act. Besides, the contention raised by Mr. Mishra, learned Senior Advocate not only over focusses on the above-quoted portion but tends to completely ignore the specific satisfaction recorded in the impugned sanction order about not only the existence of an organized

crime syndicate in terms of Section 2(f) of the said Act but, also that the accused persons including the petitioner are members of such syndicate and further, have singly or jointly committed serious and violent offenses for pecuniary and other benefits. Therefore, we are satisfied that the impugned sanction order warrants no interference on the ground now urged before us.

15. At the request of Mr. Mishra, learned Senior Advocate, however, we clarify that observations in this order are only *prima facie* and nothing in this order is even remotely intended to either influence or prejudice the trial and merits or to preempt any legitimate defenses that the petitioner may have in the course of such trial.

16. This petition is therefore **dismissed**. The rule is discharged. There shall be no order as to costs.

(PUSHPA V. GANEDIWALA, J.)

(M. S. SONAK, J.)

RR Jaiswal

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