

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

***CRIMINAL APPEAL NO. 418 OF 2023***

The State of Maharashtra,  
(A.C.P., D-East, Crime Branch,  
Ghatkopar West, Mumbai.)  
(D.C.B. C.I.D., Unit-VII,  
Mumbai, C.R. No.89/2021)  
(Bhandup Police Station,  
C.R.No. 558/2021)

...Appellant  
(Orig.Complainant)

Versus

1. Sachin Dhananjay Kulkarni @ Chingya,  
Aged : about 24 years, Occ.: Watchman,  
R/at-Gitasagar Chawl, Matoshri Mitramandal,  
Upward Pipeline, Tembipada,  
Bhandup West, Mumbai-78
2. Piyush Priyadarshan Naik,  
Aged: about 20 years, Occ.: Nil,  
R/at-Room No.1, Sindhu Sadan Chawl,  
Chhatrapati Krida Mandal, Pipeline,  
Tembipada, Bhandup West, Mumbai
3. Umesh Bharat Kadam,  
Aged: about 30 years, Occ.: Packing work,  
R/at-Hanuman Chawl, Room No.7,  
Ramnagar, Ducklline, Tembipada,  
Bhandup West, Mumbai – 78
4. Sushil @ Sada @ Jairam Sadanand Sawant,  
Aged : about 26 years, Occ.: Auto Driver,

R/at-Room No. 109, Yogeshwar Dham,  
Kisan Nagar No. 3, Thane West

5. Rahul @ Rahulya Vilas Jadhav,  
Aged: about 21 years, Occ.: Delivery boy,  
R/at-Ambedkar Nagar, Tulshetpada,  
Gaondevi Road, Bhandup West,  
Mumbai – 78

6. Ali Jawar Khan,  
Aged: about 21 years, Occ.: Learning  
R/at-Om Ujjwal Sadan, 103, 1<sup>st</sup> Floor,  
Kisan Nagar No. 3, Thane West 400 604

7. Ramchandra Sadashiv Raut @ Kaka Raut,  
Aged: about 29 years, Occ.: -, R/at-1/10,  
Tambe Chawl, Gaondevi Tekadi,  
Sarvodaya Nagar, Bhandup West

8. Vaibhav Rajendra Aaglawe @ Gavthi,  
Aged: about 22 years, Occ.: Farm,  
R/at-Veer Sewa Vasant Kaikayya Maharaj Chawl,  
Near Hanuman Mandir, Warli Pada,  
Srinagar, Thane West.

9. Amit Madhukar Bhogale,  
Aged: about 46 years, Occ.: -  
R/at-2102, A-Wing, Majestic Pride Palm,  
Kolshet Road, Thane West.

...Respondents  
(Orig.Accused)

(Respondents 1 to 7 and 9 lodged at  
Thane Central Prison, Notice to be served  
through Superintendent, Thane Central Jail,  
Respondent No. 8 lodged at Taloja Central Prison,  
Notice to be served through Superintendent,  
Taloja Central Prison, Navi Mumbai)

Ms. P. P. Shinde, A.P.P for the Appellant-State

Mr. Raja Thakare, Senior Advocate a/w Mr. Mahesh Mule, Mr. Akash Kavade, Mr. Siddharth Jagushte, Ms. Nidhi Narwekar and Mr. Ankit Takle and Ms. Aishwarya Sharma for the Respondents

**CORAM : REVATI MOHITE DERE &  
GAURI GODSE, JJ.  
THURSDAY, 19<sup>th</sup> OCTOBER 2023**

**ORAL ORDER (Per Revati Mohite Dere, J.) :**

1            Heard learned counsel for the parties.

2            By the aforesaid appeal, the appellant-State of Maharashtra has impugned the order dated 3<sup>rd</sup> December 2022 passed by the learned Additional Sessions Judge and Special Judge under Maharashtra Control of Organised Crime Act ('MCOC Act'), Greater Mumbai, by which the learned Judge was pleased to reject the appellant's application being Misc. Application (SC) No. 567/2022, seeking police custody remand of the respondents-accused. Learned A.P.P submits that the impugned order rejecting the State's application seeking police custody remand of the

respondents-accused is untenable in law.

