IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 865 OF 2021
with CRIMINAL APPLICATION NO.2215 OF 2021

Mujib Khan s/o Mirza Khan Pathan
Age 57years, Occu. Business,
R/o Indraprasth Colony, Gulshan Nagar,
Balepir, Beed, Tq. And Dist. Beed.
(At present in Judicial Custody) .. **Applicant**

Versus

The State of Maharashtra,
Through Police Station Officer,
Shivajinagar Police Station, Beed
Tq. Dist. Beed .. **Respondent**

.....
Advocate for Applicant : Mr. S.J. Salunke
Advocate/APP for Respondent-State: Mr. G.O. Wattamwar
Advocate for Applicant in Appln/2215/21 : Mr. Menezes Joslyn
.....

AND
BAIL APPLICATION NO. 409 OF 2021
with CRIMINAL APPLICATION NO.2214 OF 2021

Awez Kazi Mukhid Kazi,
Age: 27 yrs, Occu. Labour,
R/o Kazi Nagar, Beed
Tq. And Dist. Beed. .. **Applicant**

Versus

The State of Maharashtra,
(At the instance of Shivajinagar
Police Station, Tq. & Dist. Beed .. **Respondent**

.....

Advocate for Applicant : Mr. Abhaysinh Bhosale
Advocate/APP for Respondent-State: Mr. G.O. Wattamwar
Advocate for Applicant in Appln/2214/21 : Mr. Menezes Joslyn

.....

AND

BAIL APPLICATION NO. 381 OF 2021
with CRIMINAL APPLICATION NO.2209 OF 2021

Sayyed Naser Sayyed Noor,
Age: 30 years, Occu. Labour,
R/o Bharatbhushan Nagar,
Balepeer, Beed. .. **Applicant**

Versus

The State of Maharashtra .. **Respondent**

.....

Advocate for Applicant : Mr. Joydeep Chatterji
Advocate/APP for Respondent-State: Mr. G.O. Wattamwar
Advocate for Applicant in Appln/2214/21 : Mr. Menezes Joslyn

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CORAM : M.G. SEWLIKAR, J.

RESERVED ON: 22nd December, 2021
PRONOUNCED ON: 20th January, 2022

ORDER :-

All these applications can be disposed of by common order as they arise out of the same crime.

2. Facts leading to these applications in narrow compass can be stated as under:

3. Informant is the brother of the deceased-Sayyed Sajed Ali. On 26th September, 2013 accused-Anwar Khan alias Gujjar Khan s/o Mirza Khan had demanded ransom from deceased-Sayyed Sajed Ali. Deceased-Sayyed Sajed Ali did not give ransom, as a result of which accused-Anwar Khan alias Gujjar Khan assaulted the deceased and had attempted to commit his murder. Deceased-Sayyed Sajed Ali lodged a complaint with the police on account of this incident with Shivajinagar Police Station. Accused-Anwar Khan alias Gujjar Khan used to threaten deceased-Sayyed Sajed Ali, informant and her sister-Sayyed Bashirunnisa Begum to withdraw the case against accused-Anwar Khan alias Gujjar Khan.

4. It is further alleged in the FIR that on 19th September, 2019 between 2.30 pm and 3.00 pm deceased-Sayed Sajed Ali was sitting in the hotel of Usman Bhai. Informant was standing near a pan shop. At that very moment accused-Anwar Khan alias Gujjar Khan, accused-Sayyed Naser Sayyed Noor, Sayyed Shahrukh Sayyed Noor, accused-Ubed, accused-Shaikh Sarfaraz @ Saru Don, accused-Imran Pathan, accused-Pathan Mujib Khan Mirza Khan, Shaikh Shahbaz Shaikh Kalim, Shaikh Amar Shaikh Akbar, Shaikh Babar Shaikh Yusuf, Awez Kazi, Shaikh Imran @ Kala Imran Shaikh, Shaikh Mazhar @ Half Murder Shaikh Rahim along with four to five unknown persons came

