

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 115 OF 2021

Rushikesh Ramdas Patil

... Petitioner

V/s.

The State of Maharashtra and Ors.

... Respondents

Dr. Uday P. Warunjikar, for Petitioner.

Mrs. S. D. Shinde APP, for Respondent Nos. 1 to 3-State.

Mr. Piyush Toshnival, for Intervener

**CORAM : A.S. GADKARI AND
PRAKASH D. NAIK, JJ.**

DATE : 7th DECEMBER, 2022.

PC. :

1. By the present petition under Article 226 of the Constitution of India, the Petitioner (Accused No. 8) has impugned prior approval dated 1st December, 2016, under Section 23(1)(a) of the Maharashtra Control of Organised Crime Act (for short '*the M.C.O.C. Act*') and Sanction Order dated 8th March, 2017, under Section 23(2) of the M.C.O.C. Act, issued by the Additional Commissioner of Police, West Region, Thane and Commissioner of Police, Thane City respectively.

2. Heard Dr. Warunjikar, learned Advocate for the Petitioner, Mrs. Shinde, learned APP for the State and Mr. Toshnival, learned Advocate for Intervener. Perused record.

3. Dr. Warunjikar, learned Advocate for the Petitioner submitted that, according to the petitioner, the offence i.e. C.R. No.266 of 2014 was

committed by the petitioner when he was a juvenile, aged about 17 years, has also been taken into consideration by the Sanctioning Authority, while granting sanction to prosecute Petitioner alongwith other co-accused. That, the Sanctioning Authority has committed a patent error in taking into consideration the said crime. That, there is only one crime wherein the petitioner is an accused i.e. C.R. No. I-475 of 2016 dated 24th October, 2016, registered with Narpoli Police Station, Taluka Bhivandi, District Thane and apart from the said crime, there are no other antecedents at the discredit of the petitioner. He submitted that, according to his instructions the Sanctioning Authority has also taken into consideration C.R. No.266 of 2014 as noted earlier. He submitted that, by Order dated 26th December, 2019, the Principal Magistrate, Juvenile Justice Board, Bhivandi had directed to stop investigation of the said crime for the reasons stated in its Order dated 26th December, 2019, and therefore the said crime ought not have been taken into consideration by the Sanctioning Authority. He therefore submitted that, the Sanction Order issued by the Sanctioning Authority is erroneous and needs to be quashed *qua* the Petitioner.

4. Per contra, Mrs. Shinde, learned APP and Mr. Toshniwal, learned Advocate for the informant supported the Sanction Order issued by the Respondent No.3.

5. Perusal of record indicates that, the prior approval was granted by Respondent No.2 to investigate a Crime i.e. C.R. No. 475 of 2016 by applying the provisions of the M.C.O.C. Act. In the prior approval itself, the

concerned Authority has stated that, accused No.1 Akshay Nanda alias Nandu Patil is the head of the Organised Crime Syndicate. That, more than one charge-sheets have been filed against the said head of the Organised Crime Syndicate and therefore the Respondent No.2 was satisfied for application of the provisions of M.C.O.C. Act. Record further indicates that, after completion of investigation the Investigating Officer placed the papers of investigation before the Respondent No.3 for granting sanction under Section 23(2) of the M.C.O.C. Act. Respondent No.3 after being satisfied with the fact that, the offence in question has been committed by the Organised Crime Syndicate headed by Akshay Nanda alias Nandu Patil i.e. head of the Organised Crime Syndicate in conspiracy and association with other members of his syndicate whose names are specifically mentioned in the sanction Order.

6. It is therefore clear that, after granting prior approval, the Investigating Agency has completed investigation and Sanctioning Authority has accorded sanction to prosecute the Petitioner and other accused persons as contemplated under the provisions of M.C.O.C. Act.

Perusal of Sanction Order clearly indicates that, the offences registered against the head of Organised Crime Syndicate and/or against the members thereof have been taken into consideration. Neither the Respondent No.2 nor the Respondent No.3 have taken into consideration the C.R. No.266 of 2014 wherein the Petitioner was an accused when he was juvenile.

It clearly appears to us that, the provisions of the M.C.O.C. Act have been applied to C.R. No.475 of 2016 dated 24th October, 2016, registered with Narpoli Police Station, Taluka Bhivandi, District Thane.

The contention of the Petitioner that, the papers of C.R. No.266 of 2014 were also placed before the Competent Authority for Prior Approval and it is taken into consideration, according to us is the figment of imagination of the Petitioner and is not supported by the record. The Sanctioning Authority while reaching to the subjective satisfaction while issuing Order under Section 23(1)(a) or 23(2) of the M.C.O.C. Act has also not taken it into consideration.

7. It is the settled position of law and as has been held by this Court in the case of *Govind S. Ubhe V/s. State of Maharashtra*, reported in *2009 All MR (Cri.) 1903*, what is contemplated under Section 2(1)(d) of M.C.O.C. Act is that, activities prohibited by law over the time being in force which are punishable as described therein have been undertaken either singly or jointly as a member of Organised Crime Syndicate and in respect of which more than one charge-sheets have been filed. Stress is on the unlawful activities committed by the Organised Crime Syndicate. Requirement of one or more charge-sheet is *qua* the unlawful activities of the Organised Crime Syndicate and not the individual therein.

It is also the settled position of law that, the objection regarding defects in Approval Order or Sanction Order can be raised at the time of trial by giving opportunity to the concerned Authority to justify it. It

is desirable that, every Order whether Approval or Sanction should speak for itself and should disclose consideration of the materials placed before it and the application of mind thereof. However, in a case where Sanction Order or Approval Order does not expressly show consideration of all the materials placed before it and/or application of mind, the prosecution is entitled to establish the same by leading necessary evidence regarding production of material before the concerned Authority. Question of discharge of accused merely on the basis of such objections being raised cannot arise. Decision on the point of defect if any in the Order of Approval or Sanction will have to be taken into consideration at the time of trial only.

8. After applying the aforestated principles by this Court, we find that, there is no legal infirmity in according prior Approval dated 1st December, 2016 and Sanction Order dated 8th March, 2017, by the Respondent No.3.

9. Petition being devoid of merits is accordingly dismissed.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]