

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

**36 CRIMINAL PUBLIC INTEREST LITIGATION NO.15 OF 2022
WITH APPLN/196/2023 IN CRPIL/15/2022**

PEACE FOUNDATION
THROUGH ITS PRESIDENT ARSHAD MEHBOOB SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. V.D. Sapkal, Senior Counsel h/f. Mr. Sanket N. Suryawanshi,
Advocate for Petitioner in Crim. PIL No.15 of 2022
Mr. A.R. Kale, APP for Respondent – State in Crim. PIL No.15 of 2022
Mr. Ajinkya Kale h/f. Talekar and Associates, Advocate for Applicant
in Criminal Appln No.196 of 2023

...

**CORAM : NITIN W. SAMBRE AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 13-03-2023

PER COURT :

1. Heard Mr. Sapkal, the learned Senior Counsel for the petitioner and Mr. A.R. Kale, the learned APP for all the respondents.

2. The present Criminal Public Interest Litigation is taken out with following prayers:

“A) Call for record and proceedings of the case.

B) By issuing an appropriate writ, order or direction, direct the respondents to take effective preventive action against Anda gang of Samdkha s/o. Wahebkhan, Sameerkhan @ Sam s/o. Jafarkhan, Mujib @ Bhurra s/o. Azizkhan, Mudassir @ Kallu s/o. Azizkhan, Zayed Rashid @ Typya s/o. Rashid Syed operating in Ahmednagar city and to apply provisions of Maharashtra Control of Organized Crime Act, 1999 against the said gang and for that purpose issued necessary orders.

C) By issuing an appropriate writ, order or direction,

direct the respondents to establish police station / chowki in Mukundnagar area of Ahmednagar city and for that purpose issue necessary orders.

D) Pending hearing and final disposal of this Criminal Public Interest Litigation, direct the respondents to take decision on the representations of the petitioner annexed at Exhibit – B, C, F & G and for that purpose issue necessary orders.

E) Pending hearing and final disposal of this Criminal Public Interest Litigation, direct the respondents to extend police protection to the petitioner and for that purpose issue necessary orders.

F) Pass such other and further orders as this Hon'ble Court may deem fit and proper and in the interest of justice."

3. The petitioner a registered public trust claims to be keen on having violence free atmosphere in the area of its operation. According to the petitioner/trust, the accused persons who are named in prayer clause B are continuously indulging into the unlawful activities. Against the members of the alleged Anda Ganga, number of offences were registered and the accused persons are prosecuted.

4. Mr. Sapkal, learned senior counsel appearing for the petitioner submits that as the said accused persons are continuing unlawful activities which have been committed in the capacity of members of organized crime syndicate, the available material viz the number of charge sheets contemplate invoking stringent provisions of the Maharashtra Control of Organized Crime Act, 1999 (for the sake of brevity hereinafter referred as to the "MCOCA Act"). So as to substantiate his contention, Mr. Sapkal would invite attention of this Court to Section 2 of the MCOCA Act, particularly sub section 2(1) (d), 2(1)(e) and 2(1)(f), which defines continuing unlawful activity,

organized crime and organized crime syndicate.

5. According to him statutory authority under the Bombay Police Act before whom the petitioner has already lodged its complaint has looked into the same and has recorded a finding of default of the police officials. However, refrained itself from ordering invoking of aforesaid provisions for want of authority. Based on above, he would urge that the prayer clause B needs to be granted thereby issuing directions to the police authorities to invoke provisions of the MCOCA Act.

6. Learned counsel for the respondents including A.P.P. and the counsel for the intervenor submit that the prayer of the petitioner cannot be granted by issuing positive directions as the scheme of the aforesaid Act needs to be appreciated.

7. With the assistance of the respective counsel, we have scanned the provisions of the Statute.

8. The provision of Section 23 of the MCOCA Act reads as under :

The Maharashtra Control of Organized Crime Act, 1999

1.
2.

23. Cognizance of, and investigation into, an offence

(1) Notwithstanding anything contained in the Code,—

(a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy

Inspector General of Police;

(b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.

(2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police.

8. The said provision expressly provides for cognizance and investigation into an offence under the aforesaid act. For the benefit, the said provision is reproduced above.

