IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

CR. APPEAL NO. 1002 OF 2025

Amit Alias Gotya Avinash Bhosale … Appellant

Versus

The State of Maharashtra & Ors. … Respondents

………….

Ms. Tanvi Tapkire a/w Pranjal Survase i/b Mr. S.M. Sule for the Appellant.

Mr. Shrikant Yadav, APP for the Respondent - State.

………….

CORAM : MADHAV J. JAMDAR &
PRAVIN S. PATIL, JJ.

DATE : 11th MARCH, 2026.

ORAL JUDGMENT :- (Per Madhav J. Jamdar, J.)

1. Heard Ms. Tanvi Tapkire, learned Counsel appearing for the Appellant and Mr. Shrikant Yadav, learned APP for the State.

2. By the present Criminal Appeal, challenge is to the legality and validity of the order dated 5th November 2025 passed by the learned Additional Sessions Judge, Wai, Dist. Satara (below Exh.1) in Special Case No. 42 of 2023 (M.C.O.C. Act). By the impugned judgment, the learned Additional Sessions Judge, has directed that charge be framed against all accused persons for the offences punishable under Sections

302, 307, 364, 120(B), 396, 212, 201 r/w Section 34 of the Indian Penal Code (IPC) and offence under Sections 3(1)(i)(ii), 3(2), 3(3) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (M.C.O.C. Act) and under Section 143 of the Bombay Police Act.

3. At the outset, it is required to be noted that Ms. Tapkire, learned counsel appearing for the Appellant has stated that challenge is to the impugned order only with respect to the framing of charge under the provisions of M.C.O.C. Act and not as far as IPC offences are concerned. She submits that in this case, the motive to commit crime of murder of Onkar Kailas Chavan (deceased) is that the sister of accused No.2 – Rohan Jadhav had an love affair with the deceased, which has not been approved by the accused No.2 and that the deceased had taken money as well as gold from the sister of the accused No.2. She, therefore, submits that although the offence is very serious under Section 302 of the IPC and other offences under the IPC, M.C.O.C. Act cannot be invoked. She submits that the offence committed is of personal vendetta and, therefore, M.C.O.C. Act cannot be invoked. She further submits that there is no nexus with the organised crime. To substantiate the said contention, she has relied on paragraph Nos. 37 to 38 of the decision of Division Bench of this Court in case of **Govind Sakharam Ubhe Vs. State**

of Maharashtra[1]. She also relied on Full Bench judgment of this Court in case of ***State of Maharashtra Vs. Jagan Gagansingh Nepali @ Jagya & Anr.***[2] She therefore submits that the impugned order dated 5th November 2025 to the extent of framing charge for offences under Sections 3(1)(i)(ii), 3(2), 3(3) and 3(4) of the M.C.O.C. Act be quashed and set aside.

4. On the other hand, Mr. Shrikant Yadav, learned APP points out statement of Gaurav Mankar (pg. 1512) recorded under Section 164(5) of the Cr.P.C. and more particularly last paragraph of page 1515. Learned APP has also relied on judgment of **Govind Sakharam Ubhe** (supra) as also the decision of the Supreme Court in case of **Zakir Mirajkar Vs. State of Maharashtra & Ors.**[3]. Learned APP submitted that charge is rightly framed even under the provisions of M.C.O.C. Act.

5. Before consideration of the rival submissions, it is necessary to set out relevant portion in the chargesheet. The relevant portion of column No.20 of the chargesheet describing brief facts of the case are as under :-

> "प्रस्तुत गुन्हा दाखल होणे पुर्वी प्रथम सदर घटणेच्या संबंधाने यातील मयत इसम ओंकार कैलास चव्हाण हा घरात पाचवड येथे जावुन येतो, असे सांगून त्याचे मोबाईल शॉपीमध्ये काम करणारा कामगार गौरव संजय मतकर याचे सोबत मोटर सायकलवरुन गेला तो परत आला नाही. म्हणून वगैरे ची खबर मिसींगचे वडील कैलास लक्ष्मण चव्हाण यांनी दिले खबरीवरुन मनुष्य मिसींग रजिस्टरी दाखल आहे. सदर मिसींगचे चौकशी

1 2009 (3) Mh.L.J. (Cri.) 131
2 2011 (5) Mh.L.J. 386
3 2023 (20) SCC 408

दरम्यान यातील मयत याने गौरव संजय मतकर यास दिनांक ०४/०१/२०२१ रोजी १६.३० वा. चे सुमारास फोन करुन आपल्याला पाचवड येथे जायचे आहे, असे सांगून बोलावुन घेवून ते दोचे साक्षीदार याचे मोटर सायकल नं.एम.एच.११.सी.यु.८०४६ वरुन भुईंज ते पाचवड असे जात आसताना पाचवड गावचे हद्दीत शेवाळे वस्ती जवळ आले असता, **पाठीमागुन दोन मोटर सायकलवरुन अनोळखी ४ मुलांनी येवून त्यांना थांबवुन यातील मयतास जबरदस्तीने मोटर सायकलवर बसवून सातारा बाजुकडे घेवून गेले असल्याची माहिति निष्पन्न झाली.** त्याच प्रमाणे स्था.गु.शा.सातारा येथील आधिकारी श्री. रमेश स.गर्जे स.पो.नि. यांनी संशयीत म्हणून **१) रोहण राजेंद्र जाधव २) रोहीत संजय घाडगे ३) समाधान उर्फ चंप्या राजेंद्र शिंदे ४) सलिम खाजासाब शेख यांनी व त्यांचे इतर दोन साथीदांर ५) अनिकेत उर्फ बंटी नारायण जाधव ६) बंटी मोरे यांनी मिळून काठयांनी मारहान करुन त्याची सोन्याची आंगठी व मोबाईल फोन काढून घेवून त्याचा खुन केले बाबत माहिती निळाली असून** पुढील कार्यवाही करणे करीता रिपोर्ट सह अ.नं.१ ते ४ यांना हजर केले. एकंदर मिसींगचे चौकशी मध्ये प्राप्त झाले माहिती व परस्थितीजन्य पुराव्यावरुन मिसींगचे चौकशी अंमलदार यातील फिर्यादी यांनी सरकार तर्फे फिर्यादी होवुन प्रस्तूत गुन्हा दाखल केलेला आहे."

