

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 198 of 2022

Maruti Navnath Sonawane

Age : 46 years, Occ.: Service

R/s. At Sencies 32/6, Opp Mahindra building,

Sanjay Gandhi Nagar, Mumbai - 400 022.

.. Appellant.

Versus

The State of Maharashtra

(At the instance of Kalachowki Police Station)

.. Respondent.

-
- Mr. Darshit Jain i/by AID Legal, Advocate for the Appellant.
 - Mr. A.A. Palkar, APP for the State - Respondent.
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**CORAM : SMT SADHANA S. JADHAV &
MILIND N. JADHAV, JJ.**

RESERVED ON : APRIL 08, 2022.

PRONOUNCED ON : MAY 04, 2022.

JUDGMENT : (PER MILIND N. JADHAV, J.)

1. By the present Appeal, the Appellant - Maruti Navnath Sonawane has prayed for the following relief:

"(a) That this Hon'ble Court be pleased to discharge the Appellant from the alleged entire proceedings arisen in final report arising out of FIR vide CR. No.70 of 2019 dated 07.04.2019 for alleged offence punishable u/s. 395, 397, 412, 341, 201 r/w 120 (B) of Indian Penal Code, section 3(i)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crime Act, 1999 Act and u/s 37 (1) (A) r/w 135 of the Maharashtra Police Act registered at the instance of Kalachowki Police Station."

2. A First Information Report ('FIR') came to be registered against the Appellant and other co-accused in Kalachowki Police Station vide C.R.

No. 70 of 2019 dated 07.04.2019 for offences punishable under Sections 395, 397, 412, 341, 201 and 120 (B) of the Indian Penal Code, 1860 ('**IPC**') read with Section 37(1)(A) and 135 of the Maharashtra Police Act, 1951. Appellant is arraigned as accused No.3 in the report.

3. On 11.05.2019, Respondent applied for approval to the Commissioner of Police, Mumbai under the provisions of Section 23(1)(a) of the Maharashtra Control of Organized Crime Act, 1999 ('**MCOC Act**') for invoking the provisions of the said Act against the Appellant and other accused in C.R. No. 70 of 2019.

4. On 06.07.2019, the Commissioner of Police, Mumbai accepted the approval and granted sanction thereby invoking the provisions of Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act in C.R. No.70 of 2019 against the Appellant and other co-accused.

5. On 08.07.2019, charge-sheet in C.R. No.70 of 2019 was filed in the court of the Special Judge for MCOCA at Bombay ('**Trial Court**').

6. Appellant filed application under Exhibit No.93 in the Trial court seeking discharge from the offences for which charge-sheet was filed against him.

7. By order dated 18.01.2022, the Trial court rejected the Appellant's application for seeking discharge on the ground that there was voluminous material available against the Appellant for proceeding against him for the charges levelled against him and held that the Court did not find any merit in his submission that the provisions of the MCOC Act are not attracted. This order dated 18.01.2022 is impugned and challenged in the present Criminal Appeal.

8. Before we advert to the submissions made by the respective counsels, it will be apposite to refer to such facts which are relevant for the purpose of the present Appeal.

8.1. It is the prosecution case that Appellant is involved in the crime registered as C.R. No.70 of 2019 dated 07.04.2019.

8.2. Complainant (informant) in C.R.No. 70 of 2019 is a designer and supplier of gold ornaments and designs to his customers. He visits various jewellers' shops in and around Mumbai to show and exhibit sample gold ornaments and designs and thereafter receive orders for manufacturing them. On the occasion of Gudi Padwa i.e. 06.04.2019, complainant decided to visit various jewellers' shops on M.G.Road in Panvel to show his designs and sample gold ornaments. Hence on the previous night i.e. 05.04.2019 at about 20:30 hours, the complainant after closing his shop carried alongwith him 1800 gm. of sample gold ornaments comprising of chains, bangles, rings,

earrings etc. in a black leather bag and reached his residence at around 21:00 hours at Chinchpokli.

8.3. On the morning of 06.04.2019, complainant left his house with the gold ornaments, reached Chinchpokli railway station and boarded a local train to Kurla railway station. He got down at Kurla railway station and boarded another train to Panvel. Throughout the day, he visited various jewellers' shop on M.G. Road in Panvel and showed them sample ornaments and after taking orders for manufacturing the ornaments returned back to Chinchpokli by the same route. The complainant reached Chinchpokli railway station at about 21:40 - 21:45 hours, got down at the station and took the foot over bridge to come out of the station and started walking towards his residence. At that time, near the pandal of Chinchpokli Utsav Mandap two unknown persons obstructed, threatened the complainant and attempted to snatch the black bag containing the gold ornaments. The complainant resisted and had a scuffle when both two persons attacked the complainant with sharp choppers (knives). The complainant sustained serious injuries, started bleeding and shouted for help. One of the assailant snatched the black bag containing the gold ornaments and ran away. On hearing the complainant's scream for help, persons gathered at the spot. Complainant saw that there were two more unknown persons standing near Chinchpokli bridge calling on the two assailants to hurry. The assailants snatched the black bag containing the gold ornaments, injured the complainant and

escaped on motorcycles.

8.4. Complainant was helped by the bystanders and taken to Globus Hospital, Parel. In the meanwhile, a phone call was made to the complainant's son Rahul informing him about the incident and asking him to reach the hospital. The complainant was admitted in the hospital for treatment.

8.5. Crime No. 70 of 2019 was registered on 07.04.2019 wherein Appellant is arraigned as accused No.3. Charge against the Appellant is that he has actively assisted the main accused Ayub Alimuddin Shaikh @ Ayub Chikna (**Ayub Chikna**) in the commission of the crime by carrying out reconnaissance in Panvel area on 06.04.2019 between 7:27 p.m. to 21:45 p.m., and having stalked the complainant from Panvel to Chinchpokli and provided specific information about his movement and whereabouts to the other co-accused on the instructions of Ayub Chikna. According to the prosecution the crime was executed by Jakir, Meherban and associates of Meharban from Uttar Pradesh under the instructions of Ayub Chikna.

9. Appellant filed Bail Application before the Trial Court which was rejected on 01.11.2019. Appellant thereafter approached this Court vide Criminal Bail Application No.688 of 2020 which was allowed by the single Judge of this Court on 24.08.2021. This Court directed the Appellant to be

released on bail. Paragraph No.7 of the said order is relevant and reads thus:

"7. Although it is prosecution case that the gang-leader Ayyub Chikna had procured four SIM-cards from Rakesh Jaiswal Rakesh Jaiswal (co-accused), except the statement of co-accused, there is no evidence to indicate that particular SIM was used by the Applicant to keep vigil on the movements of Complainant, while he was travelling from Panvel to the spot of the incident. In so far as Applicants' complicity in the 'organised crime' is concerned; it may be stated that the affidavit of the Assistant Commissioner of Police is silent, on 'commonality' between the previously registered offences and the present crime. Besides it can be seen from the affidavit-in-reply, that offences registered against the gang-leader do not show involvement of Applicant therein. Neither particulars of nature of offences committed by the gang-leader has been stated, nor the nexus between the previous and present offences has been shown or pointed out.

