

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

CRIMINAL WRIT PETITION NO. 622 OF 2024

1. Rajan Bhagwandas Sujanani
2. Kishore Daulatram Vatnani ...Petitioners

Versus

1. The State of Maharashtra
2. Kamal Jaswantlal Sheth ...Respondents

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Mr.Amit Desai Senior Advocate a/w Mr. Gopal Krishna Shenoy a/w Mr.Sadanand Shetty, Ms. Snehal Khairnar, Ms.Sharanya S. and Mr. Yogendra Singh Advocate for the Petitioners.

Mr. Sudip Pasbola i/by Mr. Abdul Kadar, Advocate for Respondent No.2.

Mrs. M.M.Deshmukh, Addl.PP for the Respondent No.1 – State.

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**CORAM : PRAKASH D. NAIK, &
N. R. BORKAR, JJ.**

DATE : 25th APRIL 2024.

P.C.:

1. The Petitioners are challenging the proceedings in Special Case No.298 of 2023 arising out of C.R. No.115 of 2013 for offences under Section 387 r/w Section 120(B) r/w Section 34 of Indian Penal Code (for short “IPC”) and Sections 3(1), 3(2) & 3(4) of Maharashtra Control of Organised Crime Act, 1999 (for short “MCOC Act”) as well as proclamation dated 29.12.2023 issued against the Petitioners.

2. The FIR was registered on 22.11.2013 with Juhu Police Station, Mumbai vide C.R. No.403 of 2013 for offences under

Sections 387 r/w Section 34 of IPC and subsequently transferred to Anti Extortion Cell, D.C.B. C.I.D. Mumbai. The complainant had alleged that the dispute is in relation to property with the complainant and accused. He received threat calls from the others on 03.09.2013 and 04.09.2014. The complainant suspected that the calls were made at the instance of the accused. The conversation between the person threatening the complainant was recorded in the cell phone which was recovered during the course of investigation vide Panchanama dated 30.11.2013. The investigation proceeded. 'A-Summary' report was submitted before the trial Court. The trial Court directed further investigation. Pursuant to it, the approval was sought for invoking the provisions of MCOC Act. Prior approval was granted on 21.09.2022. Investigation proceeded. Sanction was granted for prosecution under MCOC Act on 21.02.2023.

3. Learned Senior Advocate Mr.Desai submitted that the application of the provisions of MCOC is abuse of process of law. The said provisions are invoked after a period of nine years. The FIR was registered on 22.11.2013.

4. The investigation was conducted and 'A-Summary Report was submitted to the Court. The Petitioners were available for the purpose of investigation at the relevant point of time and their

statements were recorded. The Petitioners had settled abroad since last several years. They had no knowledge that the provisions of MCOC are invoked on the basis of alleged involvement of one Ravi Pujari. The name of the said accused was reflected in the FIR and there was no reason to invoke the provisions after lapse of about nine years. The Petitioners attended Anti Extortion Cell in October-2022 and November-2022. Accused Satish Dhanani was arrested post invocation of the MCOC provision. He is granted bail by this Court vide order dated 07.02.2024. The order indicate the nature of evidence relied upon by the prosecution. The other accused Mangesh Sawant had preferred an application for anticipatory bail. The provisions of MCOC Act were invoked and the said application was granted. Post invocation of the provisions of MCOC Act, the said accused had challenged the proceedings before this Court vide Criminal Writ Petition No.2317 of 2023. The said Petition was admitted vide order dated 20.12.2023 and interim relief was granted in terms of prayer Clause (i). The said prayer clause indicate that the relief granted in the said application for anticipatory bail was continued. While admitting the said Petition, the Division Bench of this Court had observed that there was delay of about 9 years for applying the provisions of MCOC Act. The said order was challenged by the original complainant before the apex

Court and the Special Leave Petition challenging the said order has been dismissed vide order dated 26.02.2024. Exercise of powers to invoke the provisions of MCOC Act is malafide. The trial Court on the basis of application preferred by the Investigating Agency has initiated the proceedings for proclamation. The order dated 29.12.2023 is under challenge.

5. Learned A.P.P. submitted that there is sufficient evidence to show the involvement of the Petitioners in the crime. On account of non availability of the Petitioners, the proclamation was required to be issued. The case of the prosecution is that the co-accused Ravi Pujari had threatened the complainant of dire consequences that if he does not settle the matter with the accused and submit to their demand. The Petitioners were not available for the purpose of investigation.

6. Learned Advocate for Respondent No.2 submitted that the invocation of provisions of MCOC Act is justified. There is evidence to show that the co-accused Ravi Pujari had threatened the complainant at the instance of the Petitioners. At this stage no interim relief can be granted. The case of the co-accused, who has been granted bail can be distinguished.

7. It is relevant to note that the FIR was registered on 22.11.2013. The contention of the Petitioners is that initially they

had cooperated in the investigation. The initial investigation resulted in submission of 'A-Summary' report. The interim relief has been granted to the co-accused. The accused Satish Danani has been granted bail by this Court. While granting bail to the co-accused, the Court analyzed the nature of evidence which has been collected by the Investigating Agency. Considering the factual matrix as narrated herein above we are inclined to grant interim relief.

ORDER

- i) Petition be listed for final disposal on 3rd July 2024.
- ii) In the meantime there shall be ad-interim relief in terms of prayer Clauses (d) & (e) till next date.
- iii) The Proclamation is stayed for a period of six weeks with liberty to the Petitioners to appear before the trial Court and prefer appropriate application for setting aside the proclamation. In the event of any adverse order passed in the proclamation proceedings, Petitioners will be at liberty to approach the Court for appropriate relief.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)