A ABHISHEK

v.

STATE OF MAHARASHTRA & ORS.

(Criminal Appeal No. 869 of 2022)

B MAY 20, 2022

[DINESH MAHESHWARI AND ANIRUDDHA BOSE, JJ.]

Penal Code, 1860 – ss. 363, 364A, 384, 386, 387, 397 and 504 – Sanction order – Challenge to – FIR was registered against the appellant for offences u/s 363, 364A, 384, 386, 387, 397 and C *504 IPC – The appellant having remained out of reach, a proclamation was issued u/s 82 of the CrPC r/w. s.20(3) of MCOCA, declaring him as an 'absconder' – ADGP and Commissioner of Police after examining the proposal of Assistant Commissioner of Police for according sanction in terms of s.23(2) of MCOCA,* D *granted the sanction for prosecution of appellant under IPC, Arms Act and MCOCA due to the previous involvement of the appellant in other criminal cases – After the sanction, police filed the charge-sheet against the accused persons including appellant – Appellant approached the High Court challenging the sanctioning order –* E *The High Court examined the contents of sanction order and, after finding no legal flaw or shortcoming therein, proceeded to dismiss the writ petition – High Court rejected the contention raised by the appellant that the sanctioning authority did not apply its mind – On appeal, held: The suggestions on behalf of the appellant to limit the activity only to the use of violence is obviously incorrect when it* F *omits to mention the wide-ranging activities contemplated by clause (e) of s.2(1) of MCOCA, i.e., threat or violence or intimidation or coercion or other unlawful means – Actual use of violence is not always a* sine qua non *for an activity falling within the mischief of organised crime – The second part of the requirement of the nature* G *of activity, i.e., pecuniary benefit, has also not been projected correctly on behalf of the appellant – The requirement of law is not limited to pecuniary benefits but it could also be of 'gaining undue economic or other advantage – Sanctioning Authority, was conscious of the requirement of law and indeed examined the matter only with reference to such requirement and issued the sanction* H *order in question only after arriving at the requisite satisfaction –*

Challenge to the judgment as passed by the High Court, and to the sanctioning order, required to be rejected when the appellant had been declared absconder.

Maharashtra Control of Organised Crime Act, 1999 – ss. 2(1)(d), 2(1)(e), 3(1)(ii), 3(2), 3(4) & 23(2) – Object of – This enactment is for making special provisions for dealing with the menace of organised crime causing serious threat to the society – No doubt, the enactment makes stringent provisions with several extraordinary measures but, the peculiar nature of the mischief sought to be tackled, i.e., of organised crime, has obviously led to such extraordinary measures, particularly when the existing legal framework was found to be rather inadequate to control the menace.

Dismissing the appeal, the Court

HELD: 1. A comprehensive look at the objects and reasons for enactment of *Maharashtra Control of Organised Crime Act, 1999* (MCOCA), its overall purpose signified in its Preamble, and the relevant definitions in Section 2 as also the punishments provided in Section 3, leave nothing to doubt that this enactment is for making special provisions for dealing with the menace of organised crime causing serious threat to the society. No doubt, the enactment makes stringent provisions with several extraordinary measures but, the peculiar nature of the mischief sought to be tackled, i.e., of organised crime, has obviously led to such extraordinary measures, particularly when the existing legal framework was found to be rather inadequate to control the menace. [Para 11][1151-G-H; 1152-A]

2. The provisions of MCOCA need to be strictly construed and for their application, an unlawful activity has to fall within the periphery of organised crime. However, the question still remains as to the import of the requirement of 'strict construction' of the stringent provisions? A brief reference to the fundamental legal principles in that regard shall be apposite. So far as the applicability of the rule of strict construction *qua* MCOCA is concerned, it being a special penal statute, this much is clear that no one is to be made subject to this law by implication or by presumption; and all doubts concerning its application would, ordinarily, be resolved in favour of the accused. However, the rule of strict

