



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

13 CRIMINAL WRIT PETITION NO. 1287 OF 2025

SANTOSH RAMESH NIKUMBH

VERSUS

THE STATE OF MAHARASHTRA

....

Mr. Pankaj N. More, Advocate for the Petitioner

Mr. V. M. Jaware, APP for the Respondent – State

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**CORAM : SANDIPKUMAR C. MORE AND
Y. G. KHOBRAGADE, JJ.**

DATE : December 22, 2025

ORAL ORDER (Per: Y. G. Khobragade, J.) :-

1. Heard Mr. Pankaj N. More, the learned counsel appearing for the Petitioner and Mr. V. M. Jaware, the learned APP for the State.

2. By the present petition, the petitioner takes exception to the order dated 6th June, 2024, passed by the learned Special Court, Jalgaon below Report dated 27.05.2024 submitted by the Investigation Officer in Crime No. 56 of 2024 registered with the Chalisgaon City Police Station, on 07.02.2024 for the offences

punishable u/s 302,307,120-B,143,144,147,148,149,212 of Indian Penal Code read with Sec. 3/25 of the Arms Act and Sec. 3(2)(v), 3(2)(va) of Prevention of SC, ST Atrocities Act, Sec. 37(1)(3) of the Maharashtra Police Act and Sec. 3(1)(i), 3(2), 3(3), 3(4) of the Maharashtra Control of Organized Crimes Act, 1999. The Petitioner further prayed for revocation/cancellation of proclamation issued against him and to release his property from the attachment.

3. The learned counsel appearing for the petitioner canvassed in vehemence that, on 07.02.2024 a Crime No. 56 of 2024 registered with the Chalisgaon City Police Station on the basis of Report lodged by the informant Shri Ajay Baisane, wherein it has been alleged that, the informant and deceased Mr. Mahendra Balu More was present in the office of deceased and at that time the Accused Nos. 2, 3, 4, 8 and 9 visited in said office and fired from the firearm at the instance of the accused no. 6 & 7. The accused nos. 1 to 9 hatched a criminal conspiracy to eliminate the deceased. So also, the accused No. 2, 3, 4, 8, & 9 formed unlawful assembly near the office of the deceased and shoot the deceased by firing from the country made pistols and the informant got injured.

4. It is further canvassed on behalf of the petitioner that, the petitioner was having no knowledge about his requirement for investigation in Crime No. 56 of 2024. However, the Petitioner had approached before the learned Sessions Court, Jalgaon by filing the application for anticipatory bail in Crime No. 56 of 2024 but said application came to be rejected vide order dated 24.04.2025. It is further contended that, during the course of investigation of said crime, the Competent Authority has refused to accord sanction to prosecute the arrested accused persons under the M.C.O.C. Act, therefore, the learned Special Court remanded back the case to the Sessions Court and after completion of the investigation a Charge sheet came to be filed u/s 173 of the Cri. P. C., which is registered as Special Case No. 134 of 2024.

5. It is further canvassed that, at the time of the incident/offence, the petitioner was not present at the spot of incident and he was in Mumbai to attend consultancy from his Physician due to health issues. So also, for some time the petitioner was residing at his friend's and relative's house and for some period the petitioner had gone to his native place. Further, the petitioner was frequently required to attend his Physician on multiple occasions, therefore, he

was not available at his local residence. The Petitioner was not made aware about registration of crime against him and the Police personals from the Respondent Police Station did not contact him. The petitioner was not aware of the registration of crime against him and the petitioner has not been served any notice and subsequently the Investigating Officer filed report under Section 173 of Cr.P.C., which is registered as Special Case No. 134 of 2024 and pending on the file of the learned Sessions Judge. However, the Respondent Investigating Officer illegally shown him absconding without service of summons or notice in connection with Crime No. 56 of 2024 and soon after he came to know that he has shown absconding, he contacted with his counsel and filed an application for anticipatory bail before the learned Sessions Court Jalgaon, but, it was rejected. On 27.05.2024, the Respondent I.O. submitted an application u/s 20 (3) of M.C.O.C. Act,1999 before the learned Special Court and prayed for declaration that the petitioner is absconding and concealing himself from arrest. On 06.06.2024, the learned Special Court has passed the impugned order in mechanical manner and proclaimed the petitioner by attaching the property though the petitioner was not absconding. So also, the learned Special Court has passed the

impugned order without sufficient reasons, Therefore, impugned order is illegal and bad in law, hence, prayed for quash and set aside.