9. The provisions of Section 23 opens with a non-obstante clause. Clause (a) of Sub section (1) of Section 23 of the Act puts an embargo on the powers of the police officer of recording information about commission of an offence of organized crime defined under Section 2(1)(e) of the MCOCA Act without prior approval of the police officer not below the rank of Deputy Inspector General of Police. Clause (b) of Sub Section (1) of Section 23 of the Act further provides that investigation in the offence under the provisions of the MCOCA Act cannot be carried out by a police officer below the rank of the Deputy Superintendent of Police.

10. As such what is required to be appreciated is the scheme of the Act particularly under Sub Section (1)(a) of Section 23 of the Act puts an embargo on the rights of the police officer of recording information of the commission of organized crime without prior approval of the police officer not below the rank of the Deputy Inspector General of Police. The word approval used in the said sub section contemplates and means the said authority i. e. an officer not below the rank of Deputy Inspector General of Police who shall apply

its mind to the information available so as to have subjective satisfaction about commission of an offence of organized crime.

11. As such what can be noticed is the Court cannot substitute its opinion to that of opinion of police officer not below the rank of Deputy Inspector General of Police in the matter of recording of the information about the commission of an offence of organized crime under the MCOCA Act.

12. Sub Section 2 of Section 23 of the Act puts an embargo on the powers of the Special Court in taking cognizance of an offence under the MCOCA Act without previous sanction of the police officer not below the rank of an Additional Director General of Police.

13. As such plain reading of section provides for the scrutiny of the information in the matter of an offence under the MCOCA Act even at the stage of recording of information and another before taking cognizance, the sanction from the Additional Director General of Police.

14. Admittedly in the case in hand the approval of the police officer not below the rank of Deputy Inspector General of Police neither noticed, nor such steps been taken on behalf of the respondent police are brought to the notice of this Court.

15. The provisions of the MCOCA Act can be made applicable provided that the accused is found to be related and involved in the offence which satisfies five ingredients mentioned below :

- (i) that there has to be continuing unlawful activity/ies;
- (ii) that such an activity will have to be by an individual, singly or jointly;
- (iii) that such an activity is either by a member of an organized crime syndicate or on behalf of such syndicate;
- (iv) that there has to be use of violence or threat of violence or intimidation or coercion or other unlawful means;
- (v) that such an activity has to be with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for the person who undertakes such an activity or any other person or promoting insurgency”.

16. The aforesaid proposition can be drawn support from the judgment of this Court in the matter of **the State of Maharashtra Vs. Jagan Gangasingh Nepali and others** reported in *MANU/MH/1155/2011*.

17. In this view of the matter, we are of the view that this Court cannot substitute its opinion to the requirement under Section 23(1)(a) of the MCOCA Act so as to issue positive directions to the respondent police authorities to initiate prosecution against the accused persons under the provisions of the MCOCA Act.

18. However, we have considered the case of the petitioner in the backdrop of provisions of Section 09 of the Act, which prescribes for procedure and powers of the Special Court. The Special Court is empowered to take cognizance of any offence without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts. In case if a complaint of fact constituting an offence under the MCOCA Act is brought to the notice of the Special Court, it is essential for the Special Court to refer to the same to the authorities mentioned in Section 23 of the MCOCA Act referred to

above. In our opinion, such recourse is very much available to the petitioner and if so desired it is open for it to take recourse to such remedial measure in regard to provisions of Section 23 of the MCOCA Act.

19. Apart from above, we are informed that a police chowki has already been made functional. We expect from the respondent – Superintendent of Police, Ahmednagar to ensure regular posting of the police personnel at the said chowki as the grievance made by the petitioner is that even if the police chowki at Mukundnagar area is open, however, the same is not made operational for want of staff.

20. Keeping such remedy open to the petitioner, we hasten to observe that in case if the steps are taken by the petitioner accordingly, the Special Court shall deal with the prayer of the petitioner in accordance with the scheme of the Statute and more particularly provisions of Sections 9 and 23 of the MCOCA Act.

21. As far as prayer clause – E is concerned, same is in regard to the police protection. It shall be always open to the petitioner to approach the police authorities, who can deal with such issue in accordance with the Rules.

22. With above observations we do not see any reason to cause interference in the matter in the writ jurisdiction. The public interest litigation accordingly stands disposed of.

(S.G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE , J.)