construction cannot be applied in an impracticable manner so as to render the statute itself nugatory. In other words, the rule of strict construction of a penal statute or a special penal statute is not intended to put all the provisions in such a tight iron cast that they become practically unworkable, and thereby, the entire purpose of the law is defeated. As regards application of MCOCA, what is required to be seen is as to whether the basic and threshold requirements, as per combined reading of clauses (d), (e) and (f) of Section 2(1) thereof, are fulfilled. If they are not so fulfilled, mere use of the expressions of the statute in the sanction order would be of no effect but, on the other hand, if the requirements are fulfilled, mere want of any expression or word in a particular passage in the sanction order would not take away the substance of the matter. In other words, strict adherence by the authorities concerned to the requirements of MCOCA also cannot be stretched beyond common sense and practical requirements in terms of the letter and spirit of the statute. [Paras 12.3, 12.6 and 12.7][1154-G-H; 1156-B-D; G-H; 1157-A-B]

3. A bare look at clause (e) of Section 2(1) of MCOCA makes it clear that 'organised crime' means any unlawful activity by an individual singly or jointly, either as a member of 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. The suggestions on behalf of the appellant to limit the activity only to the use of violence is obviously incorrect when it omits to mention the wide-ranging activities contemplated by clause (e) of Section 2(1) of MCOCA, i.e., threat or violence or intimidation or coercion or other unlawful means. Actual use of violence is not always a *sine qua non* for an activity falling within the mischief of organised crime, when undertaken by an individual singly or jointly as part of organised crime syndicate or on behalf of such syndicate. Threat of violence or even intimidation or even coercion would fall within the mischief. This apart, use of other unlawful means would also fall within the same mischief. The second part of the requirement of the nature of activity, i.e., its objective, has also not been projected correctly on behalf of the appellant. The requirement of law is not limited to pecuniary benefits but it could also be of 'gaining undue economic or other

advantage'. The frame of the proposition that the object ought to be gaining pecuniary benefit or other 'similar' benefit is not correct as it misses out the specific phraseology of the enactment which refers to undue economic or other advantage apart from pecuniary benefit. The Full Bench of the High Court in *Jagan Gagansingh Nepali @ Jagya* has rightly said that there could be advantage to a person committing a crime which may not be directly leading to pecuniary advantage or benefit but could be of getting a strong hold or supremacy in the society or even in the syndicate itself. As noticed above, the purpose of this enactment is to be kept in view while interpreting any expression therein and in the name of strict construction, its spirit and object cannot be whittled down. [Paras 14.1, 14.2 and 14.4][1158-H; 1159-A-E; 1161-G-H; 1162-A]

3. The common thread of "violence" or "threat of violence" or "unlawful means" running through all of these cases is not a matter requiring any analysis, for the same being apparent on the face of record. Significantly, the aforesaid had not been the cases involving the appellant singularly; and more significantly, the alleged team leader RS is the co-accused in at least three previous cases. This is apart from the recurrence of other co-accused persons in one case or the other. It has rightly been pointed out on behalf of the respondent-State that in order to attract MCOCA, every previous case need not be of the object of gaining pecuniary benefit alone. The cases in question, apart from involving the offences against human body and property, also include variety of other offences including those of rioting while armed with deadly weapons; causing insult to provoke breach of peace; and criminal intimidation. They also include the offence under the Arms Act. In all the referred cases, use of violence has specifically been alleged. In the crime chart, the nature of activities and the persons involved leave nothing to doubt that the involvement of the appellant in such crimes and unlawful activities which are aimed at gaining pecuniary advantages or of gaining supremacy and thereby, leading to other unwarranted advantages is clearly made out. The criticism of the impugned sanction order dated 05.11.2020, that it had been of mere repetition of the expression of statute, is also difficult to be accepted. The High Court, in the impugned order, has rightly

observed that the said order is required to be viewed in its totality, and its substance cannot be ignored by isolated reference to a particular line or expression. This Court has not an iota of doubt that firstly, the approving authority, and then, the sanctioning authority, were conscious of the requirement of law and indeed examined the matter only with reference to such requirement; and issued the orders in question only after arriving at the requisite satisfaction. It has rightly been pointed out on behalf of the respondent that in such matters, the competent authority has to focus essentially on the factum whether the material in question reveals the commission of crime, which is an organised crime, committed by the organised crime syndicate. [Para 15.1, 15.2 and 16][1162-G-H; 1163-AF]

