

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 190 OF 2026

Kisan Dnyanoba Tapkir ...Petitioner
Versus
The State of Maharashtra ...Respondent

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Mr. Satyavrat Joshi, i/b Shivani Kondekar, for the Petitioner.
Mr. D. J. Haldankar, APP for the State.
Mr. Satyam Nimbalkar, a/w Abhishek Arote, i/b Harshwardhan
Pawar, for the intervener.

CORAM: N. J. JAMADAR, J.
DATED: 12th FEBRUARY, 2026

Order:-

1. By this petition under Article 227 of the Constitution of India and Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, ("BNSS, 2023"), the petitioner takes exception to an order dated 24th December, 2025, passed by the learned Civil Judge (MCOCA), Pune, directing issuance of proclamation against the petitioner in connection with CR No.577/2025 registered with Dighi Police Station, Pune, for the offences punishable under Sections 103(1), 3(5) of the BNSS, 2023, Section 3(1)(ii), 3(2), 3(3) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 ("MCOCA"), Section 3(25), 5 read with Section 27 of the Arms Act, 1959 and Section 37(1)(3) and 135 of the Maharashtra Police Act, 1951.

2. On 12th November, 2025, the younger brother of the first informant was allegedly killed by firearm. Initially co-accused Amit Pathare and Vikrant Thakur were named as the assailants. The first informant alleged that the deceased was killed in pursuance of a well planned conspiracy.

3. As the complicity of the petitioner was revealed during the course of investigation, the petitioner was named in the remand reports filed before the learned Magistrate. As the Investigating Officer claimed that the petitioner has made himself scarce, the learned Magistrate issued a non-bailable warrant against the petitioner on 27th November 2025.

4. In the meanwhile, the petitioner had filed an application for pre-arrest bail, being ABA/8058/2025 before the Court of Session, Pune. However, on 10th December, 2025, the Competent Authority granted prior approval under Section 23(1)(a) of the MCOCA and, thereupon, the provisions contained in Sections Section 3(1), 3(2), 3(3) and 3(4) of MCOCA were invoked. Consequently, the petitioner withdrew first ABA.

5. On 18th December, 2025, the petitioner filed second ABA/8614/2025 before the Special Judge, MCOCA. While the said application was awaiting adjudication, on 24th December, 2025, on the report of the Investigating Officer, the learned

Special Judge, issued the proclamation against the petitioner under Section 84 of the BNSS, 2023.

6. The petitioner has invoked the writ jurisdiction asserting, *inter alia*, that the order of issuance of proclamation suffers from grave procedural error as the non-bailable warrant was issued by the Magistrate, and in the absence of a non-bailable warrant first having been issued by the learned Special Judge (MCOCA), proclamation could not have been issued by the learned Special Judge. Even otherwise, the proclamation has been issued in a mechanical manner without recording a subjective satisfaction that, the petitioner was an absconder. In any event, such subjective satisfaction could not have been recorded as the petitioner had filed an application for pre-arrest bail. Thus, the presumption of abscondence was clearly negated.

7. Mr. Joshi, the learned Counsel for the petitioner, would urge that, the order of issuance of proclamation causes grave prejudice to the petitioner in the pursuit of his remedies. Since a proclamation has been issued against the petitioner, no Court would hear the petitioner on the substance of the matter that, there is no *prima facie* case against the petitioner for the alleged offences punishable under Section 103(1) of the BNS, 2023 and

Sections 3(1), 3(2), 3(3) and 3(4) of MCOCA. Secondly, Mr. Joshi would urge, the expression used in Section 84 of the BNSS, 2023 is, “a warrant has been issued by it”. Thus, both the warrant and proclamation ought to be issued by one and the same Court. In the case at hand, since the warrant was issued by the learned Magistrate, the learned Special Judge could not have straightaway issued a proclamation without first issuing a warrant. An endeavour was made by Mr. Joshi to draw home the point that the orders of non-bailable warrant and proclamation were obtained to defeat the rights of the petitioner to seek statutory remedies and, therefore, the impugned order of issuance of proclamation, while the application for pre-arrest bail was pending, deserves to be quashed and set aside.

