

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3812 OF 2021

Rajendra Bhau Patole	...	Petitioner
Versus		
The State of Maharashtra		
And Another	...	Respondents

Mr. Girish Kulkarni a/w Mr. Kunal Nawade i/b Milind Deshmukh for the
Petitioner.

Mr. J.P. Yagnik, APP for Respondent No.1-State.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : 28 MARCH, 2022

JUDGMENT : (Per S.M. Modak, J.)

. In this Petition, we are required to decide the prayer for quashing of FIR made by the Petitioner/accused who is yet not arrested. “The averments “in the FIR” are the only criterios or whatever “material collected during investigation” is the relevant criterio for quashing” is the predominant issue to be addressed in this Petition.

2 The Petitioner filed an application for grant of protection from arrest in connection with an offence registered at C.R. No.512 of 2021 under Sections 307, 324, 323, 509, 504, 506(2), 143 144, 147, 148, 149 of Indian Penal Code and Sections 4, 25 of Arms Act along with Sections 37(1) read with Section 135 of Bombay Police Act lodged at Mankhurd Police Station. It was registered on the complaint of Sunil Muralidhar Sathe. Apprehending arrest, the Petitioner approached the City Civil

Court, Mumbai. Initially, he could get interim protection from arrest as per Order dated 26 August 2021. However, he was not successful in securing an Order of confirmation for the reason that Additional Commissioner of Police Mumbai have granted approval under Section 23 of the provisions of Maharashtra Control of Organized Crime Act, 1999 (MCOC Act).

3 That is how the Petitioner approached this Court. He made prayer thereby challenging constitutional validity of Section 21(3) of the said Act and also made a prayer for setting aside the Order dated 28 September 2021. However, when this Court has raised serious doubt about those prayers in the Order dated 21 December 2021, the Petitioner deleted those prayers and inserted prayer for quashing of FIR and quashing of approval dated 28 September 2021. On this background, we have heard Mr. Girish Kulkarni, learned Counsel for the Petitioner and Mr. J.P. Yagnik, learned APP for Respondent No.1-State.

4 The parameters for quashing of FIR are well settled. FIR can be quashed in an extra ordinary jurisdiction, if averments in the FIR does not show commission of an offence or it can be quashed, if material collected during the investigation does not suggest commission of an offence or if there are technical defects, for example, not obtaining sanction to prosecute. The purpose of this provision is not to compel the accused person to face an ordeal of trial. When either there is an abuse of process of any Court or securing the end of justice, the power under 482 of Code of Criminal Procedure can be exercised. That is to say when either of the party has abused the process of Court in order to harass any party by way of vengeance, such power can be exercised or it can be exercised when

criminal law is set in motion in a good faith, but during the investigation, no material is collected to disclose the involvement of the accused.

5 In the case before us, the charge-sheet is filed against in all four persons before the Special Court under MCOC Act. It is true that police have not arrested the present Petitioner and they could not get opportunity to interrogate him. So as on today, we are supposed to deal with the grievances of the Petitioner on the basis of materials collected and which is part of a charge-sheet filed against other accused persons.

6 The grievance of the Petitioner is two fold :

(i) the averment in the FIR has not referred to the Petitioner as an accused, and

(ii) so far as the grant of approval under MCOC Act is concerned, it nowhere discloses commission of any of the offence under the provisions of MCOC Act.

7 It is also submitted that at the most the Petitioner can be blamed for harbouring the main assailants by giving them shelter in his house at Phaltan, District Satara. There is a contention raised on behalf of the Petitioner that when police realized interim protection granted to the Petitioner will be confirmed, the police hurriedly obtained approval on 28 August 2021 to invoke MCOC Act. It is also contended that there is no nexus/link between the Petitioner and gang leader. It is also contended that the on the basis of offences mentioned in the say, it cannot be said that the present offence is committed to continue the unlawful activities. All these contentions are refuted by learned APP.