(Emphasis added)

6. The chargesheet also records that as far as accused No.1 – Aniket alias Bunty Narayan Jadhav, gang leader is concerned, there are total 14 cases registered and the present offence took place although the gang leader was externed from Satara District.

7. The chargesheet records various aspects about the other accused So far as role of the present applicant is concerned, the same is described on page 1440 in the chargesheet, which reads as under :-

"आरोपी क्रमांक ०७- अमित ऊर्फ गोटया अविनाश भोसले वय ३३ वर्षे, समतानगर, भुईंज ता. वाई

नमुद आरोपी नं.-७ हा भुईंज गांवात राहणारा असून त्याचा मोबाईल शॉपीचा व्यवसाय आहे. त्यामुळे टोळी सदस्य आरोपी क्र-२ तसेच टोळी प्रमुख आरोपी क्र-१ यांचे संपर्कात तो आहे.

तो प्रस्तुत गुन्हर्यातील टोळी प्रमुख व टोळी सदस्य आरोपी क्र-०२ याचे परिचयाचा असल्याणे त्याने घटणेच्या आरोपी क्र-१२ याचे पोल्ट्री शेडवर हजर राहुन टोळी प्रमुख आरोपी याने केलेल्या कटामध्ये प्रत्यक्ष सहभागी होवुन सदरचा कट पुर्णत्वास नेहणे करीता साक्षिदार गौरव संजय मतकर व शौकत उर्फ मुन्ना मुशाक शेख

> यांना मारहाण करुन त्याचा खुन करणेच्या प्रयत्नानध्ये इतर आरोपी यांना सहकार्य केले. यातील मयत यास काठ्यांनी मारहाण करुन त्याचा खुन करुन त्याचे प्रेत भुईंज येथील स्मशानभुमी मध्ये दहन करुन पुरावा नष्ट करणे मध्ये टोळी प्रमुख व इतर आरोपी साथीदार यांना मदत केली आहे."
>
> *(Emphasis added)*

Thus, the material on record shows that, so far as the alleged offence is concerned, the deceased was not only mercilessly assaulted, but his gold ring was also removed from his finger. Thereafter, he was killed, his body was burnt, and the ashes were thrown into the Krishna River. As per the prosecution case and the material on record, the appellant – accused No.7 has actively participated in the crime.

8. Before further considering the contention of the appellant, it is necessary to set out the IPC offences as the learned counsel appearing for the Appellant, on instructions, has stated that as far as the IPC offences are concerned, the Appellant is not challenging the order framing charge under the IPC. The IPC offences are under Sections 302, 307, 382, 120B, 396, 212, 201 r/w 34 of the IPC. The relevant IPC offence for the purpose of appreciating the submission of learned counsel appearing for the Appellant is under Section 396 of the IPC. Section 396 of the IPC is concerning 'dacoity with murder' and provides that '*if any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with* *death, or for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine*'.

9. Section 391 defines 'dacoity' as '*when five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit 'dacoity'.*

10. Section 390 provides that - "*In all robbery there is either theft or extortion.*

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint."

"*Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant* *hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up thing extorted.*"

11. Extortion is defined under Section 383 of the IPC as "*Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".*"

12. Theft is defined under Section 378 *inter alia* as "*Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.*"

13. As already noted hereinabove, the learned Counsel appearing for the Appellant has stated that as far as the IPC offences are concerned, she has instructions not to challenge the impugned order by which charge is framed *inter alia* with respect to the IPC offences. The relevant IPC offences are already set out hereinabove and the ingredients of the said offences are discussed hereinabove. In this back ground of the matter, the only question which is before us for consideration is whether the charge can be framed under the provisions of the M.C.O.C. Act i.e. under Sections 3(1)(i)(ii), 3(2), 3(3) and 3(4). Thus, it is clear that relevant section is Section 3 which reads as under :-

> *"**3. Punishment for organised crime***
>
> *(1) **Whoever commits an offence of organised crime shall,-***
>
> *(i) **if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees one lac;***
>
> *(ii) **in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.***
>
> *(2) **Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.***
>
> *(3) **Whoever harbours or conceals or attempts to harbour or conceal, any member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extent to imprisonment for life, and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.***
>
> *(4) **Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.***
>
> *(5) Whoever holds any property derived or obtained from*

commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs."

(Emphasis added)

14. 'Organised Crime' is defined under Section 2(1)(e), which reads as under:-

"[(e) ***"organised crime" means, any continuing unlawful activity, by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate,-***

(i) ***by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency, or***

(ii) (ii) by cultivating, producing, manufacturing, possessing, selling, purchasing, transporting or storing of narcotic drugs or psychotropic substances in commercial quantity, as notified under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), in contravention of the said Act or rules framed thereunder, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person;]"

(Emphasis added)

15. 'Organised crime syndicate' is defined under Section 2(1)(f), which reads as under :-

*"(f) "****organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime;"***

(Emphasis added)

16. ‘Continuing unlawful activity’ is defined under Section 2(1)(d), which reads as under:-

> “*2(1)(d)* ***"continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;”***
>
> *(Emphasis added)*

17. Thus, what is important to note is that ‘organised crime’ means any continuing unlawful activity, by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate - by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency. Organised crime syndicate is a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime.

18. This is a case where it is the submission of Ms. Tapkire, learned counsel for the Appellant that although the offence is very serious even under the IPC offences, however, the motive of the offence is that sister of accused No.2 was having love affair with the deceased, which was not approved by the accused No.2 and apart from that deceased had taken from the sister of the accused No.2 money and gold. It is, therefore, her contention that the motive behind the offence is personal vengeance.

19. As noted hereinabove, the organised crime *inter alia* means by use of by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency. This is a case where as per the prosecution case, deceased was not only killed but his Cell Phone and Gold ring were stolen. In this back ground, it is relevant to note the observations of the learned Additional Session Judge in paragraph Nos. 6 to 10, which reads as under :-

> *"06. Perusal of charge-sheet it will find that investigating officer has described the role of each accused, in detail, played while committing serious crime by hatching* ***conspiracy for committing the murder of Omkar Kailas Chavan by snatching golden ring and mobile from him and assaulted Gaurav Sanjay Matkar and Shoukat @ Munna Mashak Shaikh and destroyed the body deceased Omkar by burning it secretly in order to destroy the evidence.***
>
> *07.* ***Role of each accused played while committing crime has been described in detail in charge-sheet running in 10 pages.***

They are in consonance with the statement of witnesses and other material placed on the record. *They go to demonstrate that there are sufficient grounds for framing the charge.* ***Charge-sheet also reveals that how all the accused have created terrorism by showing video of incident to one witness Vaibhav Gulumbkar.*** *Charge-sheet also unfolds that each accused is having previous criminal background since considerable period.* ***Charge-sheet also reveals that each accused persons appears to be the member of Organized Crime Syndicate/Gang and they have committed the murder of Omkar on account of fact that deceased had proposed the sister of accused Rohan, and on that count also assaulted above named witnesses in order to kill them. It also appears that while committing crime accused persons have snatched valuable property of deceased. Allegations made in the charge-sheet against each accused persons are supported by reports, panchnamas, the statements of four witnesses and various documents such as panchanama, memorandum panchanama, medical evidence, confessional statements etc.*** *Record also further reveals that Sanction Order dated 05/07/2021 passed by Director General of Police Maharashtra State, Mumbai, which was sanctioned after sending proposal by investigating officer to the said authority.* ***Record also reveals that there are certain confessional statements of accused. It can be collected from the record that prohibitory actions were taken against accused Aniket, Varun, Nikhil, Pratik, Nitin, Rohit, Mazhaar Noorahmed Shaikh and they have committed it's breach, for committing other serious crime.*** *Investigating officer appears to have collected call records of the accused relating to the incident in question. Record further indicates that identification parade was carried out by Tahsildar and accused persons were identified which appears to be sufficient to connect them to the incident in question. It also appears from the record that statement of witnesses namely, Sudhakar Ramkrushna Bhandare, Saurabh Balasaheb Sutar, Gaurav Sanjay Matkar, Balwant Jagannath Dhumal, Jeevan Nilkamal Chetri, Sandip Dinkar Jadhav, Vaibhav Dilip Gulumbkar, Pravin @ Ganesh Mansing Jadhav, Sanjay Krushna Gaikwad, Mazhar Noormahammad Shaikh, Ganesh Machhindra Jagtap, Pushkraj Laxman Bhosale, Anil Vilas Wadkar, Sesil Sunil Keshave, Shoukat Mashak Shaikh, Sagar Ramdas Jedhe, Urnar*

Hashmuddin Momin, Kundlik Kisan Kanase, Kantilal Raya Devrase, Aniket Sunil Shetye, Kanhaiyya Ranjitsinha Dalwale were recorded u/s 164 of Cr.P.C. Various incriminating material touching to the crime appears to have been seized from the houses of accused namely, Rohan Rajendra Jadhav, Rohit Sanjay Ghadge, Samadhan @ Champya Rajendra Shinde, Salim Khajasab Shaikh, Mahendra @ Pintu Hanmant Jadhav, Pratik Pruthviraj Pawar and Shubham Ravindra Jadhav. Mobiles of accused appears to have been seized for investigation as per seizure panchanamas. It also appears that u/s: 27 of Evidence Act, pocket of deceased and weapons used in the crime appears to have been seized from accused Rohan Rajendra Jadhav and Rohit Sanjay Ghadge. It also further appears from the record that vehicle used in the crime was also seized under execution of panchnama done under 27 of Evidence Act. It also appears from the record that investigating officer has collected the information about criminal background of accused persons.