8. To begin with, the nature of the accusation and the circumstances of the case, out of which the instant petition arises, deserve to be kept in view. The deceased was allegedly killed by shooting in the head. A witness had allegedly seen and identified the co-accused at the very time of the alleged occurrence. The petitioner is sought to be roped in as a member of the organized crime syndicate in prosecution of the object of which the offence has allegedly been committed.

9. The fact that the petitioner had preferred an application for pre-arrest bail, by itself, does not imply that, the accused has not made himself scarce. As expounded in the case of *Kartarey vs State Of U. P.*¹, to be an “absconder” in the eye of law, it is not necessary that a person should have ran away from his home. It is sufficient if he hides himself to evade the process of law, even if the hiding place be his own home.

10. The object of the provisions contained in Section 84 of the BNSS, 2023 (Section 82 of the CrPC) is to secure the presence of the accused. If the investigating agency is not able to trace the accused during the course of investigation, and the Magistrate is satisfied about the said fact, a warrant can be issued to secure the presence of accused. In the backdrop of the gravity of the accusation, no fault can be found with the order of issuance of a non-bailable warrant against the petitioner passed by the learned Magistrate on 27th November, 2025; a fortnight after the alleged occurrence.

11. It is imperative to note that, a period of more than 25 days elapsed between the issuance of non-bailable warrant and proclamation by the learned Special Judge. From a perusal of the report dated 24th December, 2025 filed by the Investigating

1 (1976) 1 SCC 172.

Officer before the learned Special Judge, it becomes evident that the investigating agency had made diligent effort to trace out the petitioner. The learned Special Judge has, thus, recorded that the petitioner and another co-accused could not be apprehended despite issuance of non-bailable warrant and there were reasons to believe that they were avoiding the process. Thus, submission of Mr. Joshi that the learned Special Judge did not record subjective satisfaction about abscondance does not merit acceptance.

12. Undoubtedly, Section 84 of the BNSS, 2023 uses the expression, “a warrant has been issued by it”. However, the aforesaid expression does not imply that when the proceedings are made over to the Special Judge (MCOCA), upon invocation of the provisions of MCOCA, the earlier orders passed by the Magistrate are rendered nugatory. Section 21 of the MCOCA provides for modified application of certain provisions of the Code of Criminal Procedure. The Special Court under Section 21(2) of the MCOCA is empowered to authorize the detention of a person accused of an offence punishable under MCOCA, for an extended period. Under Section 9 of the MOCOCA the Special Court is also empowered to take cognizance of any offence without the accused being committed to it for trial. A

conjoint reading of the provisions contained in MCOCA would indicate that the Special Judge (MCOCA) is empowered to perform the functions of Magistrate as well as Court of Session, in certain matters. Therefore, the submission of Mr. Joshi that, the Special Court must first have issued a non-bailable warrant and, only thereafter, a proclamation could have been issued, does not appear to be sustainable.

13. The matter can also be looked at from another perspective. A procedural error in the matter of issuance of proclamation need not necessarily warrant interference with such order, unless it results in a miscarriage of justice. Under Section 511 of BNSS (Section 465 of CrPC), no finding, sentence or order passed by the Court of competent jurisdiction shall be reversed or altered by a superior court on account of any error, omission or irregularity in the complaint, summons, warrant or proclamation order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under the said Sanhita, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

14. In the case at hand, the learned Magistrate has issued a non-bailable warrant. Despite diligent efforts by the

investigating agency the petitioner could not be apprehended. Thus, the learned Special Judge after recording that there were reasons to believe that the petitioner was absconding, ordered the issuance of proclamation. Thus, there is no legal infirmity in the impugned order.

15. Resultantly, the petition stands dismissed.

[N. J. JAMADAR, J.]