6. The learned counsel appearing for the petitioner submitted that initially crime No.56 of 2024 registered with Chalisgaon City police station under the provisions of Indian Penal Code and Arms Act but no provisions of M.C.O.C. Act were invoked. During the course of investigation of Crime No.56 of 2024, on 23.07.2024, the proposal was submitted with the Competent Authority seeking permission to file chargesheet for the offences punishable u/s 302, 307, 120-B, 143, 144, 147, 148, 149, 212 of Indian Penal Code read with Sec. 3/25 of the Arms Act and Sec. 3(2)(v), 3(2)(va) of Prevention of SC, ST Atrocities Act, Sec. 37(1)(3) of the Maharashtra Police Act and Sec. 3(1)(i), 3(2), 3(3), 3(4) of the Maharashtra Control of Organized Crimes Act, 1999, however, the Competent Authority refused to accord sanction. Therefore, the learned Special Court having no jurisdiction to pass the impugned order and to declare the petitioner absconding, hence, impugned order is illegal, bad in law and prayed to quash and set aside the same.

7. Per contra, the learned APP strongly opposed the petition and canvassed that, initially Crime No.56 of 2024 registered against the petitioner and other accused persons for the offence punishable under Sections 307, 120-B, 143, 144, 147, 148, 149 of I.P.C., under Sections 37(1)(3), 135 of the Maharashtra Police Act and under Sections 3/25 of Arms Act and under Sections 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Sections 3(1)(i), 3(2), 3(3) and 3(4) of the M.C.O.C. Act. Out of those accused, the Investigating Officer arrested accused persons namely Sachin Somnath Gaikwad, Anis @ Navva Sheikh Sharif Sheikh Bhushan Machindra Aaher, Sawan Mansub Waghari (Ugrejia), however, other accused Uddesh @ Guddu Sudhir Shinde, Shyam @ Sam Namdeo Chavan, Sumit @ Baba Ashok Bhonsale, Santosh @ Santa Pahelvan Ramesh Nikumbh (Petitioner) and Shubham @ Vicky Vijay Pawale remained absconding. The Investigating Officer searched everywhere for all the absconding accused persons but they were not traceable and avoided their arrest. Therefore, the Investigating Officer submitted an application under Section 20(3) of the M.C.O.C. Act and prayed for issuance of proclamation that the petitioner is absconding. On 06.06.2024, the

learned Special Court passed the impugned order and declared the present petitioner is absconding under Section 20(3) of the M.C.O.C. Act and directed to publish proclamation in the local newspaper and Police Station as well as at the residential address of the petitioner and other conspicuous places within Chalisgaon city. Therefore, impugned order is just and proper, hence, prayed for dismissal of the petition.

8. Having regard to the rival submissions canvassed on behalf of both the sides, We have gone through the petition paper book. It is a matter of record that on 07.02.2024, a Crime No.56 of 2024 registered with Chalisgaon City Police Station for the offence punishable under Sections 307, 120-B, 143, 144, 147, 148, 149 of I.P.C., under Sections 37(1)(3), 135 of the Maharashtra Police Act and under Sections 3/25 of Arms Act and under Sections 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Sections 3(1)(i), 3(2), 3(3) and 3(4) of the M.C.O.C. Act.

9. Needless to say that, the petitioner mainly contended that, initially crime No.56 of 2024 was registered with Chalisgaon

City police station under the provisions of Indian Penal Code and Arms Act but no provisions of M.C.O.C. Act was invoked and during the course of investigation of Crime No.56 of 2024 the proposal was submitted with the Competent Authority seeking permission to file charge-sheet for the offences punishable u/s 302,307,120-B, 143, 144, 147, 148, 149, 212 of Indian Penal Code read with Sec. 3/25 of the Arms Act and Sec. 3(2)(v), 3(2)(va) of Prevention of SC, ST Atrocities Act, Sec. 37(1)(3) of the Maharashtra Police Act and Sec. 3(1)(i), 3(2), 3(3), 3(4) of the Maharashtra Control of Organized Crimes Act, on 23.07.2024. However, the Competent Authority refused to accord sanction,hence, the learned Special Court has no jurisdiction to pass the impugned order and to declare the petitioner absconding. However, on perusal of the petition paper book it appears that, on 21.07.2024, the Sub-Divisional Police Officer submitted the proposal with Additional Police Director General seeking permission to file chargesheet in Crime No. 56 of 2024 registered with Chalisgaon City Police Station for aforesaid offences on ground that, in past various serious nature of offences were registered against the arrested and absconding accused persons and considering nature of those offences prayed permission to invoke provisions of M.C.O.C.

Act. On 09.04.2024, the Superintendent of Police, Jalgaon passed an order and permitted to add Sec. 3(i)(II),3(2),3(4) of the M.C.O.C. Act. On 08.04.2024, the Competent Authority vide its outward No. NR/115/ M.C.O.C.A./945/2024 granted sanction for addition of Sec. 3(i)(II), 3(2), 3(4) of the M.C.O.C. Act in Crime No. 56 of 2024. Therefore, submission canvassed on behalf of the petitioner that, the Special Court has no jurisdiction to pass the impugned order is not acceptable to this Court.