4. The submissions about taking irrelevant factors into account with reference to the said two cases resulting in acquittal and discharge must fail for the simple reason that for the purpose of clause (d) of Section 2(1) of MCOCA, the result of a particular matter is not decisive of the question as to whether the activity in question answers to the description of 'continuing unlawful activity' or not. These had not been offences committed single-handed by the appellant and charge-sheets were indeed filed therein. The matter of settlement because of cross-cases or a matter of acquittal because of the witnesses not turning up, could hardly be of any relevance so far as clause (d) of Section 2(1) of MCOCA is concerned. Therefore, it cannot be said that any irrelevant matter has been taken into consideration by the sanctioning authority. What is significant and pertinent for the purpose of Section 2(1)(d) is the involvement of the person concerned in the referred activity and filing of charge-sheet and taking of cognizance in the offence as predicated. Acquittal or discharge is of no significance. The reference in the confessional statements of the two co- accused persons in relation to the appellant is not a factor entirely irrelevant for the appellant being a co-accused person with them. The detailed discussion by the sanctioning authority to the substantial pieces of evidence collected in the matter rather fortifies the conclusion that the sanctioning authority has meticulously applied its mind to all the relevant factors and has taken an overall view of the matter before

forming the final opinion in favour of granting the sanction. The contention in that regard also fails. Thus, challenge to the judgment as passed by the High Court on 16.12.2021, and to the sanctioning order dated 05.11.2020, was required to be rejected when the appellant had indeed been declared absconder. However, as observed hereinbefore, this Court has considered it proper to first examine the matter on merits because notices had been issued to the respondents and it had appeared serving the cause of justice to deal with the matter on merits. As noticed, all the contentions urged on behalf of the appellant remain baseless and challenge herein ought to fail. [Paras 17.5, 18.1 and 22] [1166-F-H; 1167-B; 1168-B-C; 1170-B-D]

State of Maharashtra v. Jagan Gagansingh Nepali @ Jagya & Anr.: **(2011) SCC OnLine Bombay 1049 – approved.**

Khaja Bilal Ahmed v. State of Telangana & Ors.: **(2020) 13 SCC 632 : 2020 (1) SCALE 41 – held inapplicable.**

State of Maharashtra & Ors. v. Lalit Somdatta Nagpal & Anr.: **(2007) 4 SCC 171 : [2007] 2 SCR 473;** *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra & Anr.*: **(2005) 5 SCC 294 : [2005] 3 SCR 345;** *Jagannath Misra v. State of Orissa*: **(1966) 3 SCR 134;** *Mohindhr Singh Gill & Anr. v. Chief Election Commissioner, New Delhi & Ors.*: **(1978) 1 SCC 405 : [1978] 2 SCR 272;** *State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari & Ors.*: (**2013) 12 SCC 17 : [2013] 5 SCR 128;** *Kavitha Lankesh v. State of Karnataka & Ors.*: **(2021) SCC OnLine 956;** *Vinod G. Asrani v. State of Maharashtra:* **(2007) 3 SCC 633 : [2007] 2 SCR 1023;** *Balram Kumawat v. Union of India & Ors.*: **(2003) 7 SCC 628 : [2003] 3 Suppl. SCR 24;** *Prem Shankar Prasad v. State of Bihar and Anr.*: **(2021) SCC OnLine SC 955 - referred to.**

Case Law Reference

[2007] 2 SCR 473	**referred to**	**Para 6.1**
[2005] 3 SCR 345	**referred to**	**Para 6.2**

A	**[1966] 3 SCR 134**	**referred to**	**Para 6.4**
	[1978] 2 SCR 272	**referred to**	**Para 6.4**
	[2013] 5 SCR 128	**referred to**	**Para 7.4**
	[2007] 2 SCR 1023	**referred to**	**Para 7.6**
B	**[2003] 3 Suppl. SCR 24**	**referred to**	**Para 12.6**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 869 of 2022.

From the Judgment and Order dated 16.12.2021 of the High Court
C of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Writ Petition No.667 of 2020.

Vinay Navare, Sr. Adv., Mehul M. Gupta, R. P. Gupta, Advs. for the Appellant.

Rahul Chitnis, Sachin Patil, Aaditya A. Pande, Geo Joseph, Ms.
D Shwetal Shepal, Advs. for the Respondents.

The Judgment of the Court was delivered by

DINESH MAHESHWARI, J.

Leave granted.

E 2. By way of this appeal, the appellant has challenged the judgment and order dated 16.12.2021, as passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Writ Petition No. 667 of 2020 whereby, the High Court has rejected his challenge to the order dated 05.11.2020, as issued by the Additional Director General of Police
F and Commissioner of Police, Nagpur City[1] under Section 23(2) of the Maharashtra Control of Organised Crime Act, 1999[2] sanctioning prosecution of the appellant with five other accused persons in Crime No. 251 of 2020 of Sadar Police Station, Nagpur City for varying offences under the Indian Penal Code, 1860[3], the Arms Act, 1959[4] as also MCOCA.

G 3. The genesis of the present appeal is in the complaint filed on 08.05.2020 at Police Station Sadar, Nagpur City. Therein, the complainant

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[1] Hereinafter also referred to as the 'sanctioning authority'.
[2] For short, 'MCOCA'.
[3] For short, 'IPC'.
H [4] Hereinafter also referred to as 'the Arms Act'.

alleged that on 02.05.2019, he was forcefully kidnapped from Motimahal Restaurant, Sadar, Nagpur; and was intimidated with knife and a ransom of Rs. 20 lakhs was demanded by the accused persons. The complainant alleged that three of the accused persons were known to him, being the present appellant Abhishek Singh, as also one Ankit Pali and another Roshan Sheikh. The complainant also alleged that the accused persons asked him to give them papers of his ancestral property and to hand over the shop; threatened him from time-to-time to kill; forcefully took his son in a vehicle; created terror of killing him and his son; and forcefully took out an amount of Rs. 9,000 to Rs. 11,000 from his pocket. The complainant further alleged that the accused persons visited his house from time-to-time demanding money; and that out of fear, he had left his house and was staying at other places.

3.1. On the basis of the complaint aforesaid, the said Crime No. 251 of 2020 came to be registered for offences under Sections 363, 364A, 384, 386, 387, 397 and 504 IPC.

3.2. It is noticed that the appellant, apprehending arrest, applied for pre-arrest bail and on 11.05.2020, the Sessions Judge, Nagpur granted him *ad interim* bail.

3.3. However, on 02.06.2020, the Additional Commissioner of Police (Crime), Crime Branch, Nagpur City examined the proposal submitted by the Police Inspector, Crime Branch, Nagpur City for addition of Sections 3(1)(ii), 3(2) and 3(4) of MCOCA in the said Crime No. 251 of 2020 against six accused persons, including the appellant. The said Additional Commissioner of Police, in his approval order dated 02.06.2020, *inter alia,* observed that more than one charge-sheet had been filed against the accused persons involving offences for which, punishment of three years or more of imprisonment had been prescribed; and the previous record made out that the accused persons had committed offences of very serious nature under IPC and related special enactments. The Additional Commissioner of Police recorded his satisfaction while granting approval in the following terms: -

> "Previous preventive actions taken against the above mentioned accused failed to show desired results. According to the record, it seems that ultimate intention of the accused persons is to gain pecuniary benefit, establishing supremacy in the locality, create terror in the minds of the people in order to have pecuniary gain

A & other advantages by committing such serious offence. The preventive actions taken against them on multiple occasions till date have failed to produce desired results and also after taking preventive actions on multiple times above named criminals in an organized way committed serious offences. Hence, it is very much clear that preventive actions taken against them failed to produce desired results.

B

I am prima facie satisfied that every other time above mentioned accused commit the offence with new offender thereby creates crime syndicate and there is enough material evidence available and record to give prior approval for investigation under the provisions of section 3(1)(ii), 3(2) & 3(4) of M.C.O.C. Act, 1999 against the above mentioned accused as per authority vested in me under section 23(1) (A) of the M.C.O.C. Act 1999."

C

3.4. On the invocation of MCOCA in terms of the approval aforesaid, the application for pre-arrest bail filed by the appellant was rejected by the Sessions Judge, Nagpur. However, for the appellant having remained out of reach, a proclamation was issued on 14.10.2020 under Section 82 of the Code of Criminal Procedure, 1973[5] read with Section 20(3) of MCOCA, declaring him as an 'absconder'.

D

3.5. On 05.11.2020, the Additional Director General of Police and Commissioner of Police, Nagpur City, examined the proposal of the Assistant Commissioner of Police (Crime), Crime Branch, Nagpur dated 31.10.2020 for according sanction in terms of Section 23(2) of MCOCA for prosecution of the accused persons in Crime No. 251 of 2020 for the offences under IPC, Arms Act as also MCOCA; and proceeded to issue such sanction as per the proposal. This sanction order dated 05.11.2020 is the bone of contention in the present matter. Its relevant contents, particularly in relation to the appellant, could be usefully noticed as under:-

E

F

"…It is also revealed that preventive actions have been taken against the Team Leader and accused No. 5 Abhishek u/s 110 of the Cr. P.C. at Sitaburdi Police station. It is also revealed that the Team leader continues to commit the heinous offences involving different members of his crime syndicate mainly for pecuniary benefit and other advantage.

G

H [5] For short, 'CrPC'.

The Team leader **Roshan Sheikh** has committed total 9 offences, out of which, he has committed 4 offences jointly with accused No. 5 Abhishek, out of which charge sheets have been filed in the court in 3 cases and one present offence is under investigation…

It is thus revealed that in total 4 cases charge sheets have been filed in the court against the Team Leader, accused No. 5 Abhishek, accused no. 4 Irfan Khan jointly. Thus in total 4 cases charge sheet have been filed jointly in respect of their crime syndicate and court has also taken the cognizance. The Chart showing charge sheets jointly filed in respect of their crime syndicate is annexed herewith as **Annexure-B**.

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The Accused No. 5 Abhishek has committed total 7 offences, out of which, he has committed 3 offences jointly with Team Leader i.e. crime No. 482/15 of Nandanwan P.S., Crime No. 196/16 Sitaburdi P. S., and crime No. 83/17 Sitaburdi and one offence jointly with their present crime syndicate. The accused no. 5 has committed remaining 2 offences U/s 307 of IPC of Burdi P.S. with other different members of their crime syndicate and one offence under section 4/25 of Arms Act of Ambazari P. S. with other different members of their crime syndicate and charge sheets have been filed in all above cases against the accused No. 5. The accused No. 5 had obtained Anticipatory Bail on registration of present FIR and after application of the MCOCA he is absconding. The Chart showing total 7 offences committed by the accused No. 5 is annexed herewith **as Chart- F**.

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It is further revealed that the Preventive action also has been taken against Team Leader and accused No. 5 Abhishek, but in vain. Offences under Arms Act are also found registered against the Team leader and accused No. 5 and 6 but could not deter them from committing such offences for pecuniary benefit. It is thus appears that there is fulfillment of the essential ingredients of the section 2 (d) and (e) of MCOCA.

EVIDENCE COLLECTED IN PRESENT OFFENCE: -

1. It is revealed that the Team Leader and accused No. 3 Sallim Kaji have given Confession u/s 18 of MCOCA and disclosed

A modus adopted for committing such serious offences punishable under above said provisions for pecuniary benefit and for other advantage.

2. It reveals that the accused No. 3 has disclosed in his Confession about how and in what manner all other members of present crime
B syndicate are involved in the present crime and what is exact role of each member and also the modus opted by the Team leader in committing such heinous offences, by deceiving various victims for pecuniary benefits.

3. The Team leader also has disclosed all his illegal acts, names of
C the victims, instances of extortion and modus of blackmailing adopted by him for extortion for pecuniary benefits. The I. O. has recorded statements of all such victims as evidence relating to the illegal heinous acts of the Team leader. In all total 24 statements of witnesses have been recorded by the I.O.