there. Accused-Anwar Khan was armed with a revolver and was armed with a dangerous weapon called kukri, accused Sayyed Naser was also armed with kukri, accused-Sayyed Shahrukh and Ubed were armed with sickle. Shaikh Sarfaraz was armed with sword, Shaikh Imran was armed with sickle. Mujib Khan was armed with sickle, Shaikh Shahbaz was armed with kukri, Shaikh Amar was armed with kukri, Shaikh Babar was armed with sickle, Awez Kazi was armed with pipe, Shaikh Imran @ Kala Imran was armed with iron pipe, Shaikh Mazhar @ Half Murder was armed with wooden rod. They assaulted deceased-Sayyed Sajed Ali on chest, throat and hand by means of the weapons armed with them. All of them fled in their respective vehicles from the spot. Informant shifted the deceased to the hospital. He was pronounced dead on arrival. On these allegations FIR came to be lodged on the basis of which offence under Section 302, 120-B, 143, 147, 149, 195(A), 201, 212, 384, 385 of the I.P.C. and under Section 3/25, 4/25 of the Indian Arms Act and under Section 37(1)(3)/135 of Maharashtra Police Act and under Section, 3(1)(i), 3(2), 3(4), 3(5) of MCOCA Act and under Section 7 of Criminal Law Amendment Act came to be lodged against all the accused.

5. Bail Application No.865/2021 is preferred by accused-Mujib Khan s/o Mirza Khan Pathan, Bail Application No.409/2021 is preferred by Awez Kazi and Bail Application No.381/2021 is preferred by Sayyed Naser. After

registration of the offence vide communication dated 1st February, 2020 sanction was sought for applying the Maharashtra Control of Organised Crime Act (for short the 'MCOC' Act) against the accused and the applicants herein. Vide order dated 12.02.2020 Additional Commissioner of Police accorded sanction for applying MCOC Act to the applicants and other accused.

6. I have heard learned counsel Shri S.J. Salunke for the applicant in bail application no.865/2021, Shri Bhosle learned counsel for the applicant in bail application no.409/2021, learned counsel Shri Chatterji for the applicant in bail application no.381/2021, learned APP Shri Wattamwar for the State and Shri Menezes Joslyn learned counsel assisting the APP.

7. Learned counsel Shri Salunke and Shri Bhosle submitted that there is no evidence to invoke MCOC Act in the present case. For invoking the provisions of MCOC Act there has to be evidence to show that there exists organised crime syndicate and there is continuous unlawful activity and the said continuous unlawful activity was for the purpose of gaining economic advantage, promoting insurgency, pecuniary advantage or other advantage. The offence registered against the applicants do not indicate that they are members of organised crime syndicate. They further submitted that so far as accused-Mujib Khan Pathan and Awez Kazi are concerned only general allegations are made. It is vaguely alleged that all the accused including Awez

Kazi and Mujb Khan Pathan assaulted the deceased. No specific role is attributed to any of the accused.

8. Learned counsel Shri Bhosle for applicant in bail application no.409/2021 submitted that only one charge-sheet is filed against applicant-Awez Kazi. He submitted that to invoke provisions of MCOC Act the quintessential requirement is that more than one charge-sheet ought to have been fixed against the said accused and cognizance of it ought to have been taken. He submitted that in case of applicant-Awez Kazi one offence was registered prior to registration of current offence. However, charge-sheet came to be filed after the registration of the current offence. He submitted that, therefore, provisions of MCOC Act cannot be invoked in case of accused-Awez Kazi. Both the learned counsel placed reliance on the following cases:

1) **Mahipal Singh V/s. CBI & Anr; 2014 (11) SCC 282**
2) **State of Maharashtra & Ors. V/s. Lalit Somdatta Nagpal & Anr.; 2007 (4) SCC 171**
3) **State of Maharashtra V/s. Shiva @ Shivaji Ramaji Sonawane & Ors; 2015 (14) SCC 272**
4) **Prasad Shankar Purohit V/s. State of Maharashtra (Cri. Appeal No.1969-1970/2010)**
5) **Sk. Mehmood Sk. Mehboob V/s. State of Maharashtra; 2015 ALL MR (Cri.) 3124**

9. Learned counsel for the applicant Shri Chatterji in bail application no.381/2021 submitted that applicant-Sayyed Naser Sayyed Noor was not present at the spot of the incident. Even before the day of the incident he was admitted in hospital at Hyderabad. He submitted that in the bail application before the Court of Additional Sessions Judge applicant Sayyed Naser had made an application contending therein that he was present at the spot of the incident and he was admitted in the hospital even before the date of the incident. He submitted that learned Additional Sessions Judge directed the Investigating Officer to submit his report. The Investigating Officer recorded statements of the concerned persons and produced those statement before the concerned Court. He submitted that this clearly shows that Sayyed Naser was not present at the spot of the incident. He has been falsely implicated in this offence. He further submitted that MCOC Act cannot be applied for want of continuing unlawful activity and that applicant is not the member of the organised crime syndicate. He placed reliance on the case of **Jummi & Ors. V/s. State of Haryana; 2014 (11) SCC 355**.