. In the case of **State of Maharashtra Vs. Bharat Shantilal Shah and Others** (2008) 13 SCC 5; the Hon'ble Apex Court has held that offences, which do not look to be common to those under the MCOC Act, would not be relevant for the purpose of denying the relief of bail. Consequently, reply filed by the Prosecution does not show that previously registered offences against the Applicant and gang-leader have anything in common with the offences registered in the present crime. Therefore, crimes registered against the Applicant and gang-leader were characterized by individuality."

10. Appellant filed a discharge application being application vide Exhibit No.93 before the learned Sessions Court at Mumbai under the provisions of Section 239 of the Code of Criminal Procedure, 1973 ("**Cr.P.C.**") for seeking discharge which was rejected by the impugned order. The impugned order held that there is voluminous material available against the Appellant for proceeding against him for the charge leveled against him.

11. The prosecution charge against the Appellant is on the following 5 counts:

(i) that on instructions received from Ayub Chikna, the Appellant

receded the area from Panvel to Chinchpokli on 06.04.2019 involving the movement of the complainant from 7:27 p.m. to 9:45 p.m. and provided information of the complainant to the other co-accused;

(ii) that Ayub Chikna supplied the SIM card and mobile phone to the Appellant for providing such information and receiving the complainant's movement on the day of the incident; that the CDR *prima facie* established that Appellant was present at Panvel and from there onwards until near the scene of crime in Chinchpokli;

(iii) that the CCTV footage collected by the prosecution from various places including Panvel railway station area proved the presence and involvement of the Appellant;

(iv) that an amount of Rs.10,200/- seized from the Appellant was the balance amount out of the total amount received by the Appellant towards consideration for providing the information of the movement of the complainant to Ayub Chikna and other co-accused;

(v) that the Appellant was in continuous contact with Ayub Chikna and his wife Ms. Sangita Nair in respect of the crime in the present case.

12. Mr. Darshit Jain, learned counsel appearing for the Appellant has vehemently submitted that the Appellant has no nexus whatsoever with Ayub Chikna or any of the co-accused and is falsely implicated by the prosecution.

To substantiate his argument the following submissions are made:-

- (i) that the Appellant was never present at the scene of crime nor is involved in any manner whatsoever in the entire sequence of events alleged by the prosecution;
- (ii) that there exists no direct or indirect nexus between the Appellant and Ayub Chikna; that the provisions of Section 2(e) of the MCOC Act cannot be applied to the Appellant as according to the said definition, there was no violence, intimidation or coercion or pecuniary benefit to the Appellant;
- (iii) that recovery of Rs. 10,200/- from the Appellant attributed to having being received the same from Ayub Chikna for the Appellant's role cannot be a ground for implicating the Appellant unless it is proven that the Appellant was present and actively involved in the commission of the purported crime and had indeed received any such amount from Ayub Chikna;
- (iv) that there is no material placed on record to show that the Appellant was present in Panvel area or Chinchpokli area and stalked and followed the complainant during his return journey on 06.04.2019 and provided live information about the movement of the complainant to Ayub Chikna or any other co-accused; that the CDR produced on record do not in any way implicate the involvement of the Appellant

by using any of the four SIM cards used to execute the crime;

(v) that there are no eye witnesses and any cogent proof of the involvement of the Appellant; that the Appellant is not associated with any of the gang members or knows any of them who are involved in the crime;

(vi) that there are two prior FIRs registered against the Appellant being CR No.135 of 2016 under Section 394 IPC and C.R. No. 229 of 2018 under Section 324 IPC which are characterised by individuality and there is no commonality between these two earlier offences registered and the crime registered in the present case;

(vii) that the amount of Rs.10,200/- allegedly recovered from the Appellant's house was falsely planted by the prosecution themselves;

(viii) that there is no CCTV footage submitted by the prosecution before the Trial court till today to substantiate their claim that the Appellant followed the complainant from Panvel to Chinchpokli, neither there was any panchanama of any such CCTV footage collected from various places which disclosed the presence of the Appellant at any place or the scene of crime;

(ix) that no mobile phone is recovered from the Appellant neither any SIM card allegedly provided by Ayub Chikna is recovered from the Appellant; furthermore, the co-accused who sold the four SIM

cards on the basis of fabricated documents has not stated that the Appellant had approached him or purchased any of the SIM cards.

(x) that due to false and frivolous implication of the Appellant, the Appellant has suffered immense hardship and irreparable loss in his business and has also been defamed in front of his family, friends, relatives and society;

(xi) that the Appellant is / was neither a gang member of any gang/organised crime syndicate nor participated in the alleged incident in any manner and that there is not an iota of evidence of conspiracy attributable to the Appellant in the present offence;

(xii) that two charge-sheets filed against Ayub Chikna, viz., (a) C.R. No. 107 of 11 under Section 341, 392, 34 of IPC read with Section 3, 4, 25 Arms Act read with Section 37(1), 134 Maharashtra Police Act read with 3(1)(ii), 3(2), 3(4) MCOC Act and (b) C.R. No. 100 of 2009 under Section 292, 397, 34 of IPC read with Section 3, 25 of the Arms Act, are relied upon by the prosecution to indict the Appellant with MCOC proceedings; however Ayub Shaikh has been acquitted in C.R.No. 100 of 2019 and therefore the condition mentioned in section 2(d) of the MCOC Act which states that more than one charge-sheet shall be filed within a period of 10 years does not apply to the Appellant in the present case and hence the provisions of the MCOC Act could not have been invoked against the Appellant;

(xiii) that therefore the sanction granted under Section 23(2) of the MCOC Act on 06.07.2019 by the Commissioner of Police, Mumbai is bad in law, patently illegal and liable to be set aside and quashed qua the Appellant;

13. Mr. A.A. Palkar, learned APP appearing on behalf of the State has supported the impugned order and made the following submissions:-

- (i) that crime No.70 of 2019 was lodged under Sections 394, 397 and 34 IPC read with Section 37(1)A and 135 of the Maharashtra Police Act, 1951 on 07.04.2019 against four unknown persons initially;
- (ii) that the Investigating Officer (IO) conducted the investigation, spot panchanama, collected CCTV footage during which it was revealed that for commission of the crime four mobile phones having Nos. 9892715679, 9892709925, 9892711286 and 9892710644 were used; that the SIM cards in these 4 phone numbers were deactivated on 20.03.2019 after which they were not in operation; that the CDR of these phone numbers revealed the tower location and use of the SIM cards near the scene of crime;
- (iii) that the main accused Ayub Alimuddin Shaikh @ Ayub Chikna formed an organized crime syndicate with the other co-accused

during the preceding years for committing serious offences like dacoity, assault, theft, robbery by using criminal force;

