IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 123 OF 2025

Nikhil Dilip Balvadkar .. Appellant

Versus

State of Maharashtra .. Respondent

…

Mr.Karma Vivan with Ms.Isha Rakesh Singh, Mr.Neel A. Paralikar and Mr.Tejas Kothalikar for the appellant.
Ms.Supriya Kak, APP for the State/respondent.
Mr.Manoj Mohite, Senior Advocate i/b Ms.Ilsa Shaikh for the intervenor.

CORAM : BHARATI DANGRE &
SHYAM C. CHANDAK, JJ
DATED : 11th NOVEMBER, 2025

JUDGMENT:- (Per Bharati Dangre, J)

1 By the Appeal filed under Section 12 of the MCOCA, the appellant has raised challenge to the order dated 2/1/2025, refusing to discharge him, on being arraigned as accused in special case no. 964 of 2023 for the offence punishable under section 302, 120B, 109, 212, 201 read with Section 34 of the Indian Penal Code and Section 3(1)(i)(ii), 3(2), 3(3) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999, secion 4(27) of the Arms Act and Section 135 of the Maharashtra Police Act.

Further, the appellant also raise a challenge to the order dated 15/1/2025, thereby framing charge against accused nos.1 to 8, which include the present appellant, being arraigned as accused no.6.

2 Heard learned counsel Mr.Karma Vivan for the appellant and Ms.Supriya Kak for the State. The learned Senior counsel Mr. Mohite appeared for the intervenor/complainant.

By inviting our attention to the charge-sheet filed pursuant to the completion of investigation, in respect of an offence registered with Shirgaon Parandwadi police station, in form of Form No.96/2023, the learned counsel would submit that the order rejecting his discharge passed by the Special Court and further order framing charge against him under MCOCA is unsustainable, as the basic pre-requisites of invocation of the offence under the Special enactment is not made out. He would submit that the matter cannot be one of simply an arithmetic equation but one will have to decipher the charge-sheets to see if there is any continuing unlawful activity which is carried out on or on behalf of an organised crime syndicate. The prosecution has mathematically added the cases against each of the accused to which the threshold of 2 or more charge-sheets, and if the prosecution has failed to establish "continuing unlawful activity" as defined in Section 2(d) of the MCOCA, merely because two charge-sheets are filed, the activity according to him, do not amount to a "continuing unlawful activity".

It is his specific contention that there is no nexus of link of the crimes or the activities carried out by the individuals, including the appellant, with that of the Organised Crime Syndicate and in specific with the gang leader, as according to him, to attract the offence, it is necessary that there is a link between the activities of the accused with that of the Syndicate.

.. The learned counsel would specifically rely upon the ingredients of Section 2(d) defining the term "continuing unlawful activity" and this according to him, would include :-

> "(a) An activity prohibited by law from the time being in force'
> (b) Activity must be a cognizable offence punishable with Imprisonment of 3 years of more;
> (c) Activity to be undertaken either singly or jointly; **as a member of an organized crime syndicate.**
> (d) Activity (i.e. cognizable offence) in respect of which more than one charge-sheets (i.e. 2 or more) have been filed before the competent court within the preceding period of 10 years and Court has taken cognizance of the same."

It is also his submission that Section 2(e) define the term "Organised crime" and the essentials of the same include (a) continuing unlawful activity; (b) by an individual, singly or jointly, either as the member of Organised Crime Syndicate or on behalf of Organised Crime Syndicate; by use of violence or threat of violence or intimidation, or coercion or other unlawful means, with the objective of (i) gaining pecuniary benefit (ii) gaining undue economic or other advantage for himself or another (iii) or promoting insurgency.

Further, the learned counsel would submit that, to label a crime as “Organised Crime Syndicate” it must necessarily have involvement of two or more persons, acting singly as a syndicate or gang or collectively as a syndicate or gang, which indulge in activities of organised crime.

4 Mr. Karma has placed before us a chart reflecting the involvement of the eight accused persons in six CRs including the subject C.R, in which MCOCA is invoked, being CR No. 96/2023 registered with Shirgaon Parandwadi police station.

He would submit that the commonality of the accused persons is not established, since in C.R.No. 276/2022 registered with Talegaon Dabhade police station, the gang leader is only arraigned as accused, and there is no involvement of the present appellant. Similarly, in offence registered with Vadgaon Maval Police Station i.e. C.R.No.189/2021, only the gang leader is an accused. In another offence registered with Talegaon Dabhade i.e. C.R.No.91/2020, Amol Appasaheb Gokhale is the only accused, and the present appellant along with Sagar Ovhal are accused in C.R.N. 1085/2019 with Chatushrungi police station.

In the FIR registered with Hinjewadi Police Station in form of C.R.No. 20/2007 which, according to the learned counsel could not be taken into consideration, as there is no live link with the present offence in which MCOCA has been invoked and in this offence, only Amar Ojarkar (Santosh) is the accused.