10. On face of record it further appears that the Investigating Officer taken all efforts and searched everywhere the present petitioner and other absconding accused persons including cities like Pune, Chinchpada, Taluka Kalyan, district Thane and within Jalgaon district. However, the petitioner and other absconding accused were not traceable and they were hiding to avoid their arrest.

11. It further appears that, on 03.01.2025, the petitioner filed Exh. 19 an application for anticipatory bail in Special Case No. 134 of 2024 before the Sessions/Special Court, Jalgaon and prayed for anticipatory bail. On 24.04.2025, the Additional Sessions Judge/Special Court passed an order and declined to grant

anticipatory bail. In spite of this, the present petitioner was not available and he was not found by the Investigating Officer. Therefore, this fact itself suggest that the petitioner was having the knowledge about registration of cognizable offences against him but he remained absconded to avoid his arrest. Therefore, on 27.05.2024 / 28.05.2024, the Investigating Officer submitted an application under Section 20(3) of the M.C.O.C. Act before the Special Court and prayed for issuance of proclamation of absconding of the present petitioner and other accused persons. Charge-sheet was also filed before the Special Court under the M.C.O.C. Act.

12. On 06.06.2024, the learned Special Judge, Jalgaon, passed the impugned order holding that though the Investigating Officer tried to trace out the petitioner and other accused but they were not available and hiding from arrest. Therefore, the petitioner and other absconding accused were called upon to appear before the Investigating Officer in Crime No.56 of 2024 registered with Chalisgaon city Police Station, within a period of 15 days after the date of publication of proclamation, stating that in default, their movable and immovable properties will be seized. On perusal of record it appears that, the Investigating Officer made inquiry about

the petitioner and other absconding accused but nobody knew whereabouts the present petitioner and other absconding accused even after the period of three months. So also, the absconding accused were hiding their identities.

13. The petitioner has not specified any such circumstances to show that he was available at his address and he was not absconding at any time before, though the Investigating Officer visited at his residential address. The petitioner himself admitted that he was frequently visiting at Mumbai to attend physician due to his ailment and some time he visited to his native place. Therefore, this fact itself suggests that, the petitioner avoiding his arrest and hiding at unknown places. It is not the case of the petitioner that though he made him, available at his address but the Investigating Officer did not arrest him.

14. Section 20(3) of the M.C.O.C. Act provides as under:-

“20 (3) (a) If, upon a report in writing made by an investigating police officer with the approval of the supervisory officer referred to in sub-section (1) of section 14, any Special Court has reason to believe that any person, who has committed an offence punishable under this Act has absconding or is concealing himself so that he may not be apprehended, such Court may, notwithstanding anything contained in section 82 of the Code, publish a written proclamation requiring him to

appear at a specified place and at a specified time not less than fifteen days but not more than thirty days from the publication of such proclamation:

Provided that, if the investigating police officer concerned fails to arrest the accused, who has absconding or is concealing himself, within a period of three months from the date of registering the offence against such person, the officer shall, on the expiry of the said period, make a report to the Special Court for issuing the proclamation.

(b) The Special Court issuing a proclamation under clause (a) may, at any time, order the attachment or any property, movable or immovable or both, belonging to the proclaimed person, and thereupon the provisions of sections 83 to 85 of the Code shall apply to such attachment as if such attachment were made under that Code.

(c) If, within six months from the date of attachment, any person, whose property is, or has been, at the disposal of the State Government under sub-section (2) of section 85 of the Code, appears voluntarily or is apprehended and brought before the Special Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding apprehension and that he had not received such notice of the proclamation as to enable him to attend within the specified time therein, such property or, if the same has been sold, the net proceeds of the same and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.”

15. Section 82 of Cri.P.C. provides ample powers to execute a warrant but if it remains unexecuted, there are two more remedies i.e. (1) issuing a proclamation and (2) attachment and sale of property provided u/s 83. Simultaneously issuance of warrant of arrest and proclamation.

16. Therefore, on considering of Sub-section (3) of Section 20 of the M.C.O.C. Act, it appears that if the Special Court has reason to believe that any person, who has committed an offence punishable under this Act has remained absconding or is concealing himself, so that, he may not be apprehended, the said person can be declared absconding.

17. On perusal of the impugned order, it appears that on 07.02.2024, C.R. No.56 of 2024, was registered with, Chalisgaon city Police Station, but since then, the petitioner was found absconding and was not traceable though the Investigating Officer took search of the petitioner. Therefore, all these circumstances are compelled to declare the present petitioner proclaimed. On perusal of the impugned order, it does not appear illegal, bad in law and no case is made out to interfere with the same. The Writ Petition is therefore, dismissed.

[Y. G. KHOBRADE, J.]

[SANDIPKUMAR C. MORE, J.]