10. Learned APP Shri Wattamwar submitted that in order to invoke provisions of MCOC Act requirement of filing of two charge-sheets is against organised crime syndicate. Section 3 of MCOC Act requires and mandates that pendency of two charge-sheets and cognizance having been taken by the

competent courts are the essential conditions. But these essential conditions apply only to organized crime syndicate. These conditions do not apply to an individual accused. He submitted that the organised crime syndicate may go on changing its members, therefore, once there is evidence to show that there was an organised crime syndicate and more than one charge-sheets are pending against organised crime syndicate and cognizance of those charge-sheets has been taken is the only requirement. In such a case when there is evidence of organised crime syndicate requirement of more than one charge-sheet against an individual accused is insignificant. Only requirement is whether he is a member of the organised crime syndicate. He submitted that in the case at hand, Awez Kazi is an accused against whom only one offence was registered. This offence no.219/19 is registered with Beed Rural Police Station. However, charge-sheet came to be submitted after registration of offence in the present crime. He submitted that in the case at hand, there is evidence to show that accused-Anwar Khan @ Gujjar Khan is the leader of the gang. He has formed organised syndicate and commits offences, therefore, mere registration of offence against accused-Awez Kazi is sufficient to invoke provisions of MCOC Act.

11. Shri Joslyn adopted the arguments of learned APP. Learned APP placed reliance on the following authorities.

1. **Ranjitsing Bramajeetsingh Sharma; MANU/SC/0268/2005**
2. **Kavitha Lankesh Vs. State of Karnataka; MANU/SC/0945/2021**
3. **Govind Sakharam Ubhe V/s. The State of Maharashtra; MANU/MH/0427/2009**
4. **Prem Chunnilal Yadav (Gwalwanshi) Cri. Appeal/418/2020**
5. **Digvijay Saroha; MANU/DE/3188/2019**

12. Learned counsel Joslyin Menezes placed reliance on the following authorities:

1. **Sachin Bansilal Ghaiwal; Criminal Appeal No.25/2014**
2. **Subhash s/o Mohan Pawar; BA/850/2020**
3. **Kaluram Chaudhary; (2016) 2 AIR BOMR (Cri.) 270**

13. I have given thoughtful considerations to the submissions of the learned counsel. Before embarking on the inquiry, certain definitions will have to be looked into. Section 2(d) of MCOC Act defines continuing unlawful activity, Section 2(e) defines organised crime, Section 2 (f) defines organised crime syndicate.

Sections 2(d) (e) (f) of MCOC Act are as under:

d) "continuing unlawful activity" means an activity prohibited bylaw 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 filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence ;

(e) "organised crime" 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;

(f) "organised crime syndicate"means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime ;

14. In order to invoke the provisions of MCOC Act it has to be established that there was continuing unlawful activity. In the case of **Govind Sakharam Ubhe** cited (supra) following prepositions have been laid down:

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."*

15. From the submissions of the learned counsel the question that is posed for determination before this Court is whether for invoking MCOCA pendency of more than one charge-sheet against an individual or against organised crime syndicate is an essential requirement. For deciding this question certain facts will have to be looked into.

16. According to the prosecution accused Anwar Khan @ Gujjar Khan is the leader of the gang. Several offences are registered against him. He has formed a gang and he has committed several offences as a leader of the gang and applicant-Sayyed Naser, applicant-Mujib Khan and applicant-Awez Kazi are the members of the gang. Prosecution has given the chart indicating crimes committed by accused Anwar Khan @ Gujjar Khan and the members of his gang. According to the prosecution, there is a continuing unlawful activity and in all twelve offences are registered against Anwar Khan @ Gujjar Khan and the members of his gang. So far as applicant-Mujib Khan and applicant Awez Kazi are concerned current offence is the only offence registered against them. Details of the crime committed by the accused-Anwar Khan @ Gujjar Khan are re-produced below in a tabulated form:

Sr. No.	*Police station*	*Crime No.*	*Sections*	*Name of accused*	*Present status of the case*
1.	MIDC Police Station Paithan, District, Aurangabad	13/2020	399, 353, 307, 402 of IPC & u/s 4, 7/25 of Arms Act	Anwar Khan Mirza Khan and 17 others	Sessions Case No.106/2011 pending
2.	Shivaji Nagar Police Station, Beed	248/2010	452, 324, 323, 504 506, 34	1. Shaikh Amar Sk. Akbar, 2. Shaikh Adhar Sk. Akbar	RCC No. No.307/2011 pending
3.	Shivaji Nagar Police Station, Beed	161/2013	307, 395, 326, 384, 341, 323, 147, 148 of IPC & u/c 3/25 of Arms Act	Anwar Khan @ Gujjar Khan and 8 others	RCC No. 144/2014 pending
4.	Ambejogai City Police Station	40/2014	143, 144, 147, 148, 307 of IPC & u/s 4/25 of Arms Act	Layak Ali and 4 others	Sessions Case No. 80/2014 pending
5.	Beed City Police Station	83/2015	364(a), 120-B, 211, 506, 34 of IPC	Anwar Khan @ Gujjar Khan and 5 others	Sessions Case No. 78/2019 pending
6.	Sadar Bazar Police Station, Jalna	292/2015	399, 401, 402, 116 of IPC & u/s 4/25 of Arms Act	Anwar Khan @ Gujjar Khan and 6 others	RCC No.270/2016 pending
7.	Shivaji Nagar Police Station, Beed	509/2018	394, 323, 504, 506, 34 of IPC	Anwar Khan @ Gujjar Khan and 3 others	RCC No. 65/2019 pending
8.	Beed City Police Station	164/2018	506, 34 of IPC & u/s3/25 of Arms Act	Anwar Khan @ Gujjar Khan and 2 Others	RCC No. 99/2019 pending

9.	Parli City Police Station, District Beed	109/2013	3/25 of Arms Act & u/s 135of Mah. Pol. Act	Shaikh Sadek Sk. Hamid and 3 others	RCC No. 80/2015 pending
10.	Beed Rural Police Station, District Beed	219/2019	397, 307, 386, 34 of IPC & u/s 4/25 of Arms Act	Anwar Khan @ Gujjar Khan and 9 others	Pending police investigation
11.	Shivaji Nagar Police Station, Beed	353/2019	392, 34 of IPC	Anwar Khan @ Gujjar Khan and 3 others	Pending police investigation
12.	Shivaji Nagar Police Station, Beed	403/2019	302, 120-B, 143, 147, 149, 201, 212, 195-A of IPC & u/s 3/25, 4/25 of Arms Act & u/s 135 of Mah. Pol. Act	Anwar Khan @ Gujjar Khan and 17 others	Pending police investigation

17. This chart shows that as a gang leader nine offences are registered against him. If names of the accused are perused the names those figure in more than one crime are Shaikh Shahbaz Shaikh Kalim, Shaikh Amar Shaikh Akbar, Sayyed Naser Sayyed Noor (applicant), Shaikh Mazhar Shaikh Rahim, Shaikh Ubed and Sayyed Shahrukh Sayyed Noor. This clearly shows that accused has formed a gang. The offences registered against him are under Section 394 (Robbery), section 395 (Dacoity), 364-A (Kidnapping for ransom). These offences are registered during the period from 2010 to 2019. Almost in every year one offence is registered against Anwar Khan @ Gujjar Khan being the leader of the gang. From this, it appears that accused-Anwar

Khan @ Gujjar Khan is involved in criminal activities prohibited by law, either singly or jointly with the intention of gaining pecuniary, economic advantage or other advantage. Registration of offence in almost every year indicates that there has been a continuing unlawful activity. In almost all the crimes violence has been used by the accused and his gang members. Registration of offences against human body against the gang clearly indicates the use of violence by the accused-Anwar Khan @ Gujjar Khan and his gang.

