

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 5752 OF 2021****WITH****INTERIM APPLICATION NO. 3252 OF 2021**

Sunny Sultan Singh

... Petitioner

V/s.

The State Of Maharashtra

... Respondent

Ms. Savita Prabhune Appointed Advocate for Petitioner.

Mr. Ajay Patil APP, for Respondent-State.

**CORAM : A.S. GADKARI AND
PRAKASH D. NAIK, JJ.****DATE : 5th DECEMBER, 2022.****P.C. :**

1. A bare perusal of Petition would indicate that, Petitioner wants this Court to test his defence in a trial arises out of C.R. No.44 of 2020 registered with M.H.B. Colony Police Station, Mumbai contending that, the provisions of Maharashtra Control of Organized Crimes Act (MCOCA) have been wrongly applied to the said crime.

2. It is the settled position of law that, defence of the Petitioner can not be tested in a Petition under Article 226 of the Constitution of India, as it involves disputed question of facts.

3. In view of the above, we find that present Petition is misconceived and is accordingly dismissed.

4. It is however made clear that, Petitioner will be at liberty to file an appropriate Application before the Trial Court and lead evidence in support of his contention if permissible under the law. If such Application is filed, it is needless to mention that, the Trial Court will decide it as per the provisions of law.

5. In view of disposal of Petition, Interim Application No. 3252 of 2021 does not survive and is accordingly disposed off.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]