IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 262 OF 2023

Sakshi D/o Rajendra Khobragade,
Aged about 20 years, Occ. Student,
R/o Plot No. 333, Bhaurao Nagar,
Near VMV College, Nagpur **...Petitioner**

// VERSUS //

1. The State of Maharashtra, through its Police Station Officer, Police Station Yashodhara Nagar, District Nagpur.
2. The Additional Director General of Police and Commissioner of Police, Nagput City, Nagpur. **... Respondents**

Shri C.S. Kaptan, Senior Advocate assisted by Shri Tejas Deshpande, Advocate for the petitioner.
Shri S.S.Doifode, APP for the respondent nos. 1 and 2.

CORAM : SMT. VIBHA KANKANWADI, AND MRS. VRUSHALI V. JOSHI, JJ.

Reserved on : 3rd July, 2024.
Pronounced on : 19th July, 2024.

ORAL JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The petitioner by invoking the constitutional powers of this Court under Article 226 of the Constitution of India challenges the order of sanction accorded by respondent no.2 Additional Director General of Police and Commissioner of Police, Nagpur City, Nagpur on 24th June, 2022 thereby granting sanction under Section 23(2) of the Maharashtra Control Organized Crime Act, 1999 (in short hereinafter referred as 'MCOC Act, 1999') against the petitioner.

3. Heard Shri C.S. Kaptan, learned Senior Advocate assisted by Shri Tejas Deshpande, learned advocate for the petitioner and Shri S.S.Doifode, learned Additional Public Prosecutor for the respondent nos. 1 and 2/State.

4. Shri C.S. Kaptan, learned Senior Advocate instructed by Shri Tejas Deshpande, learned advocate for the petitioner submits that if we perused the impugned order it does not specifically say that who is the leader of crime syndicate which is one of the basic ingredients to be followed/mentioned. Mere mention of names of various persons will not be sufficient. Further perusal of the impugned order dated 24th June, 2022 would reveal that many persons are stated to be the leaders/members of the alleged organized crime syndicate and this is not contemplated under the Act, 1999. If it is organized crime, somebody has to be a leader. He relies on the decision in *Asgar Ali Vs. State of Maharashtra and others 2023 SCC Online Bombay 2851,* wherein the Division Bench of the Principal Seat has observed that when the Competent Authority has nowhere mentioned rather identified which is

the ‘organized crime syndicate’ against whom the provisions of MCOC Act are to be invoked, then such order cannot be allowed to sustain. So also said order is silent about the fact that, who is the head of organized crime indicate or leader of the gang. Learned Senior Advocate also submits that impugned order of sanction also lacks application of mind. He has taken note of one crime in which the petitioner is involved that means the specified condition of more than one charge-sheet in respect of same crime has not been fulfilled. Here, the authority has misinterpreted the second charge-sheet which is in fact supplementary charge-sheet in the said crime. When the sanction itself is defective, the petitioner should not be asked to face the trial under the said section.

5. Per contra, learned Additional Public Prosecutor has strongly objecting the maintainability of the petition. He submits that the petitioner is absconding and proceeding under Section 89 of the Code of Criminal Procedure has been taken up. When the petitioner is concealing herself and avoiding her arrest, thereby further illegal act cannot seek legal remedy. He relies on the decision of *Abhishek Vs. State of Maharashtra and others (Criminal Appeal No. 869 of 2022 arising out of SLP (CRL) No. 1157 of 2022)* decided by the Hon’ble Apex Court on 20th May, 2022, wherein also stated that when sanction was granted under Section 23(2) of MCOC Act, for prosecution of the said petitioner and it was found that he is absconding. It has been observed that ‘as regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an ‘absconder’ and remains out of reach of the investigating agency and

thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence. By way of reference, we may observe that in relation to the indulgence of pre-arrest bail in terms of Section 438 CrPC, this Court has repeatedly said that when an accused is absconding and is declared as proclaimed offender, there is no question of giving him the benefit of Section 438 CrPC. What has been observed and said in relation to Section 438 CrPC applies with more vigour to the extraordinary jurisdiction of this Court under Article 136 of the Constitution of India. The submissions on behalf of the appellant for consideration of his case because of application of stringent provisions impinging his fundamental rights does not take away the impact of the blameworthy conduct of the appellant. Any claims towards fundamental rights also cannot be justifiably made without the person concerned himself adhering to and submitting to the process of law.'