It is therefore, the contention of the learned counsel that since the offence in Hinjewadi is more than 10 year old, it cannot be taken into consideration and in the remaining offences only the case registered with Chaturshrungi police station, more than one accused is implicated, but as far as two offences registered with Talegaon Dabhade and the offence at Vadgaon Maval, the accused are individuals, and they have carried out activities singly, and there is no material in the charge-sheet to show that they have committed the offences “as Member of Organised Crime Syndicate or on behalf of such Syndicate”.

5 Relying upon the decision of this Court in case of **Prafulla & Ors, Vs. State of Maharashtra**[1], 2008 SCC Online 1848, the learned counsel would submit that the definition of the term “continuous unlawful activity” and “Organised Crime” are intertwined, clear and unambiguous, and that to constitute an continuing unlawful activity, there must be similar activities in the past in respect of which more than one charge-sheet has been filed in the preceding 10 years, and mere proof of filing charge-sheet is not enough, as it is only one of the pre-requisites for considering the offence of continuing unlawful activity.

According to the learned counsel, the observations in Prafulla (supra) are upheld by the Hon’ble Supreme Court.

Heavy reliance is placed by him on the decision in

1 2008 SCC Online Bom 1848

the learned counsel in case of **Govind Sakharam Ubhe Vs. Vs. State of Maharashtra**[2] where there is insistence of a 'link' or 'nexus' between the previous crimes to satisfy the the requirement 'continuing unlawful activity' is focused, and without this link, it is held that the offence under MCOC cannot be attracted. Thus, according to the learned counsel, the requirement of 'more than one charge-sheet' is qua the unlawful activities and not qua the individual member thereof, as the focus of the statute is not only on having past crimes, but it is on having a nexus that link them to the activities of a Gang. This view, according to the learned counsel is approved in **Zakir Abdul Mirajkar Vs. State of Maharashtra**[3]

6 The learned Senior Counsel Mr.Mohite has also placed before us his interpretation of the term "Organised Crime Syndicate" as well as 'Continuing Unlawful Activity' by relying upon the decision in Zakir (supra). Mr.Mohite would urge before us that MCOCA is a Special Act, and on a conjoint reading of the key terms in the Act i.e. Organized Crime and Continuing Unlawful Activity, it is not a requirement that more than one charge-sheet is filed with respect to each accused persons. According to Mr.Mohite, what is only important, is to establish the nexus or the link of the person with the organised crime syndicate and unless the link is established, the person cannot be roped into, but this link is with the 'organised crime syndicate'.

2 (2009) SCC Online Bom 770
3 2022 SCC Online SC 1092

7 When we have perused the charge-sheet which has charged the accused persons for committing offence under IPC as well as the provisions of the MCOCA, with reference to the complaint filed by Ravindra Gopale, who alleged that his brother Pravin Gopale, received threats from the accused persons that he shall not cause any interference in their way, and shall not advise people, and on 1/4/2023, he was assaulted by the named four accused persons by dangerous weapons, and caused his death.

Upon an offence being registered invoke Sections 302 read with Section 34 along with Section 120B of the IPC, the provisions of MCOCA came to be invoked.

During the course of investigation, the statements of the witnesses were recorded and the video clip of the incident was collected, which established the assault mounted on the deceased by means of scythe. The incident was witnessed by several persons and during the course of investigation, apart from accused no.1, the involvement of other accused persons surfaced on record, which included the present appellant, and the charge-sheet filed compiled of the material that all accused persons i.e. accused nos.1 to 8 had hatched the conspiracy to commit murder of the deceased and accused nos.4 to 8 are also part of the conspiracy, as they assisted accused nos.1 to 3, the main assailants by providing them shelter, vehicle, new clothes and helped them in destroying blood stained clothes and offering monetary aid for hotelling and lodging.

8 The charge-sheet also include the documentary evidence like bills and communication exchanged between the accused through their mobile phones.

.. While sending a proposal to the Assistant Commissioner of Police for inclusion of provisions of MCOCA, Mr.Vishal @ Kiran Sunil Gaikwad was resident of Shirgaon, was described as a gang leader who indulged himself along with the members of his gang in violence for obtaining pecuniary advantage by committing different criminal acts. His activities included assault, extortion and the investigation revealed that the gang leader along with his associates had created a reign of terror by indulging themselves into various criminal activities which included dacoity, assault, assault on government servants etc in the last 10 years. The investigation also revealed that there are five offences registered individually and collectively against the member of the Gang, which would invite punishment of more than three years and the Court had taken cognizance of more than one such offence. The proposal therefore, refer to five offences registered with different police stations, in addition to the subject offence in which MCOCA is invoked.