(iv) that the Appellant being part of the organised crime syndicate formed by Ayub Chikna was arrested on 12.04.2019 for his complicity in the crime;

(v) that there is sufficient evidence to prove the continuous unlawful activity of the organized crime syndicate led by Ayub Chikna and more than one charge-sheet of cognizable cases having punishment of three years or more has been filed against Ayub Chikna before the Competent courts within the preceding ten years; hence the Respondent sent the proposal on 02.05.2019 alongwith the investigation papers to the Additional Commissioner of Police, Central Region Mumbai to apply the provisions of Section 3(1)(ii), 3(2) and 3(4) of the MCOC Act against the Appellant;

(vi) that the Additional Commissioner of Police, Central Region Mumbai, after perusing the investigation papers, in exercise of powers conferred upon by him under Section 23(1)(a) of the MCOC Act granted approval to apply the provisions of the said Act to C.R. No.70 of 2019; and appointed the Additional Commissioner of Police, Bhoiwada Division to investigate the case and submit his report;

(vii) that the Additional Commissioner of Police, Bhoiwada Division after completion of investigation submitted his report dated 24.06.2019 to the Competent Authority i.e. the Commissioner of Police, Mumbai for seeking sanction to prosecute the Appellant and 12 other co-accused, being active members of the organized crime syndicate headed by Ayub Chikna for offences punishable under the MCOC Act; that the Appellant is an active member of the organized crime syndicate headed by Ayub Chikna and has committed several cognizable offences; that in the present case the Appellant, on the instructions of Ayub Chikna reached the location where the complainant visited in Panvel on 06.04.2019 and on his return to Chinchpokli between 7:27 p.m. to 9:45 p.m. and provided information on phone to Ayub Chikna and the other co-accused in the case;

(viii) that the CDR *prima facie* established the presence of the Appellant at Panvel and near the scene of crime in Chinchpokli; that the Appellant was in regular touch with accused No.8 - Ms. Sangita Nair, wife of Ayub Chikna; that the Appellant and accused No.8 were in regular touch through mobile phone No.9987251628; that one of the mobile phone number used by the co-accused in the present case namely mobile phone No.9892709925 was used for having conversation with the

Appellant on his mobile phone No.9987251628;

- (ix) that the Appellant received a substantial amount as consideration from Ayub Chikna for giving the tip and providing information of the movement of the complainant out of which Rs.10,200/- was recovered from him;
- (x) that the role of the Appellant in the present case of providing information about the movement of the complainant to Ayub Chikna and other co-accused was in the nature of abetting the offence and hence falls within the purview of the term 'abet' as appearing in Section 2(1)(a) of the MCOC Act and hence the provisions of MCOC Act are squarely applicable to the Appellant;
- (xi) that the Appellant is an accused facing trial for two offences registered with the Dharavi Police Station, Mumbai;
- (xii) that the Appellant has not challenged the order dated 06.07.2019 passed by the Commissioner of Police, Mumbai wherein the Competent Authority has recorded its subjective satisfaction while granting prior approval and sanction to prosecute the Appellant under MCOC Act.

13.1. Mr. Palkar, learned APP in support of his aforesaid submissions has referred to the decision of the Division Bench of this Court in the case of *Narendra Singh @ Dallu Sardar Vs. State of Maharashtra*,¹ to contend that

¹ 2015 ALL MR (Cri.) 54

the provisions of Section 2(d) defining continuing unlawful activity does not envisage charge-sheets in relation to 'organized crime' as defined in Section 2(e) of the MCOC Act; that it nowhere stipulates that the charge-sheet should be against the accused or any other co-accused in such charge-sheet; that the charge-sheet in relation to offences punishable with lessor punishment filed against an accused as part or representative or member of a crime syndicate or against its other members may be relevant to demonstrate the existence of such a syndicate. Paragraph No.28 of the said judgment is relied upon by the APP which reads thus:-

"28. Section 2(d) defining continuing unlawful activity does not envisage chargesheets in relation to "organized crime" as defined in Section 2(e) of the Act. It also nowhere stipulates that the chargesheets should be against the accused in last chargesheet under this Act or any of his coaccused in such chargesheet. This scheme is itself sufficient to negate the challenge of present appellant. Charge-sheets in relation to offences punishable with lesser punishments filed against an accused as part or representative or member of a crime syndicate or against its other members, may be relevant to demonstrate the existence of such a syndicate. Similarly, the existence or involvement of any organized syndicate or fact that accused in chargesheets already filed acted for or were acting at the instance of such a syndicate or coaccused were its part or members or representatives, may itself surface later on i.e. after filing of earlier chargesheets or earlier trial and hence, the said existence or capacity or involvement of or on behalf of the crime syndicate would not find mention in any of such previous chargesheets. Said assertion may, however, figure in the impugned chargesheet to be tried and filed against a person like present accused. In the present matter, the impugned chargesheet expressly refers to those earlier chargesheets and to appellant as gang leader of such a crime syndicate. We feel that in present trial also, the prosecution can show that the earlier chargesheets were against the crimes of a syndicate or coaccused found now associated with him, happen to be part of such a syndicate. If the arguments of appellant are accepted, words deliberately not used in Section 2(d) by the State Legislature are required to be read in to it and a rider deliberately omitted by it, is required to be artificially inserted into it. This is against the settled canons of interpretation. Section 2(d) does not contemplate any "accused specific" ingredient and needs independent interpretation uninfluenced by Section 2 (e). This definition gives primacy to direct or indirect role played by the syndicate and individuals roped in subsequent chargesheet become relevant only because of their connection with earlier crime or accused therein. Section 2(e) is a specie carved out of a larger concept seen in Section 2 (d) by the State Legislature. Thus to control

organised commission of crimes, commission of at least two cognizable offences, completion of investigation of the same, cognizance of the chargesheets filed in relation thereto meet requirements of Section 2(d). Section 2 (e) adds one more rider to it.

If mention of fact that such continuing unlawful activity was committed by the accused or his colleagues either singly or jointly, as a member of any organised crime syndicate or on behalf of such syndicate, is held a prerequisite in more than one chargesheet in previous ten years, the purpose of enactment itself would be defeated. Commission of first crime by an individual or few accused together will never show the requisite link or affinity needed to demonstrate either existence or participation of or on behalf of a syndicate. It may surface after more than one such offences are committed or chargesheets are filed. Therefore, only the State Legislature has given wide time frame of 10 years to see that more than one chargesheet of which cognizance is taken by the competent court are filed in relation to such continuing unlawful activity. Earnest will of the State Legislature to prevent organised crimes is also apparent from the words "either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate" also reveal a very broad field thrown open before the investigating agency. After more than one such chargesheets only the investigating officer/s may get some clue or hint about involvement of a syndicate and not otherwise. Hence, this practical difficulty and legislative resolution thereof also shows absence of any merit in the preliminary objection raised by the appellant.