18. Therefore, there is evidence to indicate that accused-Anwar Khan @ Gujjar Khan runs an organised crime syndicate. The requirement of organised crime syndicate is that there should be continuing unlawful activity by an individual singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate. Another requirement is the use of violence or threat of violence, intimidation or other unlawful means while carrying on these continuing unlawful activity and the object should be gaining pecuniary benefits and gaining undue economic and other advantage or promoting insurgency. Discussion made above clearly shows that there is continuing unlawful activity. Violence is used and it is for gaining pecuniary advantage or economic advantage. Therefore, the essentials of organised crime activity are fulfilled. Therefore, Anwar Khan @ Gujjar Khan is running an organised crime syndicate and all the applicants are the members of the

organised crime syndicate.

19. So far as accused Sayyed Naser is concerned more than two charge-sheets are filed against him i.e. Crime Nos.161/2013, 294/2015, 509/2018, 109/2013, 353/2019 and the current crime.

20. Once it is found that the accused-Anwar Khan @ Gujjar Khan has formed an organised crime syndicate next question that falls for consideration is whether requirements of filing more than one charge-sheet against individual accused is *sine qua non* for invoking the provisions of MCOC Act.

21. As per the submissions of learned counsel for the applicants pendency of more than one charge-sheet and taking cognizance of the offence by the competent courts is an essential factor for invoking the provisions of the MCOC Act. For this purpose they placed reliance on the case of **Mahipal Singh** cited (supra), it has been held as under:

> *"10. We have given our most anxious consideration to the rival submissions and in the light of what we have observed above, the submissions advanced by Mr. Subramaniam commend us. It is trite that to bring an accused within the mischief of the penal provision, ingredients of the offence have to be satisfied on the date the offence was committed. Article 20(1) of the Constitution of India permits conviction of a person for an offence for violation of law in force at the time of commission of the act charged as an offence. In the case in hand, examinations alleged to have been rigged had taken place in January, 2010, June, 2010, November, 2010 and January, 2011 and the date on which the first information reports were registered, more than one charge-sheets were not filed against the accused for the offence of*

specified nature within the preceding period of ten years and further, the court had not taken cognizance in such number of cases. As observed earlier, for punishment for offence of organised crime under Section 3 of MCOCA, the accused is required to be involved in continuing unlawful activity which inter alia provides that more than one charge- sheets have been filed before a competent court within the preceding period of ten years and the court had taken cognizance of such offence. Therefore, in the case in hand, on the date of commission of the offence, all the ingredients to bring the act within Section 3 of MCOCA have not been satisfied. We are conscious of the fact that there may be a case in which on the date of registration of the case, one may not be aware of the fact of charge-sheet and cognizance being taken in more than one case in respect of the offence of specified nature within the preceding period of ten years, but during the course of investigation, if it transpires that such charge-sheets and cognizance have been taken, Section 3 of the MCOCA can be invoked. There may be a case in which the investigating agency does not know exactly the date on which the crime was committed; in our opinion, in such a case the date on which the offence comes to the notice of the investigating agency, the ingredients constituting the offence have to be satisfied. In our opinion, an act which is not an offence on the date of its commission or the date on which it came to be known, cannot be treated as an offence because of certain events taking place later on. We may hasten to add here that there may not be any impediment in complying with the procedural requirement later on in case the ingredients of the offence are satisfied, but satisfying the requirement later on to bring the act within the mischief of penal provision is not permissible. In other words, 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.

11. Now we proceed to apply the principle aforesaid to the facts of the present case. We find that on the date the offence was committed or came to be known, one of the ingredients of the offence, i.e. submission of charge-sheet and cognizance of offence of specified nature in more than one case within the preceding period of ten years, has not been satisfied. Therefore, we have no other option than to hold that the *accused cannot be prosecuted for the offence under Section 3 of MCOCA.”*