3           Mr. Thakare, learned senior counsel appearing for the respondents-accused opposed the appeal. He submits that no interference is warranted in the impugned order dated 3<sup>rd</sup> December 2022, inasmuch as, there is non-compliance of the mandate of Section 21(7) of the MCOC Act. He submits that in the application filed by the State, there is no explanation whatsoever for the delay in seeking police custody remand.

4           Perused the papers. It appears that an FIR was lodged at the behest of Shreedhar Bhoval being C.R. No. 558/2021, with the Bhandup Police Station, as against the respondents-accused for the alleged offences punishable under Sections 302, 326, 342, 506, 120B, 143, 144, 148, 149 r/w 34 of the Indian Penal Code; under Sections 4, 25 of the Arms Act and under Sections 37(1), 135 of the MCOC Act. It appears that pursuant to the registration of the said FIR, the respondents were arrested in the said C.R. It appears that out of 10 accused, 1 accused was a

juvenile in conflict with law and hence, he was produced before the Juvenile Justice Board, Dongri, Mumbai. It appears that the investigation was thereafter transferred from Bhandup Police Station to DCB, CID, Unit-VII, Crime Branch, Ghatkopar (West), Mumbai. After investigation, charge-sheet was filed in the said case on 1<sup>st</sup> January 2022 as against respondent Nos. 1 to 8 in the Court of the 37<sup>th</sup> Esplanade Court, Mumbai; on 4<sup>th</sup> January 2022, before the Juvenile Justice Board, Dongri, Mumbai, as against the juvenile in conflict with law, and, on 23<sup>rd</sup> February 2022, supplementary charge-sheet as against respondent No. 9 in the Court of Additional Chief Metropolitan Magistrate, 37<sup>th</sup> Esplanade Court, Mumbai. It appears that on 21<sup>st</sup> February 2022, the DCB CID, Unit-VII, Crime Branch, Ghatkopar (West), Mumbai, forwarded a proposal along with a report and all relevant documents to the Joint Commissioner of Police (Crime), Mumbai, seeking prior approval for invoking the provisions of the MCOC Act. Pursuant thereto, the Joint Commissioner of Police (Crime), Mumbai, accorded prior approval vide order

dated 23<sup>rd</sup> September 2022. Pursuant to the approval granted, the appellant-State filed an application being Misc. Application (SC) No. 567/2022 in Sessions Case No. 645/2022 before the learned Special Judge on 16<sup>th</sup> November 2022 and sought police custody remand of the respondents-accused under Section 21(7) of the MCOC Act. The grounds on which police custody remand was sought, have been reproduced by the learned Special Judge in para 8 of his order dated 3<sup>rd</sup> December 2022. After going through the reasons on which, police custody remand was sought, the learned Judge rejected the said application seeking police custody remand of the respondents-accused Nos. 1 to 9, as the appellant-State had failed to explain the delay and as no affidavit was filed.

5           We have perused the impugned order as well as Section 21(7) of the MCOC Act. Admittedly, the proposal was sent by the police on 21<sup>st</sup> February 2022 and approval was granted by the Joint Commissioner of Police (Crime), Mumbai,

on 23<sup>rd</sup> September 2022; and the police filed an application seeking police custody remand before the learned Judge on 16<sup>th</sup> November 2022. The grounds on which police custody remand was sought, is completely silent with respect to delay in filing the said application, belatedly. No explanation has also been accorded by the appellant-State, in the grounds on which, police custody remand was sought, as mandated under Section 21(7) of the MCOC Act.

6            Learned A.P.P also does not dispute the fact that no explanation is given in the application filed by the State, seeking police custody remand of the respondents-accused, belatedly. The prosecution has failed to explain delay of 55 days, in filing the application, as mandated by Section 21(7) of the MCOC Act.

7            Having perused the order, no infirmity can be found in the impugned order dated 3<sup>rd</sup> December 2022, rejecting the State's application seeking police custody remand of the

respondents-accused.

8           Considering the aforesaid, the appeal stands dismissed.

**GAURI GODSE, J.**

**REVATI MOHITE DERE, J.**