

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1070 OF 2021

MOHAMMAD RIZWAN MOHAMMAD RAFIQ AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. V. D. Sapkal (Senior Advocate) i/b Mr. S. R.
Sapkal

APP for Respondent Nos.1 to 3/State : Mr. M. M. Nerlikar

Advocate for Respondent No.4 : Mr. Shashikant R. Pande

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**CORAM : C. V. BHADANG &
BHARAT P. DESHPANDE, JJ.**

DATE : 8 JUNE 2022.

P. C.

This petition is filed under Article 226 of the Constitution of India for the following substantive reliefs :-

“(i). The First Information Report *qua* order according sanction to prosecute the Petitioner under the provisions of Maharashtra Control of Organized Crimes Act, 1999 in furtherance of the offence registered with the Kotwali Police Station, Parbhani, Tq: and Dist: Parbhani, bearing Crime No.139/2021 dated 25.06.2021 for the offence punishable Under Sections 307, 324, 109, 143, 147, 148, 149 of Indian

Penal Code, Section 4/25 of the Arms Act and Section 37 (1), 37 (3), 135 of Maharashtra Police Act.

(ii). The Petitioners No.1 and 2 may kindly be directed to be released on anticipatory bail in the event of their arrest in connection with the offence Registered with the Kotwali Police Station, Parbhani, Tq: and Dist: Parbhani, bearing Crime No.139/2021 dated 25.06.2021 for the offence punishable Under Section 307, 324, 109, 143, 147, 148, 149 of Indian Penal Code, Section 4/25 of the Arms Act and Section 37 (1), 37 (3), 135 of Maharashtra Police Act and added section 3 and 4 of the MCOC Act.

(iii). The Petitioners No.3 may kindly be directed to be released on bail in connection with the offence Registered with the Kotwali Police Station, Parbhani, Tq: and Dist: Parbhani, bearing Crime No.139/2021 dated 25.06.2021 for the offence punishable Under Sections 307, 324, 109, 143, 147, 148, 149 of Indian Penal Code, Section 4/25 of the Arms Act and Section 37 (1), 37 (3), 135 of Maharashtra Police Act and added section 3 and 4 of the MCOC Act.

(iv). The Criminal Proceedings bearing Special Case (MCOC) No.154/2021 pending on the file of Special Court at Parbhani under section 5 of the Maharashtra Control of Organized Crimes Act, 1999 for the offence punishable Under Section 307, 324, 109, 143, 147, 148, 149 of Indian

Penal Code, Section 4/25 of the Arms Act and section 37 (1), 37 (3), 135 of Maharashtra Police Act and added section 3 (1) (i) (ii), 3 (2) and 3 (4) of the Maharashtra Control of Organized Crimes Act, 1999 may kindly be quashed and set aside.

(v). The order dated 24.08.2021 passed by the Deputy Inspector General of Police, Nanded Region, Nanded under section 23 (1) (a) of the Maharashtra Control of Organized Crimes Act, 1999 and order dated 17.12.2021 passed by the Additional Director General of police (Law and Order) Maharashtra State, Mumbai under section 23 (2) of the Maharashtra Control of Organized Crimes Act, 1999 may kindly be quashed and set aside.

(vi). The petition the Petitioners No.2 may kindly be directed to be released on anticipatory bail in the event of their arrest in connection with the Special Case (MCOC) No.154/2021 pending on the file of Special Court at Parbhani under section 5 of the Maharashtra Control of Organized Crimes Act, 1999 for the offence punishable Under Section 307, 324, 109, 143, 147, 148, 149 of Indian Penal Code, Section 4/25 of the Arms Act and section 37 (1), 37 (3), 135 of Maharashtra Police Act and added section 3 (1) (i) (ii), 3 (2) and 3 (4) of the Maharashtra Control of Organized Crimes Act, 1999”.

2. We have heard the learned Senior Counsel for the Petitioners as well as learned APP and learned Counsel appearing for the Respondent No.4. With the assistance of the learned Counsel for the respective parties, We have gone through the record.

3. It is submitted by the learned Senior Counsel for the Petitioners that *ex-facie* the offence punishable under Sections 3 and 4 of the Maharashtra Control of Organized Crimes Act, 1999 ('MCOC Act' for short) is not made out against the Petitioners. It is pointed out that there is no material collected to indicate that the Petitioners were indulging into continuing unlawful activity on behalf of the organized syndicate, which is the *Sine qua none* for an offence under the said Act. In such circumstances, it is submitted that the Petitioners may be discharged from the offences under the MCOC Act and to that extent, the FIR/charge-sheet may be quashed.

4. The learned APP has submitted that the investigation is complete and the charge-sheet is filed and it is for the learned Special Court to decide the issue at the time of framing of charge. He points out that the Petitioners would get an opportunity to raise all such contentions

before the Special Court, which would be in a better position to consider the same.

5. The learned Counsel for the Respondent No.4 made a limited prayer. He submitted that the interim relief, which is operating in favour of the Petitioner No.2 was granted prior to the filing of the charge-sheet and therefore the same may not be continued.

6. In our considered view, the learned APP is right in contending that it would be appropriate for the learned Special Court to consider the contentions as raised at the time of framing of the charge. We find that the Special Court would be better equipped to consider, whether the case for framing of charge for the offence under Sections 3 and 4 of MCOC Act is made out or not on the basis of material collected during course of investigation. The record discloses that by an order dated 22 November, 2021, this Court had directed that no coercive steps shall be taken against the Petitioner No.2, which order has been continued from time to time and is operating till today. In such circumstances, following order is passed:

ORDER

- a. It will be open to the Petitioners to file an application for discharge before the learned Special Court.
- b. If such an application is filed, the learned Special Court shall decide the same on its own merits in accordance with law as expeditiously as possible and an endeavour shall be made to decide the same within a period of eight weeks from the date of filing.
- c. The rival contentions of the parties on merits are kept open.
- d. Interim relief as operating in this petition, shall continue to operate in favour of the Petitioner No.2 till the disposal of the application for discharge.
- e. The Petition is disposed of in the aforesaid terms.

BHARAT P. DESHPANDE, J.**C. V. BHADANG, J.**