In this view of the matter and having regard to the decision in the case of **Govind Ubhe, [2009 ALL MR (Cri) 1903]** (Supra) with which we respectfully agree, we do not find any necessity to make a reference to a Larger Bench in this case."

13.2. Mr. Palkar, learned APP has next submitted that there are 38 offences registered against the main accused - Ayub Alimuddin Shaikh @ Ayub Chikna in Mumbai, Navi Mumbai and Thane and one in Jaipur under various provisions of the IPC; that there is one offence each registered in Thane against Sahataj Jamalkhan and Jakir Khan and two offences each against the present Appellant, Faiyaz Ahmed Iqbal Shaikh, Sangita Vijay Nair, Mohmedd Bilal Kureshi and Meharban @ Bavla Kallu Kureshi. Mr. Palkar has submitted that all these members are active members of the organized crime syndicate headed by Ayub Chikna and in furtherance of their intention to commit the present offence, the involvement of the Appellant

has been proved by the investigating agency during the course of investigation; that the Appellant provided information and inputs about the movement of the complainant from Panvel to Chinchpokli to the other co-accused and hence the sanction by the Competent Authority to prosecute the Appellant under the provisions of the MCOC Act is within the ambit of the law and the impugned order deserves to be sustained.

14. We have heard the learned counsel appearing for the Appellant and learned APP at length, perused the papers referred to and relied by the learned counsel and considered the case law. Submissions made by the parties are on pleaded lines.

15. In the present case, the Appellant has sought a discharge from the applicability of the provisions of the MCOC Act against the Appellant in C.R.No.70 of 2019 on the ground that the Appellant has no nexus whatsoever with the commission of the offence and/or its main accused - Ayub Chikna and/or any other co-accused in the case. That apart it is the Appellant's case that the provisions of MCOC Act cannot be made applicable for indicting the Appellant as the Appellant is not a co-accused in any of the 39 offences registered against Ayub Chikna or in any other offences registered against any other co-accused in the present case. Therefore, it is stated that the sanction given by the Competent Authority to prosecute the Appellant under the MCOC Act is contrary to the provisions of Section 2 (1) (a) read with (d) and (e) of the said Act.

16. At this juncture, we may usefully refer to the MCOC Act, its relevant provisions which are succinctly etched out in paragraph Nos.21 to 24 of the judgment of the Supreme Court in the case *Ranjitsing Brahmajeetsing Shara Vs. State of Maharashtra and Anr.*². Paragraph Nos.21 to 24 of the said judgment are relevant and read thus:

"21. MCOCA was enacted to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang, and for matters connected therewith or incidental thereto. The Statement of Objects and Reasons for enacting the said Act are as under:

"Organised crime has been for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract, killing, extortion, smuggling in contrabands, illegal trade in narcotics kidnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organized crime being very huge, it has had serious adverse effect on our economy. It was seen that the organized criminal syndicates made a common cause with terrorist gangs and foster terrorism which extend beyond the national boundaries. There was reason to believe that organized criminal gangs have been operating in the State and, thus, there was immediate need to curb their activities.

It was also noticed that the organized criminals have been making extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission would be an indispensable aid to law enforcement and the administration of justice.

2. The existing legal frame work i.e. the penal and procedural laws and the adjudicatory system were found to be rather inadequate to curb or control the menace of organized crime. Government, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organized crime.

It is the purpose of this act to achieve these objects."

Section 2 is the interpretation clause. Section 2(1)(a), (d), (e) and (f) whereof read thus:

"2(1) In this act, unless the context otherwise requires,;

(a) "abet", with its grammatical variations and cognate expressions, includes, -

2 (2005) 5 SCC 294

(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;

(d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one chargesheets 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;"

Sub-section (2) of [Section 3](#) provides for punishment for organized crime in the following terms:

"(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organized crime or any act preparatory to organized 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."

[Section 4](#) provides for punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate. [Section 20](#) provides for forfeiture and attachment of property, sub-section (2) whereof reads as follows:

"(2) Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him, to pass an order that all or any properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the properties so attached shall stand forfeited to the State Government, free from all encumbrances."

[Section 21](#) provides for modified application of certain provisions [of the Code](#) of Criminal Procedure, sub-section (4) whereof is as under:

"(4) Notwithstanding anything contained in [the Code](#), no person accused of

an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

Section 24 reads, thus:

"24. Whoever being a public servant renders any help or support in any manner in the commission of organised crime, as defined in Clause (e) of Section 2, whether before or after the commission of any offence by a member of an organised crime syndicate or abstains from taking lawful measures under this act or intentionally avoids to carry out the directions of any Court or of the superior police officers in this respect, shall be punished with imprisonment of either description for a term which may extend to three years and also with fine."

22. The interpretation clause as regard the expression 'abet' does not refer to the definition of abetment as contained in Section 107 of IPC. It refers to such meaning which can be attributed to it in the general sense with grammatical variations and cognate expressions. However, having regard to the cognate meaning, the term may be read in the light of the definition of these words under Sections 107 and 108 of the Indian Penal Code. The inclusive definition although expansive in nature, "communication" or "association" must be read to mean such communication or association which is in aid of or render assistance in the commission of organized crime. In our considered opinion, any communication or association which has no nexus with the commission of organized crime would not come within the purview thereof. It must mean assistance to organised crime or organised crime syndicate or to a person involved in either of them. It, however, includes (a) communication or (b) association with any person with the actual knowledge or (c) having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate. Communication to, or association with, any person by itself, as was contended by Mr. Sharan, would not, in our considered opinion, come within meaning of the aforementioned provision. The communication or association must relate to a person. Such communication or association to the person must be with the actual knowledge or having reason to believe that he is engaged in assisting in any manner an organised crime syndicate. Thus, the offence under Section 3(2) of MCOCA must have a direct nexus with the offence committed by an organised crime syndicate. Such abetment of commission of offence must be by way of accessories before the commission of an offence. An offence may be committed by a public servant by reason of acts of omission and commission which would amount to tampering with the investigation or to help an accused. Such an act would make him an accessory after the commission of the offence. It is interesting to note that whereas Section 3(2) having regard to the definition of the term 'abet' refers directly to commission of an offence or assisting in any manner an organised crime syndicate, Section 24 postulates a situation where a public servant renders

any help or support both before or after the commission of an offence by a member of an organised crime syndicate or abstains from taking lawful measures under this Act.

