IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.445 OF 2025

Vishwajeet Ramesh Kasar
Age: 33 years, Occu.: Agri.,
R/o. Walki, Tq. And Dist. Ahmednagar. *.. Petitioner*

Versus

1. The State of Maharashtra
Through Additional Director General
of Police, Maharashtra State,
Home Department, Mantralaya,
Mumbai-32.

2. The Special Inspector General of Police,
Nashik Range, Nashik.

3. The Superintendent of Police,
Ahmednagar, Tq. And Dist. Ahmednagar.

4. The Sub Divisional Police Officer,
Ahmednagar Rural Sub Division,
District Ahmednagar.

5. The Police Inspector,
Nagar Taluka Police Station,
Tq. And District Ahmednagar. *.. Respondents*

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Mr. R. R. Karpe, Advocate for the petitioner.
Mr. A. R. Kale, APP for respondents/State.

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CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 07 APRIL 2025

<u>ORDER</u> (Per Smt. Vibha Kankanwadi, J.) :-

. The petitioner challenges order dated 27.07.2023 passed by respondent No.2 Special Inspector General of Police, Nashik Range, Nashik, approving the proposal forwarded by respondent No.4 under Section 23(1)(a) of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as the "MCOC Act").

2. Heard learned Advocate Mr. R. R. Karpe for the petitioner and learned APP Mr. A. R. Kale for the respondent/State.

3. Learned Advocate for the petitioner submits that the petitioner is an accused in Crime No.376 of 2023 dated 30.04.2023 registered with Ahmednagar Taluka Police Station, District Ahmednagar which is punishable under Sections 302, 384, 387, 323, 504, 506 read with Section 34 of Indian Penal Code, subsequently Sections 386, 120-B and 75 of Indian Penal Code came to be added. Respondent No.4 Sub Divisional Police Officer made communication under Section 23(1)(a) of the MCOC Act to respondent No.2 for approving the proposal under Section 3(1)(i), 3(2), 3(4) of the MCOC Act. By impugned order dated 27.07.2023, respondent No.2 has given sanction. The petitioner earlier was also an accused in Crime No.1123 of 2020 registered with same police station and after the investigation, charge-sheet has been filed for the offences punishable under Sections 302, 326, 324, 323, 504, 506, 365, 143, 147, 148, 149, 120-B, 212 of Indian Penal Code and under Sections 3(1)(i), 3(2) and 3(4) of the MCOC Act. Special Case No.225 of 2021 is pending before the learned Special Judge, under MCOC Act.

Therefore, applying MCOC Act once again would amount to double jeopardy. The applicant also states that in connection with Crime No.376 of 2023, he has filed discharge application under Section 227 of the Code of Criminal Procedure before the learned Special Judge, under MCOC Act, Ahmednagar i.e. Special Case No.262 of 2023. Learned Advocate for the petitioner further submits that while according sanction, respondent No.2 has not recorded the specific satisfaction about the existence of organized crime syndicate in terms of Section 2(1)(f) of MCOC Act. Mere satisfaction about alleged existence of ingredients of Section 2(1)(d), which defines continuous unlawful activities and Section 2(1)(9) which defines organized crime, are not sufficient for sanction. The individual liberty of the petitioner is thereby now curtailed. When there was no application of mind by the sanctioning authority and it can be so demonstrated, such order has no legal existence and, therefore, it will have to be set aside.

4. Learned Advocate appearing for the petitioner relies on the decision in ***State of Maharashtra Vs. Shiva @ Shivaji Ramaji Sonawane and Ors. Etc., ([2015] 9 S.C.R. 211],*** wherein has been held that :-

> "The filing of charge-sheets or taking of the cognizance in the same did not by itself constitute an offence punishable under Section 3 of the MCOCA. That is because the involvement of respondents in previous offences was just about one

> requirement but by no means the only requirement which the prosecution has to satisfy to secure a conviction under MCOCA. What was equally, if not, more important was the commission of an offence by the respondents that would constitute “continuing unlawful activity”. The very fact that more than one charge sheets had been filed against the respondents alleging offences punishable with more than three years imprisonment is not enough. Continuation of unlawful activities is the second and equally important requirement that ought to be satisfied. It is only if an organised crime is committed by the accused after the promulgation of MCOCA that he may, seen in the light of the previous charge sheets and the cognizance taken by the competent court, be said to have committed an offence under Section 3 of the Act.”

5. The important point that is required to be considered is that at one point of time, the petitioner is saying that in the present case itself i.e. Special Case No.262 of 2023 arising out of Crime No.376 of 2023 in which the sanction has been granted, he has already filed the application for discharge before the learned Special Judge. In spite of that the petitioner is approaching this Court under Article 226 of the Constitution of India. He cannot go ahead with two forums at the same time for same relief. It cannot be heard that the point of sanction which the petitioner wants to raise here is not a part of grounds for discharge under Section 227 of the Code of Criminal Procedure. On this count also, the petition deserves to be dismissed.

6. The second point that is raised is that already provisions under MCOC Act have been invoked against him in Crime No.1123 of 2020 i.e. Special Case No.225 of 2021 and it amounts to double jeopardy. Here, it is to be noted that the said special case is still pending. The petitioner has not been acquitted in that matter. Therefore, point of double jeopardy is absolutely not available to the petitioner.

7. The third point is the non application of mind while granting the prior sanction. In such circumstance, we would like to rely on the decision in ***Central Bureau of Investigation (CBI) Etc. Vs. Mrs. Pramila Virendra Kumar Agarwal & Anr. Etc [2020 (17) SCC 664].*** Though this case is under Prevention of Corruption Act, yet the basic ratio is required to be considered that there is a distinction between the absence of sanction and its alleged invalidity, emphasizing proper stage at which this objections can be raised. In ***Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, [1991 SC 279 (6)]***, the Hon'ble Supreme Court while acquitting the accused emphasized on two significant aspects of sanction for prosecution. Firstly, any case instituted without proper sanction must fail as the entire proceedings rendered void ab initio and, therefore, prosecution must prove that valid sanction has been granted by the sanctioning authority. Secondly, the sanctioning authority must be satisfied that the case for sanction has been made out constituting the offence. The ground of non application of mind should be raised during

as the trial proceeds. Quashment proceedings which are typically before the trial begins are generally limited to the addressing issues like lack of jurisdiction or an absolute absence of sanction. Thus, in ***Central Bureau of Investigation Vs. Pramila (Supra)***, Hon'ble Supreme Court has clearly drawn a line between complete absence of sanction which can be questioned at the outset and the alleged invalidity of sanction on account of non application of mind, which requires examination during the trial process. Therefore, there is no merit in the present petition. It deserves to be dismissed at the threshold. Accordingly, it is dismissed.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm