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

## CRIMINAL WRIT PETITION NO. 949 OF 2022
## WITH
## CRIMINAL WRIT PETITION NO. 1374 OF 2022

******

## CRIMINAL WRIT PETITION NO. 949 OF 2022

| | | |
|---|---|---|
| Jagjitsingh Kisansingh Gambhir<br>Aged 43 years, Occ. Hotel Business,<br>Residing at Sindhi Colony, Tarakpur,<br>Ahmednagar.<br>[Presently in Nashik District Prison] | .. | Petitioner |
| Versus | | |
| The State of Maharashtra | .. | Respondent |

## WITH
## CRIMINAL WRIT PETITION NO. 1374 OF 2022

| | | |
|---|---|---|
| Bharat Ramesh Joshi<br>Age. 52 years, Occ. Driver,<br>R/o. House No.345,Ganesh Chowk,<br>Civil HUDCO, Savedi,<br>Tq. & Dist. Ahmednagar<br>(Presently in jail). | .. | Petitioner |
| Versus | | |
| The State of Maharashtra<br>Through Police Inspector,<br>M.I.D.C. Police Station,<br>Taluka and District Ahmednagar. | .. | Respondent |

Mr.Amin Solkar a/w. Mr. Sayyed Tauseef h/f. Smt. Misbaah Solkar a/w. Jintendra Jain, Advocates for the petitioner (W.P. No.949 of 2022).
Mr.S.S. Kazi, Advocate for the petitioner (W.P. No.1374 of 2022)
Mr. Y.G. Gujarati, APP for the respondent/State.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 28.02.2023
PRONOUNCED ON : 19.04.2023

**J U D G M E N T :-**

01. Both these criminal writ petitions are arising out of the same crime and are on similar set of facts and therefore are taken together.

02. Rule. Rule made returnable forthwith, by consent of the parties.

03. The petitioners in both the petitions are accused in Special Case (MCOCA) No. 3 of 2017, then pending with the Special Judge, MCOCA, Nashik and subsequently transferred to the Special Court at Ahmednagar bearing No.570 of 2020. The petitioner in Cri.W.P. No.949 of 2022 (original accused No.8) filed an application Exh.77 and petitioner in Cri.W.P. No.1374 of 2022 (original accused No.3) filed an application Exh.106 for discharge from the offence under the Maharashtra Control of Organised Crime Act (for short "MCOC Act") and for transferring the case to the regular Court. Both the applications at Exh.77 and Exh.106 were decided by order dated 31.10.2018, thereby both the applications came to be rejected.

04. The facts in short giving rise to the present petitions are that the informant – Baban Rangnath Avhad lodged an FIR with the MIDC Police Station, Ahmednagar about an incident that took place on 01.04.2010 at 17.30 hours near Tarakpur, Ahmednagar. Two accused persons Jagjitsingh Kishansingh Gambhir and Mohan Shriram Duggal were found preparing spurious liquor. An information came to be lodged on 14.02.2017. It was alleged that one Mangal Mahadev Avhad was contesting an election to the post of Member of Panchayat Samiti. Another accused Bhagyashri Mokate was contesting election of Zilla Parishad. So as to attract the voters, accused Mahadev Avhad started canvassing for both these candidates. Their brothers, namely, Popot and Dilip also used to go for canvassing. On 12.02.2017 in the evening a party was arranged for the voters in the house of Mangal Mahadev Avhad. In the said party liquor was also served with dinner. The brothers of the informant started vomiting after the party on 13.02.2017. Both the brothers started feeling giddiness. Therefore, they were brought to the Civil Hospital, Ahmednagar. On reaching to the Civil Hospital, the informant found that both the brothers expired during the treatment. On that it was suspected that it is because of the spurious liquor that was supplied on the earlier day. In the said incident many others also lost their lives. Some of the persons who

attended said party became disabled. On the basis of this information, an offence came to be registered. Since the accused were found to have been indulged in the said practices even earlier and since earlier offences were registered, prior approval was sought for adding provisions of the Maharashtra Control of Organized Crime Act (for short "MCOC Act"). On 10.08.2017 said sanction was granted by the authority. Thereafter, charge-sheet came to be filed and cognizance was taken under the MCOC Act. The petitioners in these petitions filed application for discharge from the sections under the MCOC Act and for transfer as stated.

05. Since earlier the MCOCA Court at Nashik was for the district of Ahmednagar and Nashik, after a Special Court was established at Ahmednagar, the Special Case is now transferred to Ahmednagar. The learned Sessions Judge, Nashik rejected the applications by holding that there is sufficient material to add charges under the MCOC Act. The authority has rightly granted sanction. The Court considered the provisions of section 2(d) of the Act. It is held that, the material available on record shows involvement of the present petitioners in the crime. He formed opinion that prima facie the petitioners are members of the organized crime syndicate of producing

and dealing with illicit liquor. Many innocent persons lost their lives by consuming spurious liquor produced by the gang. These petitioners aggrieved by order are before this Court by way of filing these two separate petitions.

06. The learned Advocate for the petitioner in Cri.W.P. No.1374 of 2022 submits that in the FIR dated 14.02.2017, names of only three persons are shown as accused i.e. i) Bhagyashri Mokate ii) Mangal Avhad and iii) Govind Mokate. Thus, the allegation in FIR is only that brothers of the informant were called for party at the house of Mangal Avhad. It is submitted that the FIR was lodged only for the offence punishable under section 304, 328 read with section 34 of the Indian Penal Code. Though the offence was registered on 14.02.2017, accused No.3 came to be arrested on 19.02.2017 as his name transpired only during the investigation. The charge-sheet came to be filed on 24.05.2017. It is thereafter on 27.07.2017 the sections under the MCOC Act came to be added. It is submitted that the petitioner is suffering from blood cancer. However, since his bail is rejected he is still in the custody. He submits that from reading of section 2(d) and 19 of the MCOC Act, it is clear that the earlier offences under which the person is shown to have been involved must be offences where cognizance is taken by the Court. He

submits that so far as this petitioner is concerned, there is nothing to indicate, that in earlier offences cognizance is taken by the Courts. He, further submits that there has to be material to show that the accused is involved in continuing unlawful activity. In this case, the prosecution has not brought on record any material to show that this petitioner is continuously engaged in unlawful activity. He further invites attention of this Court to the definition under section 2(e) i.e. 'organized crime' and section 2(f) i.e. 'organised crime syndicate' and submits that present petitioner does not come under any of the definition. He invited attention to the order dated 26.11.2021 in Bail Application No.629 of 2021 granting bail to the petitioner, wherein this Court had observed by considering the provisions of the MCOC Act, that present case is not a fit case to attract the provisions of the MCOC Act and granted bail.

07. The learned Advocate for the petitioner in Cri.W.P. No.949 of 2022 submits that the petitioner had filed an application under section 227 of the Cr.P.C. and also under section 11 of the MCOC Act. At the same time, he submits that for the offences under the IPC, he has no dispute. The challenge is mainly to apply the provisions of the MCOC Act. He submits that the

authority has wrongly granted approval and sanction to apply the provisions of the MCOC Act. He submits that the conditions required for MCOC Act are stringent and are not to be applied in the cases of other offences. He submits that in view of section 23 of the MCOC Act, sanction is against the offence and not against offender and it needs to be tested as to whether in any of the cases the offence shows to be under the MCOC Act. He therefore attacks the sanction order itself and submitted that once the sanction is held to be bad in law, then the accused would be entitled to be relieved from the provisions of the MCOC Act. He further submits that if the sanction in respect of one of the accused is held to be bad in law, then it needs to be construed as sanction in respect of other accused is equally bad in law. He submits that as this Court at Principal Seat at Mumbai, when the the case was pending before the Court at Nashik, has held to be bad in Cri. Writ Petition No. 913 of 2019, in case of accused-Surjitsingh Gambhir. He submits that in this case, charge-sheet was filed on 11.08.2017. He submits that there is clearly non-application of mind by the authority. He submits that the order of prior approval is passed only on relying upon three cases. Firstly at Sr. No.5 in case No.570 of 2010; secondly at Sr. No.9 in STC No.2431 of 2010 and thirdly at Sr. No.18 in STC No.1963 of 2014 cognizance of which is taken by the Court. So far as first case is concerned, the offence is punishable under sections 420, 468, 472, 486 r/w 34 of the IPC r/w sections 65(e), 78 of the Maharashtra Prohibition Act, 1949. So far as second case is concerned, the offence punishable only under section 65(e) of the Maharashtra Prohibition Act and so far as third case is concerned the offence is punishable under sections 65(a)(e), 81, 83, 90 and 108 of the Maharashtra Prohibition Act. He relies upon judgment reported in **(2007) 4 SCC 171 in the case of State of Maharashtra & Ors. Vs. Lalit Somdatta Nagpal & Anr.**, wherein it is held that the provisions of the Act are required to be construed strictly. He submits that in this case no violence or any coercion is shown and therefore the sanction could not have been granted.