08. ***No accused has filed discharge application before Court.***

09. ***After hearing learned A.PP and learned counsels for accused named above, and having looked into the documents and statements of witnesses filed on record along with charge-sheet, I am satisfied that there is prima facie case based on the material described above and sufficient evidence which is able to make out prima facie case against each accused mentioned above.***

10. ***As such, having considered above described material placed on record, according to me there is sufficient material and grounds available on record to frame the charges against all accused persons for the offences punishable u/ss. 302, 307, 364, 120 (B), 396, 212, 201 read with Section 34 of Indian Penal Code and offences punishable u/ss. 3(1) (i) (ii), 3(2), 3(3) & 3(4) of The Maharashtra Control of Organized Crime Act, 1999 and under Section 143 of Bombay Police Act. Hence, following order is passed."***

(Emphasis added)

20. Thus, the learned Additional Sessions Judge has after taking into consideration the material on record for the purpose of framing of the charge has held that there is sufficient material and grounds available on record to frame the charges against all the accused persons for the IPC offences as well as offence under the M.C.O.C. Act.

21. As set out hereinabove, this is a case where the prosecution case is that the deceased was murdered *inter alia* for the purpose of committing dacoity and actually the Cell Phone and Gold ring of the deceased were stolen.

22. Ms. Tapkire, learned counsel for the Appellant has relied on the confessional statement of co-accused – Vaibhav @ Chimya Gajanan Shewate. The relevant part of his statement is as under :-

> "दि.०४/०१/२०21 रोजी सकाळी १०.०० वा. घरातुन निघुन मी भुईज गावामध्ये आलो. तेथुन मी भुईंज कारखाना रोडला गेलो. तेथे अक्षय शेवते व प्रतिक पवार हे मला भेटले. आम्हाला दारु प्यायची सवय होती, म्हणुन आम्ही पद्मश्री बार मध्ये गेलो. आम्ही दुपारी २.३० वा. पर्यंत वारु पित बसलो. त्यानंतर आम्ही दुरुस्तीला टाकलेला प्रतिक पवार याचा मोबाईल घेण्यासाठी त्याचे सी.डी १०० मोटार सायकलवरुन अमित ऊर्फ गोटया भोसले याचे दुकानावर गेलो. अमित ऊर्फ गोटया भोसले याने मोबाईल दुरुस्त नसल्याने मोबाईल दिला नाही. त्यावेळी प्रतिक पवार व अमित ऊर्फ गोटया भोसले यांचेत किरकोळ बाद झाला. त्यानंतर मी व प्रतिक पवार असे सी.डी.१०० गाडीवरुन व अक्षय शेवते, अमित भोसले स्कुटी वरुन दोन्ही मोटार सायकल वरुन ४.०० वा. जाधव याचे चिंधवली रोडला असलेल्या कोंबडी पालनाच्या शेडवर गेलो. आम्ही शेडवर गेल्यावर तेथे मालदेवाडीचा जयेश ऊर्फ बंटी मोरे याने गेट उघडुन आम्हाला आत घेवुन कुलूप लावले. **त्यानंतर आम्ही शेडचे दार ऊघडुन आत मध्ये गेलो, तेथे अनिकेत ऊर्फ बंटी जाधव होता, त्याला आम्ही भेटलो. त्यावेळी आत मध्ये वाचनवाडीचा मुलगा गौरव मतकर हा दिसला, तसेच रोडन जाधव, शुभम ऊर्फ चिग्या जाधव, सलिम शेख, रोहीत घाडगे, समाधान ऊर्फ चंप्या शिंदे असे होते आणि ते गौरव मतकर यास उघडा करुन**