22. In the case of **Prasad Shankar Purohit** cited (supra) it has been held as under:

> *“40. Before getting into the nuances of the said definition of 'continuing unlawful activity', it will be worthwhile to get a broad idea of the definition of 'organized crime' under Section 2(1)(e) and 'organized crime syndicate' under Section 2(1)(f). An 'organized crime' should be any 'continuing unlawful activity' either by an individual singly or jointly, either as a member of an 'organized crime syndicate' or on behalf of such syndicate. The main ingredient of the said definition is that such 'continuing unlawful activity' should have been indulged in by use of violence or threat of violence or intimidation or coercion or other unlawful means. Further such violence and other activity should have been indulged in with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. Therefore, an 'organized crime' by nature of violent action indulged in by an individual singly or jointly either as a member of an 'organized crime syndicate' or on behalf of such syndicate should have been either with an object for making pecuniary gains or undue economic or other advantage or for promoting insurgency. If the object was for making pecuniary gains it can be either for himself or for any other person. But we notice for promoting insurgency, there is no such requirement of any personal interest or the interest of any other person or body. The mere indulgence in a violent activity etc. either for pecuniary gain or other advantage or for promoting insurgency as an individual, either singly or jointly as a member of 'organized crime syndicate' or on behalf of a such syndicate would be sufficient for bringing the said activity within the four corners of the definition of 'organized crime'.”*

23. In the case of **Shiva @ Shivaji Ramaji Sonawane & Ors.** cited (supra). In this case the facts were that two gangs were involved in

commission of several crimes constituting continuing unlawful activity. 42 charge-sheets were filed against the gang led by Shiva and 30 charge-sheets were presented against rival gang led by Mehmood Khan Pathan. The incident which took place on 16th March, 2001 led to the invocation of MCOC Act against Shiva @ Shivaji and his companion gangsters as they had beaten up one Sunil Bante and set the shop on fire. In para 8 it has been held as under:

> *"8. It was in the above backdrop that the High Court held that once the respondents had been acquitted for the offence punishable under the IPC and Arms Act in Crimes No.37 and 38 of 2001 and once the Trial Court had recorded an acquittal even for the offence punishable under Section 4 read with Section 25 of the Arms Act in MCOCA Crimes No.1 and 2 of 2002 all that remained incriminating was the filing of charge sheets against the respondents in the past and taking of cognizance by the competent court over a period of ten years prior to the enforcement of the MCOCA. The filing of charge sheets or taking of the cognizance in the same did not, declared the High Court, by itself constitute an offence punishable under Section 3 of the MCOCA. That is because the involvement of respondents in previous offences was just about one requirement but by no means the only requirement which the prosecution has to satisfy to secure a conviction under MCOCA. What was equally, if not, more important was the commission of an offence by the respondents that would constitute "continuing unlawful activity". So long as that requirement failed, as was the position in the instant case, there was no question of convicting the respondents under Section 3 of the MCOCA. That reasoning does not, in our opinion, suffer from any infirmity. The very fact that more than one charge sheets had been filed against the respondents alleging offences punishable with more than three years imprisonment is not enough. As rightly pointed out by the High Court commission of offences prior to the enactment of MCOCA does not by itself constitute an offence under MCOCA. Registration of cases, filing of charge sheets and taking of cognizance by the competent court in relation to the offence alleged to have been committed by the respondents in the past is but one of the requirements for invocation of Section 3 of the MCOCA. Continuation of unlawful activities is the*

second and equally important requirement that ought to be satisfied. It is only if an organised crime is committed by the accused after the promulgation of MCOCA that he may, seen in the light of the previous charge sheets and the cognizance taken by the competent court, be said to have committed an offence under Section 3 of the Act."

24. Thus in the case of **Shiva @ Shivaji Ramaji Sonawane & Ors.** (supra) several offences were registered against Shiva @ Shivaji and others prior to the enactment of the MCOC Act. After enactment of MCOC Act two cases were registered and charge-sheets were filed. In both the cases he was acquitted. The Hon'ble Supreme Court held that it is only if an organised crime is committed by the accused after promulgation of MCOC Act that he may be said to have committed offence under Section 3 of the MCOC Act. This is not the factual position in the case at hand. Therefore, this decision of the Hon'ble Supreme Court has no application to the facts of the instant case. In the case of **Lalit Somdatta Nagpal & Anr.** cited (supra) the question involved was whether MCOC Act can be applied to offences under Essential Commodities (Special Provisions) Act, 1981.

25. Thus, none of these authorities deal with the situation involved in the present applications. In the case of **Govind Sakharam Ubhe** cited (supra) the Division Bench of this Court in para 36 and 37 has held as under:

"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 'ontinuing 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."