08. The learned APP in reply to Cr. W.P. No.1374 of 2022 submits that the charge-sheet was filed later-on and there is no previous stage before that. The submissions of the accused persons are considered by the learned Judge of the Special Court. He submits that the learned Special Court has rightly rejected the application by considering the legal position. He submits that the rejection of the application is proper. The Court has rightly considered the evidence of the witness Shabbir Shaikh and conversation between Jitu Gambir and witness. The Court has rightly considered section 2(d) of the MCOC Act.

He submits that there is confessional statement of the accused person recorded by the Superintendent of Police, Law and Research, CID, Pune, wherein accused Mohan Duggal has mentioned the names of both these petitioners. By giving dates of registration of offence, filing of the charge-sheet, date of seeking approval and sanction etc., he submits that all conditions are thus strictly followed. He relies on the judgment reported in **AIROnline 2021 Bom 2877 in the case of Lata Dadarao Pawar Vs. State of Maharashtra & Ors**. to submit that it is not that the sanction is required against every individual accused. He submits that the fact that the name of the accused person is not appearing in the FIR cannot be considered at the stage of discharge. He further submits that at this stage no roving inquiry is expected by the Court and the Court has to consider the material placed before it as it is. He submits that the observations in respect of another accused Surjitsingh are only for the purpose of grant of bail and not for the purpose of discharge. The Court has also considered the same material only for the purpose of grant of anticipatory bail and these observations cannot be considered while considering the application for discharge. The sanction order dated 10.08.2017 is rightly passed, with application of mind and thus is valid. In the order itself the sanctioning authority has mentioned that it has gone through the papers of investigation in the cases and certified copies of previous charge-sheets. At this preliminary stage, the material reveals that in any way the petition of the accused person for discharge cannot be considered. In the case of Lalit Nagpal (Supra), similar arguments were advanced as of the petitioner and the said petition was dismissed.

09. In rebuttal, the learned Advocate Mr. Kazi for petitioner in Cri. W.P. No.1374 of 2022 submits that in the case of accused Bharat Joshi, prerequisite conditions are absent. He is suffering from blood cancer and he requires treatment. The petitioner would be available for trial and prayed to allow the criminal writ petition.

10. Learned Advocate Mr. Solkar for petitioner in Cri.W.P. No.949 of 2022 submitted in rebuttal that the names of accused persons are not mentioned in initial investigation. Their names appear only during investigation. Taking the FIR as it is, no ingredients are shown to be present. The basic words as violence and coercion are missing in the sanction order. In absence of specific ingredients, the sanction order is bad. He submits that in the case of Surjitsingh Gambir and Sonu @ Sandeep Duggal, this Court has

come to the conclusion and the findings have attained finality. In such case, no different view is possible, wherein positive finding is recorded and prays that in any case the sanction has to be held bad in law and the matter be sent to the regular Court only for the offence under the IPC sections. He relied upon judgment reported in **(1995) 5 SCC 302 in the case of Anirudhsinghji Karansinghji Jadeja Vs. State of Gujarat**.

11. On the facts and the submissions, this Court has to now consider firstly whether the sanction granted by the authority is bad in law and secondly whether the petitioners have made out a case for discharge from the offences under the MCOC Act and to transfer the case to the regular Court. These questions are required to be dealt in the light of the provisions of law and the judgments relied upon by the parties.