23. Interpretation clauses contained in [Sections 2\(d\), 2\(e\) and 2\(f\)](#) are inter-related. An 'organised crime syndicate' refers to an 'organised crime' which in turn refers to 'continuing unlawful activity'. As at present advised, it may not be necessary for us to consider as to whether the words "or other lawful means" contained in [Section 2\(e\)](#) should be read "ejusdem generis"/ "noscitur-a-sociis" with the words (i) violence, (ii) threat of violence, (iii) intimidation or (iv) coercion. We may, however, notice that the word 'violence' has been used only in [Section 146](#) and [153A](#) of the Indian Penal Code. The word 'intimidation' alone has not been used therein but only [Section 506](#) occurring in Chapter XXII thereof refers to 'criminal intimidation'. The word 'coercion' finds place only in the [Contract Act](#). If the words 'unlawful means' is to be widely construed as including any or other unlawful means, having regard to the provisions contained in [Sections 400, 401 and 413](#) of the IPC relating to commission of offences of cheating or criminal breach of trust, the provisions of the said Act can be applied, which prima facie, does not appear to have been intended by the Parliament.

24. The Statement of Objects and Reasons clearly state as to why the said Act had to be enacted. Thus, it will be safe to presume that the expression 'any unlawful means' must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control. In other words, an offence falling within the definition of organised crime and committed by an organised crime syndicate is the offence contemplated by the Statement of Objects and Reasons. There are offences and offences under [the Indian Penal Code](#) and other penal statutes providing for punishment of three years or more and in relation to such offences more than one chargesheet may be filed. As we have indicated hereinbefore, only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA."

16.1. Analysis of the aforesaid provisions show that there should be an agreement between the persons who are alleged to conspire doing of an illegal act by illegal means and which by itself may not be illegal; that such an agreement can be proved either by direct or circumstantial evidence or by both; hence the circumstances proved before, during and after the occurrence need to be considered to decide about the complicity of the accused, needless to state that if the circumstances prove the innocence of the accused then it cannot be held that the prosecution is correct in applying

the provisions of the MCOC Act to the accused, that even if it is proven that certain acts have been permitted it needs to be clear that the said acts were so committed in pursuance of an agreement made between the accused who are party to the alleged conspiracy; that inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. It has also been held by the Supreme Court in a catena of cases that in a criminal case the onus lies on the prosecution to prove affirmatively that the accused was directly and personally connected with the acts or omissions attributed to the crime committed by him.

17. In the light of the aforestated legal position, we may now proceed to decide the present case.

17.1. Section 2 of the MCOC Act defines various terms and phrases. The definition enacted in Section 2(d), (e) and (f) are however clear and unambiguous; and that the said definitions of continuing unlawful activity, organized crime and organized crime syndicate would have to be proved for indicting a person of organized crime or being a member of an organized crime syndicate. Under Section 3 what is punishable is organized crime, attempt to commit organized crime, abetting or commission of crime, arbitrary concealing a member of organized crime syndicate or holding property derived and obtained for organized crime.

17.2. In the present case, we are concerned with the organized crime

and whether the prosecution has placed material and cogent evidence on record to prove that the Appellant is a member of the organized crime syndicate headed by Ayub Chikna. In order to indict the Appellant in the organized crime lodged under C.R.No.70 of 2019 and applying the provisions of the MCOC Act, it will have to be therefore shown that the co-accused herein have indulged in an activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, that the activities undertaken was either singly or jointly as a member of the organized crime syndicate, that in respect of similar activities in the past more than one charge-sheets have been filed in the competent court within the preceding period of ten years, that the court has taken cognizance of such offences and above all such activity was undertaken by violence or threat of violence or intimidation or coercion or other unlawful means and such activity undertaken was with the object of gaining pecuniary benefits or undue advantage or with the object of promoting insurgency.

17.3. We have perused the list of 39 offences registered against the main accused Ayub Chikna and the list of 10 offences against the other co-accused. Mr. Palkar, learned APP has fairly agreed that the Appellant is not arraigned as an accused in any of the 49 offences registered against Ayub Chikna or any of the other co-accused in the cases filed against them. Further there are two cases registered against the accused being CR No.135 of 2016 under Section 394 IPC and C.R. No. 229 of 2018 under Section 324 IPC which are

characterised by individuality and there is no commonality between these two earlier offences registered and the crime registered in the present case. We have also perused the order of acquittal of Ayub Chikna in C.R.No. 100 of 2009 which is placed on record; hence the statutory condition in Section 2(d) of the MCOC Act pertaining to pendency of more than one charge-sheet within a preceding period of 10 years is therefore not fulfilled for applying the provisions of the MCOC Act to the Appellant in the present case. Further it is clear that there is/are no charge-sheet/s filed against the Appellant as a member of the organized crime syndicate headed by Ayub Chikna in respect of any similar activity in the competent courts within the preceding period of ten years. Therefore the Appellant's indictment does not fall within the purview of the definition carved out under Section 2(d) read with (e) of the MCOC Act.

18. Next we come to the prosecution's charge of the involvement and role of the Appellant in the present case. The impugned order proceeds on the basis that there is voluminous material available against the Appellant for proceeding against him for the charge levelled against him. According to the prosecution there are 5 specific charges against the Appellant in respect of which there is evidence on record to indict the accused as under:-

- (i) that the Appellant reced the spot of visit of the complainant at Panvel when the complainant visited the jewellers' shops for showing the sample gold ornaments;

- (ii) that the Appellant was in continuous conversation with some of the co-accused in the crime and provided them first hand information about the whereabouts and movement of the complainant from Panvel to Chinchpokli until commission of the crime;
- (iii) that the CCTV footage of Panvel area, Panvel railway station, Chinchpokli railway station and the area outside Chinchpokli railway station on the footover bridge showed the presence of the Appellant and his movement in stalking and following the complainant;
- (iv) that 4 SIM cards bearing Nos.9892715679, 9892709925, 9892711286 and 9892710644 were used by the organised crime syndicate to discuss, conspire and relay information, hatch the conspiracy and provide information about the movement of the complainant to the other co-accused in the crime and SIM card No.9892709925 used by Ms. Sangita Nair, co-accused No.8, wife of Ayub Chikna was in active conversation with the Appellant on his mobile phone No. 9987251628 and;
- (v) that the amount of Rs.10,200/- was recovered from the Appellant, which was out of the consideration received for his role of providing accurate information about the movement of the complainant.

19. We have perused the panchnamas of the CCTV footage collected by the IO and adduced by the Appellant in the present case. The panchnamas pertaining to CCTV footage of 06.04.2019 as obtained are placed on record from page Nos. 99 to 103 of the Appeal proceedings. The prosecution has relied upon panchnamas prepared and pertaining to CCTV footage of the following four locations:-

- (i) Panchnama dated 07.04.2019 is prepared in Kalachowki Police Station CCTV room wherein the CCTV footage of the railway station camera near Chinchpokli ticket counter on the footover bridge is first seen and according to the prosecution the complainant is seen walking at 21.42 hours. However the CD of the said footage when seen by the pancha witnesses is blank and hence the technician is unable to copy any CCTV footage of this instance and give to the IO;
- (ii) thereafter CCTV footage of the platform CCTV camera of Chinchpokli railway station is shown to the pancha witnesses and the complainant is seen getting down from the train at Chinchpokli railway station between 21.41 hours and 21.48 hours. This CCTV footage is copied by the technician and the CD is given to the IO;
- (iii) next Panchnama dated 08.04.2019 is prepared in Kurla railway station CCTV room wherein CCTV footage of the footover bridge between Kurla Harbour line and Kurla Central line is first seen and according to the prosecution the complainant is seen walking therein.

