

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3150 OF 2023

Ajgar Akhtar Khan	]	
Aged 47 years, Occ. Business,	]	
Residing at : House No. 74,	]	
Near Nagarik Seva Mandal, Navi Vasti,	]	
Kalyan-Bhiwandi Road, Bhiwandi,	]	
Tal. Kalyan, District Thane.	]	... Petitioner

V/s.

1.	The State of Maharashtra	]	
2.	Commissioner of Police,	]	
	Mira-Bhayandar, Vasai-Virar.	]	
3.	Additional Commissioner of Police,	]	
	Mira-Bhayandar, Vasai-Virar	]	
	9, Gaurav Galaxy, Mira Road East,	]	
	Mira Bhayandar – 401 107.	]	
4.	Assistant Police Commissioner,	]	
	Virar Division, Mira-Bhayandar,	]	
	Vasai-Virar Commissionerate	]	
	1 st floor, Manikpur Nagar Parishad Bhaji	]	
	Market, Pt. Dindayal Nagar, Vasai (W),	]	
	Vasai-Virar – 401 202.	]	... Respondents

Ms. Misbaah Solkar a/w. Mr. Gaurav Shenoy and Ms. Lavanya Salve for
Petitioner.

Ms. Mahalakshmi Ganpathy, A.P.P. for Respondents-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 20th December 2023.

JUDGMENT (Per : A. S. Gadkari, J.)

1) Rule. Rule made returnable forthwith and with the consent of learned Advocates for the parties, taken up for final hearing.

2) Petitioner has invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, on the ground of violation of Articles 14 and 21 of the Constitution of India, *inter-alia* questioning the grant of prior approval/Order dated 22nd June 2023 issued by the Respondent No.3 i.e. the Competent Authority under Section 23(1)(a) of The Maharashtra Control of Organised Crime Act, 1999 (for short, “M.C.O.C. Act”) and for other consequential reliefs.

3) Heard Ms. Misbaah Solkar, learned Advocate for Petitioner and Ms. Mahalakshmi Ganpathy, learned A.P.P. for Respondents-State. Perused record produced before us and the Affidavit dated 5th October 2023 of Respondent No.4 Shri R.B. Deshmukh, A.C.P, Virar Division.

4) Ms. Misbaah Solkar, learned Advocate for Petitioner submitted that, Respondent No.3 i.e. Competent Authority has issued the said Order/prior approval dated 22nd June 2023, mechanically and without verifying the necessary and relevant record in that behalf. She submitted that, by the said Order stringent provisions of M.C.O.C. Act have been

permitted to apply to CR No. 509 of 2023 registered with Virar Police Station, Mira-Bhayandar, Vasai-Virar, Police Commissionerate for the offence under Sections 392 read with 34 of the Indian Penal Code (for short, "I.P.C."). She submitted that, various ingredients which are necessary for application of M.C.O.C. Act have not been taken into consideration by the Competent Authority and the prior approval as accorded by the Respondent No.3 is bad in law and therefore be quashed and set aside.

5) Per contra, Ms. Mahalakshmi Ganpathy, learned A.P.P. opposed the Petition and supported the impugned Order. She submitted that, Respondent No.3 has granted prior approval by its Order dated 22nd June 2023 after taking into consideration material placed before it. That, Mr. R.B. Deshmukh, A.C.P. Virar Division has filed a detailed Affidavit in support of Petition, justifying the application of provisions of M.C.O.C. Act. She submitted that, there are no merits in the Petition and it may be dismissed.

6) Section 23 of M.C.O.C. Act specifies for cognizance of and investigation into an offence under the M.C.O.C. Act.

Section 23 (1) (a) of M.C.O.C. Act reads as under :

"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;"

7) Section 23 (1) (a) provides for according of prior approval for invoking/applying the provisions of M.C.O.C. Act either to existing offence or to register a separate offence under M.C.O.C. Act, if it is revealed that the necessary parameters mentioned in the Act are complied with. Section 23 (1) (a) provides that, 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 Deputy Inspector General of Police and no investigation of an offence under the provisions of this Act shall be carried out by a Police Officer below the rank of Deputy Superintendent of Police.

7.1) The said legal position has been in detail elaborated by the learned Single Judge of this Court in the case of *Anil Umrao Gote Vs. The State of Maharashtra & Ors., Criminal Application No. 3978 of 2004, dated 3rd November 2004*. The view expressed by the learned Single Judge in the case of *Anil Umrao Gote (supra)* has been affirmed by the Division Bench of this Court in the case of *Sachin Bansilal Ghaiwal Vs. State of Maharashtra, reported in 2015 ALL MR (Cri) 525*.