12. The first judgment relied by the petitioners is reported in **2019 SCC OnLine Bom 8036 in the case of Deepak Madhavrao Mankar Vs. State of Maharashtra**, wherein the Division Bench of this Court held in the said case that there was no sufficient or tangible material available prima facie to justify the invocation of the provisions of the MCOC Act against the petitioner

therein as the organised crime syndicate and the Court had granted interim bail to the accused persons. It is seen that the judgment is of no help to the petitioners, as the Division Bench has considered the petition for the purpose of granting bail and interim bail was granted. In the said case there was challenge to the constitutional validity of provisions of sections 23(1)(a) and section 21(4) of the MCOC Act. However, the Division Bench had considered the petition for the purpose of bail and had passed the order.

13. Next case cited is reported in **2020 AIR (SC) 2203 in the case of State of Gujarat Vs. Mansukhbhai Kanjibhai Shah**. In the said case the question was mainly about definition of 'public servant' in clause (c) of section 2 of the Prevention of Corruption Act. This, case is not applicable to the present case in hand.

14. In the judgment reported in **MANU/MH/2047/2009 in the case of Madan & Ors. Vs. State of Maharashtra**, it was a case wherein the appeal was preferred against an order of conviction of the appellant. As the case is against conviction after holding a trial, the observations in the said case will not help the petitioners. It was held in the said case that there was no

violence. There was only one crime registered for preparation of decoity and there was already an acquittal. It was held that there were no plurality of the unlawful activities and therefore in that case it was held that it would not amount to organised crime. However, said case was decided in an appeal, which was preferred against conviction. It was not a case considered for discharge.

15. Next case relied upon by the petitioner is reported in **AIR 1997 SC 3400 in the case of Mansukhlal Vithaldas Chauhan Vs. State of Gujarat**. The Hon'ble Apex Court in the said case had considered the provisions of section 197 of the Cr.P.C. in respect of validity of sanction, wherein the Hon'ble Apex Court has held that since the validity of 'sanction' depends on the application of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. In the facts of that case, it was held that no proper application of mind was appearing from the order and sanction was therefore set aside. That was again a case wherein the Trial Court had convicted the appellant and the same

was confirmed by the High Court and ultimately same was set aside by acquitting the appellants therein.

16. In the next case reported in **2007 Cri.L.J.552 in the case of The State of Maharashtra Vs. Bharat Baburao Gavhane**, this Court at Principal Seat at Mumbai, in that case, on the facts, it was held that the activities were aiming at gaining supremacy over rival gang. The Court concluded that once this alone is the reason and the emphasis is as above, then the conclusion of the learned Special Judge that no prima facie material is produced to support framing of a charge for commission of offence under the MCOC Act, as held, cannot be said to be illegal and improper.

17. Further judgment relied upon is the judgment in the case of **Madhukar s/o. Babu Shinde Vs. The State of Maharashtra & Ors., Criminal Appeal No.297 of 2017**, wherein the Division Bench of this Court had considered as to whether the ingredients of section 3 of the MCOC Act have been satisfied. This Court had recorded that there was no material to satisfy invoking provisions of section 3. In that case sanction order under section 23(2) of the MCOC Act was held to be granted without application of mind by

the Special Inspector General of Police. In that view of the matter, it was held that the case ought to have been transferred to regular Court.

18. Next judgment is the judgment of this Court in the case of **Surjitsingh Bhagatsingh Gambhir Vs. The State of Maharashtra Writ Petition No.913 of 2019**, arising out of this very case in which discharge application of the petitioner is rejected. This Court at Principal Seat held that organised crime for the purpose of the enactment means any continuing unlawful activity by an individual, singly, or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimation or coercion or other unlawful means, which the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any person or promoting insurgency. The Court had come to the conclusion that the Court did not find any definite material contained in the charge-sheet to prosecute the petitioner under the MCOC Act. That was a petition under Article 21 of the Constitution to seek protection from arrest. The petitioner's anticipatory bail was rejected by the Special Court and therefore the petition was filed under Articles 226 and 227 of the Constitution. The Court came to a conclusion that there was no sufficient and

tangible material available on record to justify the invocation of the provisions of the MCOC Act against the petitioner. There was no material placed on record to establish him as a member of any crime syndicate nor it was established that he was a participant in the commission of offence by establishing that he had the knowledge of the happenings in the Civil Hospital's canteen. This Court observed no involvement of the petitioner and in those facts this the petition was allowed in terms of prayer clause (a) of that petition.