This CCTV footage is copied by the technician and the CD is given to the IO;

(iv) thereafter CCTV footage of Panvel Railway Station Hall CCTV camera is seen by the pancha witnesses wherein the complainant is seen walking between 19.56 hours to 21.34 hours. This CCTV footage is copied by the technician and the CD is given to the IO.

19.1. Apart from the aforestated four CCTV footages, there are no other CCTV footages referred to and relied upon by the prosecution to cite the presence of the Appellant either in Panvel area or at Chinchpokli railway station area before, during or after commission of the crime. None of the 4 CCTV footages and its transcripts relied upon by the prosecution show the presence of the Appellant in any of the camera frames. We have minutely perused the panchnamas and transcripts of the CCTV panchanamas relied upon by the prosecution to unearth whether the Appellant is spotted or seen in any of the said footages and we find that the Appellant is not seen in any of the said frames. Therefore the charge of the prosecution that the Appellant has reced the spot of visit of the complainant and there is ample material showing *prima facie* involvement of the Appellant is highly unreliable in the absence of material evidence.

20. Next we come to the charge of the prosecution that there was continuous conversation between the Appellant and the co-accused before and during the commission of the crime and there is ample material collected

during investigation to show prima facie involvement of the Appellant in the crime.

20.1. In the present case, it is the case of the prosecution that 4 SIM cards bearing Nos. 9892715679, 9892709925, 9892711286 and 9892710644 were procured by some of the co-accused at the instance of Ayub Chikna, these cards were activated on 06.04.2019 and deactivated on 20.04.2019 and were actively used in the mobile phones provided by Ayub Chikna to commit the offence. The prosecution has collected CDR evidence in respect of the aforesaid four SIM cards / phone numbers and in addition thereto has also collected CDR evidence in respect of four more phone numbers used by some of the co-accused as under:-

Service Provider	Mobile Number	Customer Name (procured by)	Customer Address	Date of deactivation
Bharati Airtel Ltd	9892715679	Rajesh Baleshwar	Room No. 90, Babainaka, Borivali, Mumbai - 400 091.	20/03/19
Bharati Airtel Ltd	9892709925	Rajesh Baleshwar	Room No. 90, Babainaka, Borivali, Mumbai - 400 091.	20/03/19
Bharati Airtel Ltd	9892711286	Rameshkumar Shankar Sah	Room No. 90, Babainaka, Borivali, Mumbai - 400 091.	20/03/19
Bharati Airtel Ltd	9892710644	Deepak Abhiman	Room No. 90, Babainaka, Borivali, Mumbai - 400 091.	20/03/19
Bharati Airtel Ltd	7715974370	Sandeep Saw	Room No. 90, Babainaka, Borivali, Mumbai - 400 091.	07/02/19
Bharati Airtel Ltd	8452032433	Md. Jiyauddin Md. Nabab	Room No. 90, Babainaka, Borivali, Mumbai - 400 091.	07/02/19
Vodafone	9819033456	Mahesh Pankaj Soni	Hari Vijay Apartments, Bhagat Singh Road, Vile Parle (W), Mumbai - 400 056.	Not available

Reliance Jio Ltd	8369049895	Ms. Sangita Vijay Nair	Room No. 1, Chaudhary Niwas Chawl, S.P. Road, Laxmi Nagar, Dahisar (E), Mumbai - 400 068. Not available	Not available
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20.2. As seen above, the prosecution has collected CDR evidence of the aforestated eight phone numbers used by the co-accused in the commission of the crime. CR No. 70/2019 is registered against 11 accused out of which 7 are apprehended and 4 are absconding. Out of the 7 apprehended accused, the present Appellant is arraigned as accused No. 3. It is pertinent to note that the IO has filed his report dated 20.06.2019 in respect of the involvement of the Appellant by using his mobile phone No. 9987251628. In the report, it is stated that on detailed analysis, it is revealed that two mobile phones namely 9892710644 and 7715974370 procured by Deepak Abhiman and Sandeep Sah were used as common mobile phones to communicate with four other mobiles namely 8452032433 (Md. Jiyauddin), 9892709925 (Ms. Sangita Nair), 9892711286 (Rameshkumar) and 9892715679 (Rajesh Baleshwar) for commission of the crime. It is the prosecution's case that there was active communication between the above six numbers and therefore the needle of suspicion has pointed towards these six phone numbers. However, in so far as the Appellant is concerned, the report further states that one of the aforestated six numbers namely 9892709925 of Ms. Sangita Vijay Nair was used to make phone call to the Appellant's phone number i.e. 9987251628. Save and except this bare

statement appearing in the report of the IO, there is no other nexus whatsoever pointed out by the prosecution to show that the Appellant's phone number (9987251628) was used by the Appellant in the commission of the crime. It is significant to note that the prosecution has not obtained the CDR of the Appellant's phone number i.e. 9987251628 to show that the Appellant was in active conversation with any of the other co-accused in the crime and / or the leader of the organized crime syndicate Ayub Chikna either before, during or after the commission of the crime so as to indict the Appellant. The prosecution's case is that one of the co-accused namely Shahtaz Jamal Khan on being apprehended and arrested by the police has disclosed the name of the Appellant and Ayub Chikna on the basis of which the Appellant was arrested. However for the prosecution to succeed, the investigating agency has to place on record such material which could be converted into admissible evidence. The prosecution is required to establish its charge that the Appellant's phone number was in constant communication and touch with phone numbers of the other co-accused and provided them live information about the movement of the complainant from Panvel area / Panvel Railway Station to Chinchpokli Railway Station and thereafter outside Chinchpokli Railway Station where the crime occurred. Only if the prosecution is in a position to show the involvement of the Appellant through his phone number 9987251628 the aforesaid chain of circumstances i.e. the case of the prosecution can be established. In the

absence of any material on record to show the involvement of the Appellant, the case of the prosecution fails. It is the prosecution's specific case that the CDR prima facie established the presence of the Appellant at Panvel and thereafter until the spot of the incident. This is a very serious charge by the prosecution. The prosecution has charged that the Appellant was in touch and in connection with Ms. Sangita Nair (8369049895), wife of the gang leader Ayub Chikna and has therefore abetted the crime. After a careful analysis of the CDR reports placed on record we find that there is no direct or indirect evidence against the Appellant to have acquired the alleged SIM card of mobile phone number 9987251628 at the behest of Ayub Chikna and having used the same for commission of the crime. It is pertinent to note that on being apprehended, no mobile phone or SIM card pertaining to 9987251628 was recovered from the Appellant. This is an important fact. The prosecution has also failed to obtain the CDR of SIM card No. 9987251628 attributable to the Appellant. Hence there is no material placed on record by the prosecution to come to the prima facie conclusion that the Appellant was in active conversation with any of the co-accused before, during or after the commission of the crime.