काठयांनी मारहाण करीत होते. तसेच तेथे अजय ऊर्फ गोल्डन, निखील मोरे, काच्या असे होते. त्यावेळी मी चंप्या शिंदे ला विचारल त्याला का मारताय, त्यावेळी त्याने सांगीतले की, ओंकार चव्हाण याचे रोहन जाधव याचे बहीणी बरोबर प्रेम आहे व तिचेर्कड़ुन ओंकार चव्हाण याने दोन तोळे सोने, ४ ते ५ लाख रुपये घेतले आहेत आणि गौरव त्याचा मित्र आहे. तो ही त्याचेमध्ये सामिल आहे, म्हणून आम्ही त्याला अनिकेत ऊर्फ बंटी जाधव याचे सांगणेवरुन मारतोय असे म्हणाला. त्यानंतर आम्ही शेडच्या बाहेर येवुन बसलो. काही वेळाने त्यांनी ओंकार चव्हाण यास आणले आणि त्याला ही शेड मध्ये आणुन मारहाण केली. त्याने सांगीतले की माझा काही संबंध नाही मुन्ना याचा विषय आहे असे सांगीतले. त्यानंतर काही वेळाने मुन्ना याला आणला आणि त्याला ही उघडा करुन ओंकार चव्हाण, गौरव मतकर यांना अँगलला बांधुन व खाली ओपवुन रोहन जाधव, शुभम ऊर्फ चिंग्या जाधव, सलिम शेख, रोहीत घाडगे, समाधान ऊर्फ चंप्या शिंदे, अनिकेत ऊर्फ बंटी जाधव, अक्षय कांता शेवते, रोहित घाडगे, अमित ऊर्फ गोटया भोसले, मिथुन घाडगे, प्रतिक पवार, अक्षय जाधव, वरुन जाधव, महेंद्र ऊर्फ पिंटु जाधव असे मारहाण करीत होते. काही वेळाने मी शेडबाहेर जाऊन बसलो, अर्ध्या तासाने शेडच्या खोलीमधुन बाहेर आवाज आला की, सर्वांनी खोलीत या. त्यानंतर मी ही गेलो, **त्यावेळी ओंकार चव्हाण हा उतान्या स्थितीत जमिनीवर पडला होता. तो हालचाल करीत नव्हता, त्यावेळी बंटी जाधव याचे सांगणेवरून त्यास उचलुन वरुण जाधव याचे आय १० गाडीत घालुन त्याला रोहन जाधव, सलिम शेख, राहीत घाडगे, समाधान ऊर्फ चंप्या शिंदे व प्रतिक पवार असे ओंकार चव्हाण यास भुईंज येथील भंडारे डॉक्टर यांचेकडे घेऊन गेले होते. त्यानंतर बंटी जाधव यास फोन आल्यानंतर त्यांनी ओंकार चव्हाण यास वाई येथील हॉस्पीटलमध्ये घेवुन जाण्यास सांगीतले होते. त्याप्रमाणे त्यांनी वाई येथील हॉस्पीटलमध्ये ओंकार चव्हाण यास घेवुन गेले. काही वेळाने बंटी जाधव याने आम्हा सर्वांना गाडीत बसण्यास बांगीतले, स्विफ्ट डिझायर गाडीमध्ये मी, अक्षय शेवते, प्रतिक पवार, अमित ऊर्फ गोटया भोसले, अनिकेत ऊर्फ बंटी जाधव असे बसलो.** त्यावेळी त्याने पोलो गाडी आणि मोटारसायकल गाडया स्विफ्ट गाडीच्या मागे घेण्यास सांगीतले. तेथुन आम्ही सर्वजन चिंधवली फाट्यावर आलो. तसेच आमचे गाडीच्या पाठीमागे बाई येथील अजय ऊर्फ गोल्वन माची पोलो गाडी होती, आणि तेथे असलेल्यों पैकी काहीजन मोटार सायकलवर होती. चिंध रोडला जाव १० गाडी आली त्यातुन ओंकार चव्हाण बाला आमचे स्विफ्ट गाडी मध्ये घेतले. तेगुन आमची स्विफ्ट डिझायर गाडी, पोलो माही असे घेवुन आम्ही ओंकार चव्हाण याला घेवुन सातारा येथे गेलो. तेथे आमचे भागे आलेल्या दोन मोटार सायकल आल्या होत्या त्यातील, एका मोटार सायकलवर रोहन जाधव, समाधान ऊर्फ चंप्या शिंदे व निखील मोरे असे सातारा येथील संजीवनी हॉस्पीटल मध्ये घेवुन गेले. तेथे डॉक्टर यांनी त्याला तपासून तो मयत झाला आहे असे सांगीतलेने, त्यास रोहन जाधव, निखील मोरे, समाधान ऊर्फ चंच्या शिंदे यांनी ऑकार चव्हाण यास घेवुन आले. त्यावेळी ऑकार चव्हाण याला स्विफ्ट गाडी मध्ये घालुन घेवुन आम्ही बाळे फाटा येधुन सर्व्हिस रोडने पेट्रोल पंपाचे पुढे डि मार्ट समोरील रोडवर जाऊन थांबलो. त्यावेळी स्विफ्ट डिझायर गाडीतुन ओंकार चव्हाण याला अमित ऊर्फ गोटया भोसले, समाधान ऊर्फ चंप्या शिंदे यांनी गाडीच्या डिग्गीत टाकला. त्यानंतर मला झोप आल्याने भी झोपी गेलो. आम्ही शिरवळ येथे पंढरपुर फाटयाजवळ आल्यानंतर तेथे आमचे मागे पोलो गाडी ही तेथे आली. स्विफ्ट गाडीतील व पोलो गाडीतील सर्वजन आम्ही खाली उतरुन काही मेळ बोलत थांबलो. काही येळाने आम्हाला अनिकेत ऊर्फ बंटी जाधव याने तेथेच थांबण्यास सांगीतले. आणि पोलो गाडीची चावी कावुन घेवुन स्विफ्ट गाडीतुन निखील मोरे यास घेवुन सातारच्या दिशेने निघुन गेले. शिरवळ पंढरपुर फाट्यावर भी, अक्षय कांता शेवते, प्रतिक पवार, अमित ऊर्फ गोटया भोसले, अजय ऊर्फ गोल्डन, काच्या कचरे व पोलो

गाडीतील एकजण होतो. पोलो गाडीतील गाडीतच झोपले आणि आम्ही बाहेर उभे होतो. आलटुन पालडुन आम्ही पोलो गाडीत जाऊन झोपायचो.