7.2) It is thus clear that, the Legislature in its wisdom has incorporated the said provision of Section 23 (1) (a) of M.C.O.C. Act as a precautionary measure to prevent the misuse of application of the said Act, being very stringent in nature and therefore it is expected from the concerned Competent Authority to be very careful while issuing the Prior

Approval. It is the trite position of law that, stringent the provisions of a statute are, the compliance of it is equally stricter.

8) The Division Bench of this Court in the case of *Anil Sadashiv Nanduskar Vs. State of Maharashtra*, reported in 2007 SCC OnLine Bom 1702 : 2008 (12) L.J. Soft 156 : 2008 (3) Mah. L.J. (Cri.) 650, has held that, it is desirable that every order whether the approval or sanction it should speak for itself, i.e. ex-facie it should disclose consideration of the materials placed before it and application of mind thereto. However, failure to reproduce or refer those recitals in the resolution or order itself would not render the order of approval or sanction to be invalid unless the prosecution fails to establish by leading evidence that all the materials necessary for the grant of approval or sanction were placed before the concerned authority for due application of mind by such authority before the grant of approval and/or sanction. It apparently discloses that question of validity of approval or sanction cannot be decided unless the prosecution is afforded opportunity to lead evidence in that regard. Undoubtedly, an accused desiring to raise objection regarding the defects in such approval or sanction, or grant, he can raise such objection, however for conclusive decision on the said point the accused has to wait till the trial is complete and on that ground he cannot insist for discharge unless the objection relates to inherent lack of jurisdiction to the concerned authority to grant sanction or approval and such issue can be decided on undisputed facts. It is also held that, decision on the point of

defect, if any, in the order of approval or sanction will have to be at the conclusion of the trial. It is further observed that, what is necessary is the fact of approval which is sine qua non for recording information about the commission of offence under the said Act. That there has to be an authentic record regarding the grant of such approval prior in time of initiation of investigation under M.C.O.C. Act.

9) In the present case, the impugned prior approval is termed as 'Order' by the Competent Authority, though Section 23(1)(a) of M.C.O.C. Act does not contemplate in it such an 'Order' and it only contemplates a 'Prior Approval'.

10) It is the trite law that, the title or nomenclature of a document does not decide its nature and its contents only decide its nature. A title of a document may be incorrect but the contents thereof must speak about the intention of its author or the intention of the parties executing such a document.

10.1) In the present case, the mention of word 'Order' in the heading of the Prior Approval, according to us is an insignificant defect and is curable.

11) Perusal of impugned prior approval clearly indicates that, the Competent Authority has nowhere mentioned rather identified which is the 'organised crime syndicate' against whom the provisions of M.C.O.C. Act are to be invoked. It is also silent about the fact that, who is the head of the

organised crime syndicate or leader of the gang. It only mentions about more than one chargesheet against the accused persons mentioned in the said prior approval and the said accused persons are indulging into committing offence to gain pecuniary benefit and other advantages. As there is no specific mention about the name of 'organised crime syndicate' or the crime syndicate headed by any particular accused or the leader of organised crime syndicate, in our considered view the prior approval is not only erroneous but technically highly defective too.

11.1) A.C.P. Virar Division, in his Affidavit dated 5th October 2023 has made a feeble attempt to demonstrate that, the Petitioner is the head of organised crime syndicate run by him. It is the settled position of law that, the subjective satisfaction arrived at by a Competent Authority cannot be either further explained, modified, justified or supplemented by any other subordinate Officer by way of Affidavit. However, bare perusal of the prior approval indicates that, it is absolutely silent on all these aspects.

11.2) The said defect cannot be cured, even after granting proper opportunity to the prosecution as explained in the case of *Anil Sadashiv Nanduskar Vs. State of Maharashtra* (supra). According to us, even after applying the ratio laid down by this Court in the case of *Anil Sadashiv Nanduskar Vs. State of Maharashtra* (supra), the defects which are apparent on the face of record cannot be cured by the prosecution by leading evidence in that behalf.

12) In view of the peculiar facts and circumstances of the present case, the Prior Approval dated 22nd June 2023 accorded by the Competent Authority under Section 23(1)(a) of M.C.O.C. Act is quashed and set-aside.

12.1) However, we grant liberty to the Respondent Nos.2 and/or 3 i.e. the Competent Authority to grant fresh Prior Approval under Section 23(1)(a) of M.C.O.C. Act after curing the defects as noted above.

13) In view thereof, Petition is allowed in terms of prayer Clause (a).

14) Rule is made absolute in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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