6. In the affidavit-in-reply on behalf of the respondent no.2 ACP Shri S.V.Khandekar of Assistant Commissioner of Police, Jaripatka Division, Nagpur has given details of crime against the petitioner in particular and the gang or the bunch of persons. It is stated that crime no. 288 of 2022 has been filed against the petitioner and other seven accused persons for the offence punishable under Sections 420, 406, 409, 120-B of Indian Penal Code, Sections 3, 4 of Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999 and Section 66-D of Information and Technology Act. The facts of the case would disclose that it is in respect of cryptic currency. Even it is stated that as what was the role of the present petitioner, we need not to go into the same. But

ultimately it appears that huge public money has been involved when it is said that in all 195 agent and investors have deposited Rs.4,25,80,635 in various schemes of the company and all the accused including petitioner have failed to refund the said invested amount of the depositors. It is then stated in the affidavit about as to what is the progress made in the investigation. It is then also stated that the petitioner is the member of the said organized crime syndicate. He relies on the decision in *Kavitha Lankesh Vs. State of Karnatka, the decision of three Judge Bench of the Apex Court; AIR 2021 Supreme Court 5113,* wherein it is held that even if the Investigating Agency was unable to collect material during investigation against accused does not mean that information regarding commission of crime by him cannot be recorded and investigated as being member of organized crime.

7. Learned Additional Public Prosecutor further relied upon *Govind Sakharam Ubhe Vs. State of Maharashtra; 2009 ALL MR (Cri) 1903*, wherein it has been observed that for an activity to be a `continuing unlawful activity' - a) the activity must be prohibited by law; b) it must be a cognizable offence punishable with imprisonment of three years or more; c) it must be undertaken singly or jointly; d) it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate; e) in respect of which more than one charge-sheet have been filed before a competent court. The words `in respect of which more than one charge-sheet have been filed' cannot go with the words `a member of a crime syndicate' because in that case, these words would have read as `in respect of whom more than one charge-sheet have been

filed'…. What is important is the nexus or the link of the person with organized crime syndicate. The link with the `organized crime syndicate' is the crux of the term `continuing unlawful activity'. If this link is not established, that person cannot be roped in.

8. Taking into consideration the record, it can be certainly said that since the petitioner is absconding and against her the proceeding under Section 89 of the Code of Criminal Procedure appears to have been undertaken in view of paragraph 21 of the *Abhishek Vs. State of Maharashtra and others* (supra), the petitioner has no right to file this petition and to claim the violation of fundamental right. She cannot be given any benefit as she herself is not abiding the rules of law.

9. Even if we consider that the writ petition is maintainable, still it is to be noted that the petitioner is prosecuted in Crime No. 288 of 2021. The charge-sheet is filed against the petitioner under Section 299 of Code of Criminal Procedure. As per paragraph 18 of affidavit-in-reply of Assistant Commissioner of Police, Shri Khandekar, he has given the list of crimes which are registered against the other members. It is then specifically stated that Nished Wasnik is the gang leader. It may not have been specifically so worded in the sanction, but the impugned order dated 24th June, 2022 is also against him. Therefore, on the basis of one crime against all the accused, the sanction under Section 23(2) of MCOC Act, 1999 has been granted. In *Govind Udhe* (supra) it has been held that, the words 'more than one charge-sheet' contained in Section 2(1)(d) of MCOC Act, 1999 refer to unlawful activities of the organized crime

syndicate and therefore, requirement of more than once charge-sheet is qua the unlawful activities of the organized crime syndicate and not qua individual member thereof. Hon'ble Supreme Court has approved this view in *Zakir Abdul Mirajkar Vs. State of Maharashtra; 2022 ALL MR (Criminal) 3798*, we do not find any substance in the submissions made on behalf of the petitioner that the sanction dated 24^{th} June, 2022 is in any way illegal or is based on incorrect information. There is no merit in the present writ petition and deserves to be dismissed. Accordingly, we proceed to pass the following order.

i. The writ petition is dismissed.

ii. Rule is discharged.

[MRS. VRUSHALI V. JOSHI, J.] **[SMT. VIBHA KANKANWADI, J.]**