D *** *** ***

I am satisfied that the accused No. 1 to 6 are members of an "Organized crime syndicate" and have jointly & singly committed serious and violent offences for pecuniary benefit. I am satisfied that the Team leader Roshan Sheikh and above named other co-
E accused No. 2 to 6 in the present crime No.251/2020 of Sadar P.S., are involved in "Continuing Unlawful Activity", defined in section 2 (1) (d) and (e) of MCOCA i. e. they are indulging in use of violence, threats of violence, intimidation to gain pecuniary benefit or undue economic or other advantage for themselves or any other person, by committing cognizable offences, punishable
F with imprisonment of 3 years or more, singly or jointly, and also undertaken as members of syndicate, in respect of which more than one charge sheets have been filed in competent Court.

*** *** ***"

G 3.6. In view of the above, the sanctioning authority recorded its satisfaction that all the essential ingredients of Sections 2(1)(d) and 2(1)(e) of MCOCA were fulfilled and hence, proceeded to grant sanction in terms of Section 23(2) of MCOCA for prosecution of the six accused persons including the appellant for the aforesaid offences, inclusive of the offences under MCOCA.

H

3.7. After the sanction aforesaid, the police filed the charge-sheet on 07.11.2020 in the said Crime No. 251 of 2020. This led the appellant to file Writ Petition No. 667 of 2020 in the High Court, questioning the sanction order dated 05.11.2020.

4. As noticed from the contents of the impugned sanction order dated 05.11.2020, the previous involvement of the appellant in other criminal cases with at least three of them jointly with the alleged team leader, had been the part of consideration in the sanctioning authority ultimately issuing sanction for prosecution in relation to the offences under MCOCA alongwith the other offences in Crime No. 251 of 2020. The involvement of the appellant in other cases had gone into consideration of the High Court too. As shall be noticed hereafter, the nature of other cases and the results of a couple of them forms a part of the submissions in support of this appeal. It would, therefore, be appropriate to take note of the cases in which the appellant is, or had been, involved. The particulars and status of these cases with the nature of offences and the names of accused persons are as follows: -

Serial number 1

Police Station:	Sitabuldi
Crime No. & Date:	3283/2012, dated 15.07.2012
Accused persons:	1. Abhishek Singh 2. Keval Patel
Offences:	Sections 4/25 of Arms Act and 135 of Maharashtra Police Act
Status:	Pending before JMFC, Nagpur.

Serial number 2

Police Station:	Sitabuldi
Crime No. & Date:	13/2012, dated 11.01.2012
Accused persons:	1. Abhishek Singh 2. Harsh Modi
Offences:	Sections 307, 34 IPC
Status:	The appellant Abhishek and co-accused were acquitted by the Sessions Court on 09.05.2017.

A Serial number 3

Police Station:	Nandanvan
Crime No. & Date:	482/2015, dated 20.12.2015
Accused persons:	1. Shashank Chaudhari, 2. Roshan Sheikh, 3. Pankaj Dharwal, 4. Abhishek Singh 5. Divyam Samrit, 6. Harsh Modi
Offences:	Sections 143, 147, 148, 149, 294, 324, 325 IPC
Status:	This was a cross-case with Crime No. 481 of 2015 and the parties having arrived at settlement, the High Court, by its order dated 13.04.2016, quashed the proceedings.

Serial number 4

Police Station:	Sitabuldi
Crime No. & Date:	196/2016, dated 06.05.2016
Accused persons:	1. Sameer Sharma, 2. Kammu @ Kamlesh Yadav, 3. Abhishek Singh 4. Roshan Sheikh, 5. Jaiprakash @ Vinod @ Pande Shukla
Offences:	Sections 143, 147, 148, 149, 294, 323, 326, 324 IPC.
Status:	Charge-sheet has been filed and the case is said to be pending.

Serial number 5

Police Station:	Sitabuldi
Crime No. & Date:	517/2016, dated 18.11.2016
Accused persons:	1. Sameer Sharma, 2. Abhishek Singh 3. Shrikant Wanwe 4. Shubham Jaiswal 5. Rakesh Samrutwar 6. Vishnu Tripathi 7. Rajlannan Pande 8. Ramashankar Mishra 9. Mohd. Wasim
Offences:	Sections 143, 147, 148, 149, 307 IPC and 3/25 Arms Act.
Status:	Charge-sheet has been filed and the case is said to be pending.