8 As against this, learned APP has not disputed that the present Petitioner is not being named as an accused in the FIR. However, he submitted that the investigation so far carried out discloses involvement of the Petitioner in an abetting the main assailants. He invited our attention to the provision of Section 3 of Maharashtra Control of Organized Crime Act, 1999. In support of his contention, he relied upon the following judgements :-

Govind Sakharan Ubhe Vs. State of Maharashtra¹

Sachin Bansilal Ghaiwal Vs. State of Maharashtra²

9 Before appreciating the issues, it will be material to consider some of the relevant facts.

FACTS

10 FIR is lodged on the complaint of one Sunil Muralidhar Sathe, resident of Lokshahir Annabhau Sathe Nagar, Mankhurd, Mumbai on 11 August 2021 at Mankhurd Police Station. There is a rehabilitation project undertaken at Veer Lahuji Annabhau Sathe Nagar. The occupants formed Housing Society. Muralidhar Sathe being father of such informant is treasurer and one Gowardhan Kuchekar is the main promoter of that housing society. The work of development is assigned to Builder Vivek Jain, through his company by name Bhairav Erectors Pvt. Ltd. They have also started work. As work of development was slow, the office bearers of the society have approached the Authority under SRA. They were interested to change the developer.

11 On this background, the main incident took place on 10 August

1 2009 ALL MR (Cri) 1903

2 2014 CRI. L.J. 4217

2021. In front of the house at Lokshahi Annabhau Sathe Nagar, Mumbai, accused Chivya alias Nitin Aware, Sachin Aware, Akshay Kanthe, Ravi Ambhore and Shankar Salve assaulted Baban Ranpise with the help of sword and injured Ravi Sathe, Ganesh Hiwale, Mangesh Hiwale and Muralidhar Sathe. Accordingly, an offence was registered on 11 August 2021 at Mankhurd Police Station for the offences punishable under Sections 307, 324, 323, 509, 504, 506(2), 143 144, 147, 148, 149 of Indian Penal Code and Section 4 read with Section 25 of Arms Act and under Section 135 of Bombay Police Act. This main incident was preceded by two non-cognizable offences bearing No.1614 of 2021 and bearing No.1740 of 2021 registered at Nirmal Nagar Police Station. It is this offence, which has led to Mankhurd Police Station to seek approval for invocation of provisions of MCOC Act. It was granted on 28 August 2021 by Additional Commissioner of Police, East Region. In addition to present offence, there were earlier offences hence an approval is granted to apply the provisions of Sections 3(1)(ii), 3(2), 3(3), (4) of MCOC Act. Final sanction was also granted by Commissioner of Police on 4 February 2022. Even charge-sheet is filed against in all four accused persons, by name, Shankar Dashrath Salve, Chivya alias Nitin Bhanudas Aware and Akshay Ashok Kanthe and Bhanudas Aware before the Special Court, Mumbai. One Ravi Ambore and Petitioner are shown as wanted accused.

12 Learned APP has made us available papers of investigation. We have perused them. It is true that in the FIR registered at Mankhurd Police Station, there is no reference of present Petitioner being one of the accused persons. Whereas a case put up by the learned APP against the Petitioner is that the present Petitioner has assisted assailants including the accused Shankar Salve (who is leader of the gang) in various ways.

Even he has incurred expenses of house of the accused Rajendra Patole. Even the Petitioner has offered his car for helping the assailants to run away. The accused Nitin Aware and Shankar Salve were arrested from the house of the Petitioner at Village Jadhavwadi, Taluka Phaltan, District Satara. So the Petitioner has committed an offence under Section 3(3) and 3(4) of MCOC Act. Learned APP invited our attention to relevant papers from the investigation papers.

13 To this, Mr. Kulkarni, learned Counsel for the Petitioner submitted that at most the role alleged against the Petitioner is that of abettor. According to learned Counsel the facts of two judgments referred by learned APP are different and in those cases, there was positive role attributed to the Petitioner therein.

