

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 956 OF 2015

Goeffrey Peter D'souza	]	
Aged 47 years, Occ. Business,	]	
Residing at F/8, Vishwa Bharati Society,	]	
India Nagar, Kanjur Marg (E.),	]	
Mumbai – 400 042.	]	... Petitioner

V/s.

1) The State of Maharashtra	]	
At the instance of Sr. Inspector of Police,	]	
Bhandup Police Station, Mumbai.	]	
2) Joint Commissioner of Police Crime	]	
3) Praful Bhosale	]	
Asst. Commissioner of Police,	]	
D-1 (East) DCB CID, Mumbai.	]	... Respondents

WITH

CRIMINAL WRIT PETITION NO. 957 OF 2015

Shripad Dinkar Paradkar @ Nilesh Paradkar	]	
Aged __ Years, Occ. Business,	]	
R/at 54/1913, Shree Co. Op. Hsg. Soc. Ltd.,	]	
Tilak Nagar, Chembur,	]	
Mumbai – 400 089.	]	... Petitioner

V/s.

1) The State of Maharashtra	]	
At the instance of Sr. Inspector of Police,	]	
Bhandup Police Station, Mumbai.	]	

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|----|------------------------------------|---|-----------------|
| 2) | Joint Commissioner of Police Crime |] | |
| 3) | Praful Bhosale |] | |
| | Asst. Commissioner of Police, |] | |
| | D-1 (East) ECB, CID, Mumbai. |] | ... Respondents |

Mr. Tushar Khandare a/w. Jasmeet Kaur & Mr. Pratik Ingle i/b. Mr. Prashant Goyal for Petitioner in WP/956/2015.

Mr. Subodh Desai a/w. Jasmeet Kaur & Mr. Pratik Ingle i/b. Mr. Tushar Khandare for Petitioner in WP/957/2015.

Mr. S.V. Gavand, A.P.P. for Respondent-State.

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

DATE : 6th February 2024.

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) Petitioners have invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, for quashing and setting aside the Prior Approval / Sanction dated 27th February 2015 issued by the Respondent No.2 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 Mr. Subodh Desai, learned counsel for Petitioner in WP/957/2015, Mr. Tushar Khandare, learned counsel for Petitioner in WP/956/2015 and Mr. S.V. Gavand, learned A.P.P. for Respondents-State.

Perused record produced before us.

4) Mr. Subodh Desai, learned counsel for Petitioner submitted that, Respondent No.2 i.e. Competent Authority has issued the said Prior Approval/Order dated 27th February 2015, mechanically and without application of mind. That, a bare perusal of First Information Report (F.I.R.) would make it clear that, no offence as contemplated under Section 506 (Part II) of Indian Penal Code (I.P.C.) is made out. He submitted that, when the alleged threat as contemplated under Section 506 (Part II) was extended by the Petitioner Geoffrey D'souza, the Petitioner Nilesh Paradkar was on phone and the informant has overheard it and therefore it may not be construed that, the Petitioner Geoffrey D'souza gave the said threat to the life of informant. He submitted that, the informant of the said Crime i.e. CR No. 56 of 2015 was a member of Parliament and therefore lodgment of the said crime is politically motivated. The police machinery therefore swung into motion swiftly while granting Prior Approval. He submitted that, the impugned Prior Approval suffers from vice of non application of mind. That, the Respondent No.2 has not adhered to the mandate of the provisions of M.C.O.C. Act and has exceeded the jurisdiction vested with him, particularly when the offences alleged against the Petitioners are non cognizable in nature. That, the Petitioners have been falsely implicated in the alleged offence as they have nothing to do with the same. That, the informant has taken advantage of registration of some false cases against the Petitioner

Shripad @ Nilesh Paradkar in the past; most of which have already been ended in his acquittal. He submitted that, from the perusal of F.I.R. No. 56 of 2015, no offence of criminal intimidation under Section 506 (Part II) of I.P.C. is made out against the Petitioners. He therefore prayed that, the Prior Approval granted by the Respondent No.2 may be quashed and set aside.

4.1) Mr. Khandare, learned Advocate appearing for Petitioner in Criminal Writ Petition No. 956 of 2015 supported and adopted all the arguments of Mr. Desai and also prayed that, the Prior Approval granted by the Respondent No.2 be quashed and set aside.

4.2) Mr. Gavand, learned A.P.P. opposed both the Petitions and submitted that, the Competent Authority has granted Prior Approval after taking into consideration all the necessary and relevant parameters required under the M.C.O.C. Act, while granting it. That, the provisions of M.C.O.C. Act have been applied to CR No. 56 of 2015 originally registered with Bhandup Police Station, Mumbai and subsequently transferred to DCB CID, Unit-7, Ghatkopar having re-numbered CR No. 25 of 2015 for further investigation. It was noticed to the Investigating Agency that, more than one chargesheet in offences punishable with imprisonment of 3 years or more have been filed against the Petitioner Shripad @ Nilesh Paradkar in the preceding 10 years and the Competent Courts have taken cognizance of the said offences. It was also revealed that, both the Petitioners were / are working as members of Organised Crime Syndicate headed by Chhota Rajan

Gang. That, the present crime is committed by a Organised Crime Syndicate headed by gangster Chhota Rajan and therefore the Competent Authority has rightly granted Prior Approval for invoking the provisions of M.C.O.C. Act to the present case. He submitted that, there are no merits in both the Petitions and the same may be dismissed.