26. Thus, what has been laid down in the case of **Govind Sakharam Ubhe** cited (supra) is that requirement of filing of more than one charge-sheet and taking cognizance by competent court is against organised crime syndicate. Filing of more than one charge-sheet against an individual is not the essential requirement. The same principle has been expounded by the Division Bench of this Court in the case of **Sachin Bansilal Ghaiwal** cited (supra). In para 38 the Division Bench of this Court has observed thus:

> *"38. Thus, according to us and in our humble opinion and after giving our earnest consideration, the expression 'member' as has been termed in Section 2(1)(d) of the MCOC Act can be interpreted and defined as, a person who participates in the crime either actively or passively or a person who facilitates the commission of the crime committed by the organized crime syndicate or on behalf of the organized crime syndicate, automatically becomes the member of the said crime syndicate which commits the offence or on whose behalf the offence in question is committed, as contemplated under Sec. 2(1)(d), 2(1)(e), Section 3 and other provisions of the MCOC Act."*

27. Similar proposition has been expounded by this Court in the case of **Sk. Mehmood Sk. Mehboob** (supra). In para 14 it has been held has under:

> *"14. As such, briefly stated, in the present charge sheet, to establish the charge against accused Nos.1, 3, 4 and other accused, the respondents will have to establish that the accused had committed cognizable offence punishable with imprisonment of three years or more and that it was undertaken as a member of organised crime*

syndicate or on behalf of the said syndicate in respect of which more than one chargesheets have been filed within preceding period of ten years. Therefore, the basic requirement or in other words, one of the ingredients of the organized crime is that there should be an activity prohibited by law for the time being in force which is cognizable offence punishable with three years imprisonment or more. The respondents have submitted that to fulfill this requirement of the charge, the respondents rely upon the charge sheet filed in the Court of Sessions at Akola. In this regard, it is needless to state that the respondents cannot produce the same witnesses before the Sessions Court, Akola as well as before the Special Judge, Amravati to prove the same charges in two Courts. It is abundantly clear that unless the first requirement of definition of 'continuing unlawful activity' is fulfilled, the proof of rest of the requirements is of no use. The charge sheet in the present case does not even make allegations in respect of the first part of the definition of continuing unlawful activity."

[Underlining is mine]

28. In the case of **Kavitha Lankesh** cited (supra) the Hon'ble Apex Court has put the controversy at rest. It has been observed in para 22 thus:

"22. Notably, the High Court, without analysing the material presented along with chargesheet on the basis of which cognizance has been taken by the competent Court including against the writ petitioner-Mohan Nayak N., concerning commission of organized crime by the organized crime syndicate of which he is allegedly a member, committed manifest error and exceeded its jurisdiction in quashing the chargesheet filed before the competent Court qua the writ petitioner-Mohan Nayak N. regarding offences under Section 3(1)(i), 3(2), 3(3) and 3(4) of the 2000 Act. The High Court did so being impressed by the exposition of this Court in Lalit Somdatta Nagpal, in particular paragraph 63 thereof. Indeed, that exposition would have bearing only if the entire material was to be analysed by the High Court to conclude that the facts do not disclose justification for application of provisions of the 2000 Act including qua the writ petitioner-Mohan Nayak N., provided he was being proceeded only for offence of organized crime punishable under Section 3(1) of the

2000 Act. For, the reported decision deals with the argument regarding invocation of provision analogous to Section 3(1) of the 2000 Act. Be it noted that requirement of more than two chargesheets is in reference to the continuing unlawful activities of the organized crime syndicate and not qua individual member thereof. Reliance was also placed on Brijesh Singh. Even this decision is of no avail to the private respondent-Mohan Nayak N. for the same reason noted whilst distinguishing Lalit Somdatta Nagpal. Further, the questions considered in that case, as can be discerned from paragraph 12 of the reported decision, are regarding jurisdiction of the competent Court to take notice of chargesheets filed against the accused outside the State. It is not an authority on the issue under consideration."