21. Finally the prosecution has charged that an amount of Rs. 10,200/- was recovered from the Appellant when he was apprehended and this was part of the total consideration which the Appellant had received from the leader of the organized crime syndicate Ayub Chikna. We are afraid

to state that once again this is a charge without any substantive proof or evidence for indicting the Appellant. When the prosecution claims that a substantial amount was received by the Appellant, the burden of proof is on the prosecution to prove on the basis of factual evidence and show what substantial amount was paid to the Appellant. Further the prosecution has to show as to how the substantial amount was received by the Appellant, from whom and when the said amount was received and who paid the said amount to the Appellant. No such evidence is presented, save and except it is alleged that an amount of Rs. 10,200/- was recovered from the Appellant and this was the money out of the total consideration received by the Appellant from the gang leader Ayub Chikna for providing the tip and information about the movement of the complainant to some of the co-accused. The prosecution has not placed on record any evidence whatsoever to show the nexus of the recovery of Rs. 10,200/- from the Appellant to the same having being received from Ayub Chikna.

22. As seen, in the absence of any material, direct or indirect evidence about the presence of the Appellant in the CCTV footage investigated by the prosecution, the recovery of the alleged SIM card and/or mobile phone bearing No.9987251628 from the Appellant and unable to show any nexus of the recovery of Rs.10,200/- with the alleged consideration amount paid to the Appellant by the main accused, we come to the conclusion that this is a case of no *prima facie* evidence against the Appellant. In view thereof, the

role of the Appellant in the present crime is *prima facie* doubtful. We are not in agreement with the conclusion arrived at by the learned Special Judge, MCOCA in the impugned order dated 18.01.2022 that there is voluminous material available against the Appellant to proceed against the Appellant for the charge levelled against him under the MCOC Act.

22.1. In this connection, we may also usefully refer to the order dated 24.08.2021 passed by the learned Single Judge of this Court while granting release of the Appellant on bail, wherein the learned Judge has referred to the affidavit-in-reply filed by the Assistant Commissioner of Police, Mumbai.

Paragraph No.7 of the Affidavit is relevant and is reproduced hereinunder:

"7. Although it is prosecution case that the gang-leader Ayyub Chikna had procured four SIM-cards from Rakesh Jaiswal Rakesh Jaiswal (co-accused), except the statement of co-accused, there is no evidence to indicate that particular SIM was used by the Applicant to keep vigil on the movements of Complainant, while he was travelling from Panvel to the spot of the incident. In so far as Applicants' complicity in the 'organised crime' is concerned; it may be stated that the affidavit of the Assistant Commissioner of Police is silent, on 'commonality' between the previously registered offences and the present crime. Besides it can be seen from the affidavit-in-reply, that offences registered against the gang-leader do not show involvement of Applicant therein. Neither particulars of nature of offences committed by the gang-leader has been stated, nor the nexus between the previous and present offences has been shown or pointed out.

. In the case of **State of Maharashtra Vs. Bharat Shantilal Shah and Others** (2008) 13 SCC 5; the Hon'ble Apex Court has held that offences, which do not look to be common to those under the MCOC Act, would not be relevant for the purpose of denying the relief of bail. Consequently, reply filed by the Prosecution does not show that previously registered offences against the Applicant and gang-leader have anything in common with the offences registered in the present crime. Therefore, crimes registered against the Applicant and gang-leader were characterized by individuality."

23. As seen above it is stated that save and except the statement of a co-accused, there is no evidence to indict that a particular SIM card was used

by the Appellant to keep vigil on the movement of the complainant and that the affidavit dated 06.04.2022 of the Assistant Commissioner of Police, Bhoiwada Division, Mumbai is completely silent on the commonality between the previously registered offences and the present crime. Further the said affidavit also does not show involvement of the Appellant in the offences registered against the main accused - Ayub Chikna, the gang leader of the organized crime syndicate.

24. In the present case, the Appellant has prayed for discharge from the entire proceedings arising out of C.R. No. 70/2019. The provision for discharge is contained in Section 227 of the Cr.P.C. Section 227 of the Cr.P.C. reads thus:-

"227. Discharge. - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused, he shall discharge the accused and record his reasons for so doing."

24.1. In order to understand the scope of the provision of discharge under Section 227 of the Cr.P.C., we may usefully refer to the decision of the Division Bench of this Court in the case of **Govind Sakharam Ubhe Vs. State of Maharashtra**³. Paragraph Nos. 14 and 16 to 25 of the said decision are relevant and critically analyze the scope of Section 227 of the Cr.P.C. and lay down the principles for discharge of an accused. Paragraph Nos. 14 to 25

3 2009 SCC OnLine Bom 770

read thus:

"14. Before we deal with the rival submissions, we must ascertain what is the scope of Section 227 of the Code which provides for discharge. In several judgments, the Supreme Court has outlined the scope of Section 227 of the Code. We shall refer to a few of them.

15.

16. In *State of Bihar v. Ramesh Singh* (1977) 4 SCC 39, while referring to Section 227 of the Code, the Supreme Court observed :

"At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of the suspicion cannot take the place of proof of his guilt at the conclusion of the trial. But if at the initial stage, if there is a strong suspicion, which leads the Court to think that there is a ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused".

The Supreme Court further observed that -

"If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial".

The Supreme Court then went on to observe -

"If the scales as to the guilt or innocence of the accused are even at the conclusion of the trial, then on the theory of benefit of doubt the case must end in the acquittal of the accused; but if, on the other hand, the scales are even at the initial stage of making an order under section 227 or section 228, then in such a situation, ordinarily and generally the order will have to be made under section 228 and not under section 227."

17. In *Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4 : AIR 1979 SC 366, the Supreme Court reiterated the same principles but added that at the stage of Section 227 of the Code, the Court has power to sift and weigh the evidence to find out whether there is prima facie case against the accused but if two views are equally possible and the Judge is satisfied that the evidence gives rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. The Supreme Court further observed that the Judge cannot act as a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence, any basic infirmities in the case and so on. The Supreme Court clarified that this however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

18. In *Superintendent & Remembrancer of Legal Affairs, West Bengal v.*

Anil Bhunja, (1980) 1 SCC 667 : AIR 1980 SC 52, the Supreme Court observed that the standard test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of Section 227 or Section 228. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charges against the accused in respect of the commission of that offence.

19. Same principles were reiterated by the Supreme Court in *Niranjan Singh Karam Singh Punjabi v. Jiendra Bijja, (1990) 4 SCC 76 : AIR 1990 SC 1962*.