5) Record indicates that, Mr. Sanjay D. Patil has lodged CR No. 56 of 2015 with Bhandup Police Station on 4th February 2015 under Sections 504, 507, 506 (Part II) read with 34 of I.P.C. against both the Petitioners.

5.1) It is the prosecution case that, the informant was ex-member of Parliament and President of Mumbai Region of a political party. He was having mobile No. 9820096350 for many years. That, on 4th February 2015 when the informant was at home, he received a phone call on his mobile phone at about 12.25 noon from Mobile No. 8652576254. The person from the other side told the informant that, he is Goeffrey speaking from Kanjurmarg. Goeffrey told him that, in Kanjurmarg region Mama Manchekar, worker of informant was claiming Mathadi work in his name and therefore he get it. That, herein after neither Mama Manchekar or any other worker of informant should claim any work in that area. The informant asked him whether he is threatening him, to which the said person Goeffrey told him to have a talk with Appa and gave the phone to other person. The other person told informant that, he is Nilesh Paradkar speaking and as Goeffrey has told should happen and cut the conversation. The said conversation lasted for 1

minute and 39 seconds. The informant again received a call at about 12.30 p.m. from the same mobile number. The caller spoke with the informant in a dictating and derogatory language. The said conversation lasted for 42 seconds. Thereafter at about 12.33 p.m. the informant again received a call on his mobile phone from the said same mobile number. At that time, the caller told informant that he is Nilesh Paradkar speaking and told that, the informant should act as told by Goeffrey otherwise the result will be bad. The informant told the said person that, he may do whatever he may want to do and the informant would not get cowed down for the threats and cut the phone. The informant again received a call on his mobile phone from the said mobile number i.e. 8652576254 at about 12.45 p.m.. The caller told the informant that, he is Nilesh Paradkar speaking. When Nilesh Paradkar and informant were talking on mobile phone, from behind Goeffrey told Nilesh Paradkar that 'Leave it bhai, I will do the game of Sanjay Patil' and Goeffrey took the said phone in his own hand. Goeffrey abused informant and told him that, 'They have killed his brother, what adverse he could do?' and thereafter told him that, 'He will kill informant also'. Both the Petitioners abused the informant. The informant immediately contacted Bhandup Police Station and lodged CR No. 56 of 2015.

6) The investigating Agency considering the seriousness behind the crime, transferred the investigation to the DCB CID. The DCB CID re-numbered the said CR as CR No. 25 of 2015. Mr.Vyankatesh B. Patil, Senior

Inspector of Police was entrusted with the investigation of the said crime. During the course of investigation it was revealed that, the Petitioner Nilesh Paradkar is having more than one chargesheet filed against him for offences punishable with imprisonment of 3 years or more in the preceding 10 years. That, both the Petitioners are also working for accruing pecuniary benefit and other advantages to Chhota Rajan gang and the present crime committed by them is on behalf of Organised Crime Syndicate headed by gangster Chhota Rajan.

6.1) The Senior Inspector of Police, DCB CID therefore submitted his proposal seeking Prior Approval for applying provisions of M.C.O.C. Act to CR No. 25 of 2015. The Competent Authority after going through the entire record has granted the impugned Prior Approval under Section 23(1)(a) of M.C.O.C. Act dated 27th February 2015.

7) Record indicates that, the said threat advanced by the Petitioners to the informant was for getting the Mathadi work in the region and the threat to life advanced by Petitioner Goeffrey D'souza to the informant, according to us, squarely falls within the purview of Section 506 (Part II) of I.P.C.. As alleged by the prosecution, the Petitioners are members of the Organised Crime Syndicate headed by Chhota Rajan. The act alleged against the Petitioners falls within the ambit of Section 2(i)(a) of M.C.O.C. Act.

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 material 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 view of the ratio laid down in the case of *Anil Sadashiv Nanduskar (supra)* it is necessary that, this Court should afford an opportunity to the Competent Authority to establish its case by leading evidence that, all the material necessary for the grant of 'approval' or 'sanction' were placed before it for due application of mind before grant of 'approval' or 'sanction'. The decision on the point of defect, if any, in Order of 'approval' or 'sanction' will have to be at the conclusion of the trial. After minutely perusing the impugned 'Prior Approval' we are of the considered view that, the Competent Authority has not committed any error either on facts or in law while granting it. The Respondent No.2 has rightly granted Prior Approval for invoking the provisions of M.C.O.C. Act to the present crime. We find no legal infirmity or glaring defect in the impugned 'Prior Approval' granted by Respondent No.2.

10) In view of the above, we find that, there are no merits in the Petitions and therefore both the Petitions are accordingly dismissed.

11) Rule is discharged.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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