दि.०५/०१/२०२१ रोजी पष्ठाटे ०४.०० वा. अनिकेत ऊर्फ बंटी नारायण जाधव, निखील मोरे असे आमचे जवळ शिरवळ येथील पंढरपुर फाट्याजवळ आले. आम्हाला बंटी जाधव याने गाडीत बसण्यास सांगीतले, तेथुन आम्ही सर्वजन् स्विफ्ट डिझायर गाडी व पोलो गाडी घेवुन पुणे येथे सकाळी ०६.०० वा. एका लॉजवर गेलो तेथे झोपलो. लॉजवर भी, अमित ऊर्फ गोटया भोसले, अक्षय शेवते व निखील मोरे असे बोलत बसलो असताना, **निखील मोरे याने सांगीतले की, ओंकार चव्हाण याला पोत्यात घालुन, त्यावर वाळु घालुन नदीत टाकुन दिले आहे असे सांगीतले.** आम्ही त्यावेळी खुप घाबरलो त्यानंतर, आम्ही सर्वजन दोन्ही गाडया घेवुन त्या लॉजवरुन सायं. ०४.०० वा. निघुन कोल्हापुर येथे गोकुळ हॉटेलला सध्या. ७.३०. वा. पोहचलो आणि तेथेच राहीलो.

दि.०६/०१/२०२१ रोजी सायं. ५.३० वा. आम्ही सर्वजन अनिकेत ऊर्फ बंटी जाधव याचे सांगण्यावरुन कोल्हापुर येथुन दोन्ही गाडया घेवुन सातारा येथे गौरीशंकर कॉलेज जवळ आल्यानंतर पोलो गाडीतुन उतरुन अनिकेत ऊर्फ बंटी जाधव हा आमचे स्विफ्ट गाडीत आला, आणि निखील मोरे हा खाली उतरुन पोलो गाडीत बसला. त्यानंतर आम्हाला अनिकेत ऊर्फ बंटी जाधव याने कोणाला काही एक बोलु नका, तुम्ही दारु पिल्यावर कोणाला काही बोलाल, तुम्ही गावात थायु नका असे म्हणाला. त्यानंतर मला अक्षय शेवते, अमित ऊर्फ गोटया भोसले, प्रतिक पवार असे आम्हाला भुईंज येथे स्विफ्ट गाडीतुन सोडले व पाचवड येथुन पोलो गाडीतुन अजय ऊर्फ गोल्डन, निखील मोरे, काच्या कचरे व त्यांचेबरोबर आलेला ड्रायव्हर असे निघुन गेले. मी माझ्या घरी गेलो. मी त्या दिवशी घरी थांबलो.

दि.०७/०१/२०२१ रोजी मी भिती पोटी सकाळी भुईंज येचुन माझा चुलत भाऊ दयानंद शेवते याचेकडे गेलो. तेथुन मी जुन्नर येथे माझा मित्र बाळकृष्ण याचेकडे गेलो, तेथे मी एक आठवडाभर थांबलो. त्यानंतर मी पुणे येथे माझा भाऊ दयानंद शेवते याचेकडे गेलो. त्यावेळी मला माझ्या भावाने त्याचे व्हॉट्सअप वर आलेला मॅसेज, पेपर कात्रण दाखवले त्यामध्ये भुईंज येथील ओंकार चव्हान यास मारहाण करुन त्याचे प्रेत जाळुन, - नदी मध्ये टाकले असल्याबाबत होते. त्यावेळी मी खुप घाबरलो आणि तेथुन भितीपोटी कोल्हापुर येथे जाऊन, तेथुन कर्नाटक मध्ये निपानीच्या पुढे हिपनी येथे गेलो. त्यानंतर माझ्याकडे असलेला ओप्पो कंपनीचा एफ ५ हा मोबाईल एका दुकानात विकला आणि सिमकार्ड हरवलेले आहे. त्यानंतर ठिपनी येथे सागर ढाबा येथे मजुरीने काम करुन राहीलो. दोन महिन्यानंतर मी माझा भाऊ महेंद्र गजानन शेवते यास फोन केला त्याने मला सांगीतले को, ओंकार चव्हाण याला मारहाण करुन, त्याचे प्रेत जाळुन, त्याचे आस्थि व राख नदी मध्ये टाकुन पुराबा नष्ट केला असल्याने त्यामध्ये तुझा ही सहभाग असल्याने तुझे नावे आहे, तुला जे माहिती आहे ते पोलीसांना सांग, भुईंज पोलीस ठाणेस हजर हो असे सांगीतले, त्यामुळे मी आज रोजी भुईंज पोलीस ठाणे येथे हजर झालो त्यानंतर मला पोलीसांनी अटक केली आहे."

(Emphasis added)

Even perusal of the above confessional statement of the co-accused, on which Ms. Tapkire, learned counsel for the Appellant has heavily relied, clearly show that the offence under the provisions of M.C.O.C. Act for which charge has been framed, is made out.