14 It is true that in case of **Govind Sakharam Ubhe** (supra) even act of negotiating in fixing extortion amount and also accepting it and handing it over to the leader of the gang was considered as an act of abetment falling within the purview of Section 3(4) of MCOC Act.

15 Whereas in case of **Sachin Ghaiwal** (supra), Division Bench of this Court had an occasion to consider meaning of term 'abetment' mentioned in Section 107 of Indian Penal Code *vis-a-vis* a definition given in Section 2(1)(a) of MCOC Act. In that case, the Appellants were present at the scene of the crime and assisted principal accused in commission of a murder. These two factors were considered while applying provisions of Section 3(2) of MCOC Act. Mr. Kulkarni, learned Counsel emphasized that the Appellants were present at the spot in that case and this is the factor which differentiate that case from the present case. It is true that in case before us the Petitioner was not present at the spot, but he assisted the

arrested accused in various ways. By no stretch of interpretation, it can be said that in **Sachin Ghaiwal**'s case, this Court has opined that there can be abetment only when abettor is present at the spot.

16 It is important to note that once the provisions of MCOC Act are invoked, there is different procedure to be followed during investigation, inquiry and trial. We have seen the approval granted on 28 August 2021 and sanction granted on 4 February 2022. The Petitioner has chosen to approach this Court prior to his arrest. As the Petitioner is not arrested, there is no final report filed against the Petitioner. Though the Petitioner is handicapped in going through the investigation papers, this Court can certainly peruse them.

17 The law on the point of invocation of MCOC is well settled. This Act is enacted to prevent and control an organized crime. Organized crime is different from regular crime. If for gaining pecuniary benefits, economic/other advantage unlawful activity is continued it is an organized crime. It must be undertaken on behalf of the organized crime syndicate. It means if there is crime syndicate and they are involved in criminal activity and it has become their source of livelihood, it attracts the provisions of stringent MCOC Act. Normal criminal law is not sufficient to control the activities.

18 It is not necessary that every time same set of criminals will commit that offence. There may be new accused or combination of old and new participants. What is important is all these offences are connected through the web of organized crime syndicate. On this background, if we see the previous offences, we may find that the gang leader accused

Shankar Dashrath Salve is arrested. There is combination of different accused. Accused Shankar Dashrath Salve is involved in present offence. Present Petitioner assisted the arrested accused in committing the offence. Helping them to run, to take shelter attracts invocation of Indian Penal Code. In that manner Petitioner has become member of that crime syndicate.

19 After considering the ratios laid down in above referred judgements, we do not feel that the action of the police in showing the Petitioner as wanted accused does amount to abuse of the process of the Court. It is for the reason that the investigation so far carried out suggest the involvement of the Petitioner. It is not always necessary that every accused must be present on the spot. There are various circumstances in the chain of circumstances. In that chain, it may happen that set of accused persons may be present at the spot, some of the accused have played a role prior to commission of offence and some of them have participated post commission of offence. Materials shown to us do suggest involvement of the Petitioner in helping the assailants in different manners.

20 For this discussion, we are not inclined to accept any of the contentions raised by the Petitioner. It is true that Senior Inspector of Mankhurd Police Station has submitted proposal to invoke the provisions of MCOC Act on 11 August 2021 that is on the date of registration of offence itself and it was granted on 28 August 2021. At that time anticipatory bail application of the Petitioner was not on record. Hence we reject the contention about *mala fide* exercise of power so as to deny anticipatory bail to the Petitioner.

21 Learned Advocate Shri Kulkarni may be right in his submission that role of the Petitioner is minor as compared to the arrested accused. But this contention cannot be considered in this Petition. These are our *prima facie* observations. It can be agitated either at the time of arguing bail application or arguing the matter finally on merits. The observations made above are our *prima facie* observations made for deciding issues raised in this Petition. For the above discussion, we do not find merit in the Petition. Hence, it is dismissed.

RAJESH
VASANT
CHITTEWAN

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(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)