9 A comparative chart on involvement of all the accused persons in the six offences, including the involvement of the gang leader in three offences i.e. C.R. No.96/2023, C.R.No. 276/2022 and C.R.No. 189/2021, would reveal that some of the offences are committed by the accused persons

individually, but on behalf of the Syndicate.

This is what is alleged against the accused persons and since the investigation is carried out with prior approval and subsequently even approval was granted under Section Section 23(1) by the Deputy Inspector General and Addl. Commissioner of Police for prosecution of the accused persons under the provisions of MCOCA, as they were found involved in criminal activities indulged into for pecuniary gain and as per the sanction order, the gang was created with a view to create criminal dominance of syndicate by use of violence.

The charge-sheet includes the confessional statement of the accused, though subsequently, retracted.

.. The submission of the learned counsel for the appellant that there must be live link between the crimes committed by the Organised Crime Syndicate, according to us, is not the requirement of MCOCA. In Govind Sakharam Ubhe (supra), the Division Bench of the Bombay High Court, recorded thus :-

> *"37 But even otherwise, if all provisions are read together we reach the same conclusion. Section 2(1)(d) which defines 'continuing unlawful activity' sets down period of 10 years within which more than one charge-sheet have to be filed. The members of the crime syndicate operate either singly or jointly in commission of organized crime. They operate in different modules. A person may be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situations, the MCOCA can be applied. It is the membership of organized crime syndicate which makes a*

> *person liable under the MCOCA. This is evident from section 3(4) of the MCOCA which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum of fine of Rs. 5 lakhs. The charge under the MCOCA ropes in a person who as a member of the organized crime syndicate commits organized crime i.e acts of extortion by giving threats, etc. to gain economic advantage or supremacy, as a member of the crime syndicate singly or jointly. Charge is in respect of unlawful activities of the organized crime syndicate Therefore, if within a period of preceding ten years, one charge-sheet has been filed irrespect of organized crime committed by the members of a particular crime syndicate, the said charge-sheet can be taken against member of the said crime syndicate for the purpose of application of the MCOCA against him even if he is involved in one case. The organized crime committed by him will be part of the continuing unlawful activity of the organized crime syndicate. 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".*

10 Relying upon the aforesaid observations, the Apex Court in case of **Zakir Mirajkar** (supra) has concluded that persons who are alleged to be members of the Organized Crime Syndicate need not have more than one charge-sheet filed against them in individual capacity and rather charge-sheets with respect to the Organised Crime Syndicate are enough to fulfill the conditions of Section 2(1)(d). The charge-sheet filed in the subject C.R invoking MCOCA has included the material of the gang being operated as gang leader Vidhal @ Kiran and has described the other accused persons, including the appellant as members of the gang and they are accused of operating an Organised Crime Syndicate, by indulging them in a continuing

unlawful activity, acting singly or jointly, as member of Organised Crime Syndicate or on behalf of such syndicate and in respect of which more than one charge-sheets have been filed before a Competent Court within the preceding 10 years of which the Court has taken cognizance.

Since the link between the activities of the accused is established with the Organised Crime Syndicate which is headed by Vishal @ Kiran Gaikwad, at this stage, in our opinion, it is not possible for us to presume that there is no link between the two. In any case, under Section 22 of the MCOCA, there is a presumption, unless the contrary is proved that the accused has committed an offence under Section 3 and by virtue of sub-section (2), if it is proved that accused has rendered any financial assistance to a person accused of, or reasonably suspected of, an offence of Organized crime, the Court shall presume, unless the contrary is proved that such person has committed the offence.

11 For the aforesaid reason, when the Special Judge, on perusal of the charge-sheet and documents placed on record, have refused to discharge the appellant, by recording that the gang leader, an habitual offender had formed an organised crime syndicate, and committed the crime for illegal pecuniary gain and criminal supremacy and since more than one charge-sheet is filed against the syndicate and there is no requirement of having more than one charge-sheet against each individual member/accused, the provisions of MCOCA are prima facie

attracted against the members of the crime involved in the conspiracy as well as those who harbor or conceal any member of the Organised Crime Syndicate.

.. Finding that there is sufficient material in the charge-sheet to frame charge and proceed further, the Special Judge has rightly passed the impugned order dated 2/1/2025 and proceeded to frame the charge against accused nos.1 to 8, which includes a charge of being member of an organised crime syndicate run by accused no.1 – Vishal @ Kiran Gaikwad, and as members of the Crime Syndicate, they have singly or jointly committed cognizable offences of murder, attempt to murder, hurt etc, the offences punishable with Imprisonment of three years or more and in respect of which within preceding period of 10 years or more, more than one charge-sheet has been filed and the competent court has taken cognizance of the same.

In the wake of the aforesaid finding no merit in the appeal raising a challenge to the said order, the Appeal is dismissed, being without merit and substance.

(SHYAM C. CHANDAK,J) **(BHARATI DANGRE, J.)**

Tilak