23. Ms. Tapkire, learned Counsel has relied on decision of Division Bench of this Court in the case of **Govind Sakharam Ubhe** (supra) and more particularly paragraph nos. 37 and 38, which read 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 a 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 M.C.O.C. Act can be applied. It is the membership of organized crime syndicate which makes a person liable under the M.C.O.C. Act. This is evident from Section 3(4) of the M.C.O.C. Act which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for a 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 M.C.O.C. Act 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 in respect of organized crime committed by the members of a particular crime syndicate, the***

> ***said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the M.C.O.C. Act against him even if he is involved in one case. The organized crime committed by him will be a 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.***
>
> *38. In order to substantiate our construction of Section 2(1)(d) of the M.C.O.C. Act, we will take hypothetical example of accused 1(A), accused 2(B), accused 3(C) and accused 4(D), who are members of the organized crime syndicate and who have committed crimes within preceding ten years. Insofar as accused A is concerned, it is alleged that he has committed an offence resulting in the death of any person which is punishable with death or imprisonment for life as described in Section 3(1) of the M.C.O.C. Act. Accordingly, one charge-sheet is filed against him. Insofar as accused B is concerned, it is alleged that he has committed an offence resulting in the death of any person which is punishable with death or imprisonment for life as described in Section 3(2) of the M.C.O.C. Act. Accordingly, one charge-sheet is filed against him. Likewise, insofar as accused C is concerned, it is alleged that he has committed an offence resulting in the death of any person which is punishable with death or imprisonment for life as described in Section 3(3) of the M.C.O.C. Act. Accordingly, one charge-sheet is filed against him. Finally, it is alleged that accused D is a member of organized crime syndicate as described in Section 3(4) of the M.C.O.C. Act and as such has indulged in organized crime and against whom also one charge-sheet is filed."*
>
> *(Emphasis added)*

Admittedly, in this case charge-sheet is filed against the other co-accused.

24. Ms. Tapkire, learned Counsel also relied on the Full Bench decision of this Court in the case of **Jagan Gagansingh Nepali @ Jagya** (supra) and more particularly observations made in paragraph No. 38 of the same, which read as follows :-

> *"38. ………… **The legislative intent is clear, that M.C.O.C. Act is for curbing the organised crime. Unless there is prima facie material, firstly, to establish that there is an organised crime syndicate and, secondly, that organised crime has been committed by any member of the organised crime syndicate or any person on behalf of such syndicate, the provisions of M.C.O.C. Act cannot be invoked.** In the earlier paragraph we have discussed in detail as to what are the ingredients so as to constitute an offence of "organised crime". **The prosecution will, therefore, have to firstly establish that there is an organised crime syndicate. It will have to satisfy that there exist the ingredients of "continuing unlawful activity". It will thereafter have to satisfy that the ingredients of the "organised crime" as spelt out by us hereinbefore exist, prior to invoking the provisions of M.C.O.C. Act.** We are, therefore, unable to accept the contention that if the wider meaning is given, the M.C.O.C. Act can be invoked even for sundry offences. As held by the Apex Court in the case of Ranjitsing Brahmajeetsing Sharma (supra), **merely because the person who cheats or commits a criminal breach of trust more than once, the same by itself may not be sufficient to attract the provisions of M.C.O.C. Act. By the same analogy, if a person commits murder more than once, would not by itself be sufficient to attract the provisions of M.C.O.C. Act. At the cost of repetition, we make it clear that unless all the ingredients to constitute the offence punishable under M.C.O.C. Act are available, it will not be permissible to invoke the provisions of M.C.O.C. Act.**"*
>
> *(Emphasis added)*

Even on the touchstone of the above statement of law, if the factual aspects in this case are examined, then also it is clear that *prima facie* offence under M.C.O.C. Act is made out for framing of charge. Apart from the other aspects which have been discussed hereinabove, it is also required to be noted that learned APP has pointed out statement of Gaurav Mankar (pg. 1512) recorded under Section 164(5) of the Cr.P.C. and more particularly last paragraph of page 1515, which reads as under :-

> "त्या ठिकाणी सकाळी जी मुले होती तीच मुले होती. **त्यांनी आम्हाला दोघांना अंगावरील कपडे काढायला लावले म्हणून मी व ओंकारने अभावरील कपडे काढली. त्यांनतर मला सकाळी ज्या छताच्या अँगलला बांधले होते त्या ठिकाणी ओंकार यास बांधले व त्याला काठयाने मारहाण करण्यास सुरुवात केली. दरम्यान ले मलाही काठयाने मारहाण करत होती. ते ओंकार यास पैसे व दागिने कोठे आहेत असे विचारत होते. थोड्या वेळाने त्यांनी मला आतल्या खोलीत बसवले व पुन्हा ओंकार यास मारहाण करु लागले. दरम्यान त्यांनी ओंकार याचा मित्र मुन्ना याला तेथे आणले व त्याचेही अंगावरील कपडे काढून त्याला काठंयानी मारहाण केली.** काही वेळाने अंधार पडला त्या दरम्यान मला माझे वडीलांचा फोन आला त्यावेळी त्यांनी मला फोन उचलून १०.०० वाजेपर्यंत घरी येतो असे सांगायला लावलें. त्याप्रमाणे फोन उचलून स्पीकरवर ठेवून मी वडिलांना तसे सांगितले."
>
> *(Emphasis added)*

25. Thus, the material on record clearly shows that the accused has hatched conspiracy for committing the murder of Omkar Kailas Chavan *inter alia* with a motive of snatching golden ring and mobile from him and assaulted Gaurav Sanjay Matkar and Shoukat @ Munna Mashak Shaikh and destroyed the body of deceased Omkar by burning it secretly in order to destroy the evidence. Thus, there is material on record to frame charges even under Sections 3(1)(i)(ii), 3(2), 3(3) and 3(4) of the M.C.O.C. Act.