[Underlining is mine]

It is further held in para 24 as under:

"24. As regards offences punishable under Section 3(2), 3(3), 3(4) or 3(5), it can proceed against any person sans such previous offence registered against him, if there is material to indicate that he happens to be a member of the organized crime syndicate who had committed the offences in question and it can be established that there is material about his nexus with the accused who is a member of the organized crime syndicate. This position is expounded in the case of Ranjitsingh Brahmajeetsingh Sharma vs. State of Maharashtra; MANU/SC/0268/2005 : (2005) 5 SCC 294 which has been quoted with approval in paragraph 85 of the judgment in Prasad Shrikant Purohit. The same reads thus:

> *"85. A reading of para 31 in Ranjitsing Brahmajeetsing Sharma case shows 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. Therefore, 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. The said statement of law by this Court, therefore, makes the position clear as to in what circumstances MCOCA can be applied in respect of a person depending upon his involvement in an organised crime in the manner set out in the said paragraph. In paras 36 and 37, it was made further clear that such an analysis to be made to ascertain the invocation of MCOCA against a person need not necessarily go to the extent for holding a person guilty of such offence and that even a finding to that extent need not be recorded. But such findings have to be necessarily recorded for the purpose of arriving at an objective finding on the basis of materials on record only for the limited purpose of grant of bail and not for any other purpose. Such a requirement is, therefore, imminent under Section 21(4)(b) of MCOCA."

(emphasis supplied)

29. Thus, the Hon'ble Supreme Court has unequivocally laid down that requirement of filing of more than one charge-sheet and taking of cognizance is against organised crime syndicate and not against an individual. Once it is established that there is an organised crime syndicate another requirement for invoking MCOC Act is that there must be continuing unlawful activity, it should be for pecuniary advantage, economic advantage or other advantage.

30. As indicated above accused-Anwar Khan @ Gujjar Khan in the case at hand is running an organised crime syndicate. In the case at hand

accused-Awez Kazi and applicant-Mujib Khan are the accused in the current crime i.e. crime no. 403/2019. No charge-sheet is filed against them before the current charge-sheet. Once it is found that the applicant is a member of organised crime syndicate, pendency of more than one charge-sheet and taking cognisance of the same against the applicant is insignificant. Moreover, there is nexus to the unlawful activity being carried by accused-Anwar Khan and his members of the gang. It is pertinent to note that in crime no.161/2013 registered on the complaint of deceased-Sayyed Sajed Ali, the allegations are that the deceased-Sayyed Sajed Ali was a Teacher. Accused-Anwar Khan @ Gujjar Khan, Shaikh Shahbaz and Amar (full name not known) started demanding ransom of Rs.10,000/- to 15,000/- since five to six months before the incident. On 26th September, 2013 at 8.30 pm, accused-Anwar Khan, Shaikh Shahbaz and Amar assaulted Sayyed Sajed Ali (since deceased) along with 7 to 8 unknown persons assaulted him because of which he sustained injuries on his hand, legs and he sustained fracture on both the legs. Accordingly, offence under Section 307, 395, 326, 384, 341, 323, 147, 148 of the I.P.C. and under Section 3/25 of the Indian Arms Act came to be registered.

31. If the allegations made in the current crime i.e. 403/2019 are perused it is clear that deceased-Sayyed Sajed Ali was assaulted by accused-

Anwar Khan @ Gujjar Khan and other accused including the applicants as deceased-Sayyed Sajed Ali had refused to withdraw case having been filed on the basis of FIR in crime no.161/2013. Thus, this crime has nexus with the unlawful activities carried on by accused-Anwar Khan @ Gujjar Khan. Therefore, even if no charge-sheet is filed against applicant-Mujib Khan and applicant-Awez Kazi, being members of the organised crime syndicate they are liable to be prosecuted under the MCOC Act.

32. So far as plea of *alibi* of Sayyed Naser is concerned learned counsel Shri Chatterji submitted that application was filed before the Sessions Court contending that applicant-Sayyed Naser was admitted in the hospital at Hyderabad. Learned Additional Sessions Judge adopted a novel procedure unknown to the criminal law. He directed the Investigating Officer to verify the position. Learned Additional Sessions Judge had no business to pass such an order. If any accused raises defence of plea of *alibi* it is for him to prove his defence. At the stage of bail, it is settled principle of law, that such a plea of *alibi* cannot be considered. Witnesses have stated the presence of applicant-Sayyed Naser. Some of the witnesses have also stated the presence of applicants-Mujib Khan and Awez Kazi. The role ascribed to them is that they were armed with pipe and they were brandishing pipe and preventing the people from interfering. Having regard to the discussion made above, it is

clear that MCOC Act has been rightly applied. In this view of the matter, I am not inclined to release the applicants on bail. Hence the order :

ORDER

I) All the three applications are dismissed.

II) All the application for assist to APP are also disposed of.

II) These observations are made only for the disposal of these applications and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]

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