20. In *State of Maharashtra v. Som Nath Thapa (1996) 4 SCC 659*, the Supreme Court observed that if there is a ground for presuming that the accused has committed the offence, it can be said that a prima facie case has been made out against the accused. Even if the court finds that the accused might have committed the offence, it can frame the charges. The Supreme Court clarified that at the stage of framing of charge, probative value of the materials on record cannot be gone into.

21. In *State of Maharashtra v. Priya Sharan Maharaj, (1997) 4 SCC 393 : AIR 1997 SC 2041*, the Supreme Court again reiterated that at the stage of framing of the charge, the court has to consider the material with a view to finding out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

22. In *Dilawar Kurane's case (supra)*, the Supreme Court extensively quoted observations made by it in Prafulla Kumar Samal's case and reiterated the same principles.

23. It is also necessary to refer to the Supreme Court's judgment in the *State of Karnataka v. L. Muniswamy & Ors. (1977) 2 SCC 699*. In that case, some of the accused were discharged by learned Session Judge under Section 227 of the Code. So far as the other accused were concerned, learned Sessions Judge adjourned their case for framing charges against them. Two revision petitions were filed against this order. These petitions were allowed by the Karnataka High Court on the view that there was no sufficient ground for proceeding against them. It is clear from the first paragraph of the Supreme Court judgment that the High Court had, in exercise of its powers under Section 482 of the Code, quashed the proceedings initiated by the State of Karnataka. Being aggrieved by this judgment, the State of Karnataka approached the Supreme Court. The Supreme Court referred to Section 227 of the Code and observed that the High Court is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order of discharge is justified. The Supreme Court then referred to Section 482 of the Code and observed that in exercise of the wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The Supreme Court further observed that this power is designed to achieve a salutary public purpose which is that a court proceeding ought

not to be permitted to degenerate into a weapon of harassment or persecution. The following observation of the Supreme Court needs to be quoted.

"In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

24. It is significant to note that when the attention of the Supreme Court was drawn to the judgment in *R.P. Kapur v. The State of Punjab*, AIR 1960 SC 866 to the effect that in its inherent jurisdiction, the High Court cannot embark upon an enquiry as to whether the evidence in the case is reliable or not, the Supreme Court reaffirmed this position and referring to the facts before it observed that in that case, there was no material on record on the basis of which any court can reasonably come to the conclusion that the accused were in any manner connected with the crime. Of course, in this case, the Supreme Court has also referred to Section 227 of the Code and observed that in exercise of this power, the court can determine the question whether the material on record if unrebutted is such on the basis of which a conviction can be reasonably possible. But, it must be remembered that primarily the Supreme Court was dealing with the High Court's power under Section 482 of the Code and that was a case where there was no material to reasonably connect the accused with the crime. Undoubtedly, the powers of the High Court under Section 482 of the Code are very wide and as observed by the Supreme Court, it has to consider ends of justice and not the ends of mere law. In any case, what the Supreme Court has said in this judgment does not go counter to what it has said on this point in a line of judgments, which we have referred to hereinabove.

25. The principles laid down by the Supreme Court in the above cases need to be summarized. It is settled law that at the stage of Section 227 of the Code, the court has 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 the offence or that there is no sufficient ground for proceeding against him. The Court's enquiry must not be directed to find out whether the case will end in conviction. However, though roving enquiry is not permissible, 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 and that unrebutted material will lead to a conviction. If at the stage of Section 227 or Section 228, the scales as to the guilt or innocence of the accused are even then the court must proceed to frame a charge. There is no question of giving benefit of doubt to the accused and discharge the accused at that stage because the

scales are even. That can be done only at the conclusion of trial. If there is a strong suspicion which leads the court to think that there is a ground for presuming that the accused has committed an offence, then the court will proceed to frame the charge. But if two views are possible and the court is satisfied that the evidence gives rise to some suspicion but not grave suspicion against the accused, the court will be within its right to discharge the accused. Suspicion has to be strong and grave suspicion leading the court to presume that the accused has committed an offence. While basic infirmities and broad probabilities can be considered, the court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it is conducting a trial. Probative value of the material cannot be gone into at that stage."

24.2. In the light of the aforestated legal position and as discussed in paragraph No. 17.1 and 17.2 hereinabove, we have considered the material placed on record to find out whether there is a prima facie case made out against the Appellant or not.

25. In our opinion, the material evidence which we have discussed above does not create any suspicion against the Appellant leading us to believe and presume that the Appellant is a member of the organized crime syndicate headed by Ayub Chikna and is involved in continuing unlawful activities and most importantly has any role in the abetment of the present crime in C.R. No. 17/2019. Hence, we are of the opinion that the prosecution has failed to place on record any reliable and cogent material which would establish the indictment of the Appellant in the present case. The prosecution has failed to place on record any material on record which would show that the Appellant reced Panvel area and the entire route taken by the complainant from Panvel to Chinchpokli and provided material and live information about the movement of the complainant to the other co-

accused, that the CCTV footage and CDR evidence relied upon by the prosecution established the presence of the Appellant in Panvel area in Chinchpokli area and near the scene of crime and the recovery of the amount of Rs. 10,200/- from the Appellant was linked to the consideration received by the Appellant for providing the aforesaid information to the other co-accused, all on the instructions and at the behest of the gang leader of the organized crime syndicate, Ayub Chikna. In our opinion the learned trial court in the impugned order has not given any reasons whatsoever to prove the involvement of the Appellant in the aforesaid crime.

26. In view of the above discussion and findings, the charge against the Appellant deserves to be quashed. The charge against the Appellant in the present case is based upon only filing of charge sheet against the co-accused in the past to which we have referred to herein above. *Prima facie*, there is no overt act or omission attributable to the Appellant which would amount to continuation of any unlawful activity carried out by use of force for the purpose of pecuniary gain with which the Appellant is charged. That apart, as seen, the statutory condition in Section 2(d) of the MCOC Act pertaining to pendency of more than one charge-sheet against the gang leader in the preceding 10 years does not also stand fulfilled for indicting the Appellant. The aforesaid reasoning clearly shows that there is complete non-application of mind while granting approval and sanction to prosecute the Appellant under the provisions of Section 23 of the MCOC Act.

27. In view of the above discussion and findings, we are of the considered opinion that a strong *prima facie* case has been made out by the Appellant, that this is a fit case for discharge and that the Appellant deserves to be given benefit of doubt, hence the Appeal is allowed and disposed of in terms of prayer clause (a) which reads thus:-

"(a) That this Hon'ble Court be pleased to discharge the Appellant from the alleged entire proceedings arisen in final report arising out of FIR vide CR No. 70 of 2019 dated 07.04.2019 for alleged offence punishable u/s. 395, 397, 412, 341, 201 r/w 120 (B) of Indian Penal Code, section 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crime Act, 1999 and u/s. 37(1)(A) r/w 135 of the Maharashtra Police Act registered at the instance of Kalachowki Police Station."

[MILIND N. JADHAV, J.]

[SMT. SADHANA S. JADHAV, J.]