26. Learned APP has relied on the judgment of the Supreme Court in case of **Zakir A. Mirajkar** (supra). The relevant paragraphs are paragraph Nos. 77 to 79, which read as under :-

> *"77. From the analysis above, the appellants' submission that the allegation of engaging in illegal gambling would not sustain the invocation of the penal provisions of Section 3(2) M.C.O.C.Act is simplistic. Although gambling may not, by itself, constitute an organized crime, it may be the route through which the accused are abetting the commission of organized crime.* ***The question of whether the appellants are in fact abetting organized crime in this manner, is to be determined at the stage of trial. Similarly, the question of whether offences under the IPC would attract M.C.O.C.Act in the present case is to be determined at the stage of trial and depends on the facts and circumstances of each case. The observation in Lalit Somdatta Nagpal (supra) that some degree of coercion or violence is required to charge an accused under provisions of M.C.O.C.Act must be read together with Section 2(1)(e) which recognizes that "other unlawful means" may be used while committing organized crime, in addition to coercion and violence.***
>
> *c.* ***More than one charge-sheet is not required to be filed with respect to each accused person.***
>
> *The appellants have argued that in the preceding ten years, more than one charge-sheet has not been filed in respect of each of them. This submission does not hold water.* ***It is settled law that more than one charge sheet is required to be filed in respect of the organized crime syndicate and not in respect of each person who is alleged to be a member of such a syndicate.***
>
> *78. In Govind Sakharam Ubhe v. State of Maharashtra, 2009 SCC OnLine Bom 770 a two-judge Bench of the Bombay High Court, speaking through Justice Ranjana Desai (as the learned judge then was) held that:*

"37. ***Section 2(1)(d) which defines 'continuing unlawful activity sets down a period of 10 years within which more than one charge-sheet have to be filed It is the membership of organized crime syndicate which makes a person liable under the M.C.O.C.Act. This is evident from section 3(4) of the M.C.O.C.Act which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for a 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 M.C.O.C.Act 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 in respect of organized crime committed by the members of a particular crime syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the M.C.O.C.Act against him even if he is involved in one case. The organized crime committed by him will be a 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."***

79. Other courts, too, have held that persons who are alleged to be members of an organized crime syndicate need not have more than one charge-sheet filed against them in an individual capacity. Rather, charge-sheets with respect to the organized crime syndicate are sufficient to fulfil the condition in Section 2(1)(d).”

(Emphasis added)

27. The Division Bench of this Court as approved by the Supreme Court, has held that if within a period of preceding ten years, one chargesheet has been filed in respect of organised crime by the members of a particular crime syndicate, the said chargesheet can be taken against a member of the said crime syndicate for the purpose of application of the M.C.O.C.Act against him even if he is involved in only one case. The organised crime committed by him will be a part of the continuing unlawful activity of the organised crime syndicate. It has been held that what is important is the nexus or the link of the person with organised crime syndicate. The link with the 'organised crime syndicate' is the crux of the term 'continuing unlawful activity'. If this link is not established, that person cannot be roped in. This is a case where admittedly as far as gang leader is concerned, there are 15 offences registered against him and in those cases charge-sheets have been filed. In fact, he has been externed from District Satara and the present crime has taken place during that period, when the gang leader was externed from District Satara.

28. Admittedly, the accused No.1 - Aniket alias Bunty Narayan Jadhav, gang leader is the accused in this case and there are offences against some of the co-accused. Although, it is correct that as far as the Appellant is concerned there are no other offences, however, in view of the law laid down by the Division Bench of this Court in case of **Govind Sakharam**

Ubhe (supra), as approved by the Supreme Court in **Zakir A. Mirajkar** (supra) it is very clear that if within a period of preceding ten years, one charge-sheet has been filed in respect of the organised crime committed by the members of a particular crime syndicate, the said chargesheet can be taken against a member of the said crime syndicate for the purpose of application of the M.C.O.C. Act against him even if he is involved in one case. Thus, the said statement of law is squarely applicable to this case.

29. In case of **Zakir Mirajkar** (supra), the Supreme Court in paragraph No.79 has observed that persons who are alleged to be members of an organised crime syndicate need not have more than one chargesheet filed against them in an individual capacity. Rather, charge-sheets with respect to the organised crime syndicate are sufficient to fulfil the condition in Section 2(1)(d) of the M.C.O.C. Act. Thus, it is clear that the order passed by the learned Additional Sessions Judge of framing charge even under the provisions of M.C.O.C. Act, is legal.

30. In case of **Jagan Gagansingh Nepali @ Jagya** (supra), what the full bench has held that the legislative intent in enacting M.C.O.C. Act is very clear that for curbing the organised crime, it has been held that unless there is *prima facie* material, firstly, to establish that there is an organised crime syndicate and, secondly, that organised crime has been committed by any member of the organised crime syndicate or any person on behalf of such syndicate, the provisions of M.C.O.C. Act cannot be invoked. These aspects have already been discussed hereinabove in detail. In fact, in this case, there is *prima facie* material to establish that there is organised crime syndicate and secondly that organised crime has been committed by any member of the organised crime syndicate or any person on behalf of such syndicate. Thus, the learned Additional Sessions Judge has rightly invoked the provisions of M.C.O.C. Act and rightly framed charges even under the M.C.O.C. Act.

31. Accordingly, there is no substance in the contentions raised by the Appellant. The Criminal Appeal is dismissed.

[PRAVIN S. PATIL, J.] **[MADHAV J. JAMDAR, J.]**