19. In the case of **Lalit Nagpal (Supra)** the Hon'ble Apex Court considered that on the basis of which sanction was granted, were related mainly to offences under the Penal Code which would immediately reveal that there was no live link between the old and new cases to constitute continuing unlawful activity. The Hon'ble Apex Court considered the definition of 'organised crime' in section 2(1)(e) of the MCOC Act. It was held that said section contemplates continuing unlawful activity by the use of violence or threat or violence or intimidation or coercion or other unlawful means. It was further held that the provisions of the Act will have to be interpreted very strictly and the authorities concerned are bound to observe the provisions. In

para 67 the Hon'ble Court considered that what is required to apply the provisions of MCOC Act needs something more in the nature of coercive acts and violence is required to be spelt out so as to bring the unlawful activity complained of which in the definition of the organised crime. In that case the High Court had allowed the writ petitions filed by the accused holding that having regard to the provisions of the Essential Commodities Act, provisions of MCOC Act would have no application to the case against the petitioner. This order was not interferred for the reasons different from those given by the High Court. Various Judgments of the Bombay High Court were challenged before the Hon'ble Apex Court in different special leave petitions and a common judgment was delivered by the Hon'ble Apex Court. So far as observations in respect of section 2(1)(d), 23(1)(a) and 21(4) etc. are concerned, in the backgroiund of the fact of those individual cases the judgment was delivered.

20. The learned APP relied upon judgment reported in **<u>(2022) 8 SCC 282 in the case of Abhishek Vs. The State of Maharashtra</u>**. The Hon'ble Apex Court in this case held that for the sanction or approval under the MCOC Act it requires to see as to whether the basic and threshold requirements are

fulfilled. It is held that satisfaction of the sanctioning authority needs to be considered on the basis of substance of the order and not merely by looking at the language used in the sanction order. The determinative factor is thus substance of the order and not the language used in it. It is further held that it is not limited to the activity involving use of violence in the case for organised crime. By considering clause (e) of section 2 of the MCOC Act, the Hon'ble Apex Court has held that organized crime is any unlawful activity by individual singly or jointly. It is held that actual use of violence is not always sine qua non for the activity falling under the mischief of organised crime, when undertaken by an individual singly or jointly as part of organised crime syndicate or on behalf of such syndicate. It is also held that the view of Full Bench decision in the case of **State of Maharashtra Vs. Jagan Gagansingh Nepali reported in 2011 SCC OnLine Bom 1049** is not correct. The expression 'other advantage' cannot be read in restrictive manner and it is required to be given its full effect. The common thread of "violence" or "threat of violence" or "unlawful means" running through all of these cases is not a matter requiring any analysis, as the same is apparent on the face of record. On the basis of crime chart, the nature of activities and the persons involved leave nothing to doubt that the involvement of the appellant in such crimes and unlawful activities which are aimed at gaining pecuniary advantages or of gaining supremacy. This Court finds that it is similar to the case in our hand.

21. The learned APP further relied upon case reported in **AIROnline 2021 Bom 2877 in the case of Lata Dadarao Pawar Vs. State of Maharashtra & Ors.**, wherein the name of the petitioner was not mentioned in the charge-sheet that was lodged against co-accused, who was a gang leader. It is held that non-inclusion of the name of the accused in the FIR or in approval order is not fatal to continuation of investigation. It was held that the competent authority has taken into consideration the material. The Division Bench of this Court had also considered the object of the provisions of the MCOC Act.

22. Next case cited by the learned APP is reported in **2019 ALL MR (Cri) 4380 in the case of Tarun Jit Tejpal Vs. State of Goa and Another**, wherein the case was under section 354, 354-A, 354-B, 341, 342, 376(2)(f) and 376(2)(k) of the IPC and section 227 and 228 of the Cr.P.C. relating to discharge. In that case the Hon'ble Apex Court has considered the case for discharge. It is held that the submissions made therein were the submissions

to be considered at the stage of trial and the Court is not required to consider the submission on merit at the time of framing of charge. This judgment though is not in respect of MCOC Act, however, he submits that the ratio can be applied to the present case.

23. The Division Bench of this Court in the judgment reported in **2008 (3) Mh.L.J. (Cri) 650 in the case of Anil Sadashiv Nanduskar Vs. State of Maharashtra** held that decision on the point of defect, if any, in the order of approval or sanction could be taken at the conclusion of trial. The order of sanction speaks for itself. It is to be seen that the authority while passing order of sanction or approval has applied its mind and that necessarily needs to be seen in the facts of the case, the material before the Court and substance of the sanction order. It was further held that considering all these this Court did not find that there was no error in the order of approval.

24. In another judgment reported in **AIROnline 2021 Bom 481 in the case of Sagar Balasaheb Gaikwad Vs. State of Maharashtra & Ors.**, the Division Bench held that the petitioner cannot take advantage of the fact that he was absconding when the sanction order was passed. It is further held that

if the contention raised on behalf of the petitioner is accepted, then every absconding accused would claim that the sanction order was vitiated while he was avoiding the process of law.

25. In the case of **Farman Imran Shah @ Karu Vs. State of Maharashtra, 2014 ALL MR (Cri) 1571**, this Court has held that the accused cannot insist for discharge unless objection regarding defects in such approval or sanction relates to inherent lack of jurisdiction of authority granting it. In that case the order of rejection of discharge application was challenged before the High Court. The High Court on consideration was pleased to uphold the order by rejecting the writ petition. After perusing the order of prior approval, it was noticed that the authority has recorded subjective satisfaction while giving prior approval and accordingly sanction was granted. By considering the judgment in the case of Anil Nanduskar (supra) the High Court held that the prosecution needs to be given an opportunity to lead evidence with regard to the subjective satisfaction recorded by the competent authority by leading evidence at the time of trial. The accused has to wait till the trial is complete. Only if objection relates to inherent lack of jurisdiction of the concerned authority or sanction and such an issue can be decided only on the undisputed

facts on record.

26. Having considered all these judgments and the facts, it is necessary to see the sanction order itself. There is no challenge to the said order on the ground of lack of jurisdiction with the authority or the competency of the authority. While granting approval in the order of prior approval, the authority had considered that the earlier common offences were in respect of section 65(e) and 78 of the Maharashtra Prohibition Act. The three offences from the chart are similar in nature. Name of members including present petitioner is also appearing in the order. Considering the offences, it is held by the authority that these are continuing unlawful activities and those have been committed by other unlawful means for gaining pecuniary benefits and it is held that these are organised crimes and the prior approval applying provisions under the MCOC Act was granted. The sanction order dated 10.08.2017 would show that the authority has considered the papers of investigation and certified copies of previous charge-sheets. It is recorded that all the persons mentioned in the order reveal that they are all members of organised crime syndicate and have singly or jointly committed offence in contravention of Maharashtra Prohibition Act and also under IPC.

The court also considered the evidence collected during investigation of the offence and has come to the conclusion that those clearly establish that the persons named therein in furtherance of the activity of their organised crime have committed offence of supplying spurious liquor, which resulted into death and other injuries, which necessarily indicates organised crime.

27. Looking at the language and substance of the order, this Court finds that there is no manner of doubt that the authority has considered investigation papers. As discussed earlier, there is no ground raised about competency or jurisdiction of the sanctioning authority. This Court, in view of the judgment in the case of **Abhishek (Supra)** finds that violence is always not necessary to apply provisions of MCOC Act. What is material is to show organized crime. In this case it is clear that the petitioners are carrying their activities for pecuniary gain in an organised manner. This Court, therefore, finds that there is no substance in the petitions and the same are dismissed. Rule discharged.

**[KISHORE C. SANT, J.]**