Serial number 6	
Police Station:	Sitabuldi
Crime No. & Date:	83/2017, dated 08.03.2017
Accused persons:	1. Roshan Sheikh, 2. Sunil Kuril, 3. Kamlesh Yadav, 4. Divyam Samit, 5. Rudram Samrit, 6. Abhishek Singh
Offences:	Sections 143, 147, 148, 149, 323, 294 and 506 IPC.
Status:	Charge-sheet has been filed and the case is said to be pending.
Serial number 7	
Police Station:	Sadar
Crime No. & Date:	251/2020, dated 08.05.2020
Accused persons:	1. Roshan Sheikh, 2. Sohil Khan, 3. Salim Kazi, 4. Irfan Khan, 5. Abhishek Singh, 6. Ankit Pali
Offences:	Sections 363, 364A, 384, 386, 387, 397, 504, 506 IPC, 4/25 Arms Act, and 3(1)(ii), 3(2) and 3(4) MCOCA.
Status:	It is the present case where charge-sheet has been filed.

5. Having taken note of the relevant background aspects, we may now refer to the submissions made before, and considerations of, the High Court.

5.1. In challenge to the sanction order dated 05.11.2020, it was urged on behalf of the appellant before the High Court that the sanctioning authority had not recorded specific satisfaction about the existence of 'organised crime syndicate' in terms of Section 2(1)(f) of MCOCA; and mere satisfaction about the alleged existence of the ingredients of Section 2(1)(d), which defines 'continuing unlawful activity' and Section 2(1)(e), which defines 'organised crime', was not sufficient for according sanction. In other words, the contention had been that there was no question of granting sanction in terms of Section 23(2) of MCOCA, for the vital predicate, being the existence of 'organised crime syndicate', as defined by Section 2(1)(f) of MCOCA, having not been fulfilled.

5.2. The High Court took note of the background aspects, including the facts pertaining to the appellant and his involvement in various other cases, some of them in league with the team leader Roshan Sheikh and other persons. The High Court also examined the contents of sanction order dated 05.11.2020 and, after finding no legal flaw or shortcoming therein, proceeded to dismiss the writ petition while, of course, making it clear that any observations occurring in the order would not influence or prejudice the trial or pre-empt any legitimate defence of the appellant. The High Court, *inter alia*, observed, held and concluded as follows: -

> "13. It is only after the record of satisfaction in the aforesaid terms that the sanctioning authority, in terms of Section 23 (2) of the said Act, has proceeded to record further satisfaction in terms of focus by Mr. Mishra, learned Senior Advocate and quoted at para no. 5 of this order. Even the quotation makes it clear that satisfaction about the existence of the essential ingredients is *"in view of the forgoing observations"*. The satisfaction is not restricted to the ingredients of Section 2(d) and 2(e) of the said Act but to the ingredients of the said Act in general though, particular reference may have been made in the above-quoted portion to Section 2(d) and 2(e) of the said Act.
>
> 14. Therefore, based upon the reading of only the above-quoted portion, it will not be proper to hold that the sanctioning authority has either not applied its mind and failed to record any satisfaction about the existence of "organized crime syndicate" as defined under Section 2(f) of the said Act or satisfaction that these accused persons including the petitioner herein are a part of or are the members of this organized crime syndicate. The impugned sanction order is to be read in its entirety and based on some truncated portion, no contention can be advanced or at least sustained about any alleged non-application of mind by the sanctioning authority to the requirements of Section 2(1) of the said Act. Besides, the contention raised by Mr. Mishra, learned Senior Advocate not only over focusses on the above-quoted portion but tends to completely ignore the specific satisfaction recorded in the impugned sanction order about not only the existence of an organized crime syndicate in terms of Section 2(f) of the said Act but, also that the accused persons including the petitioner are members of such syndicate and further, have singly or jointly

committed serious and violent offenses for pecuniary and other benefits. Therefore, we are satisfied that the impugned sanction order warrants no interference on the ground now urged before us.

15. At the request of Mr. Mishra, learned Senior Advocate, however, we clarify that observations in this order are only *prima facie* and nothing in this order is even remotely intended to either influence or prejudice the trial and merits or to preempt any legitimate defenses that the petitioner may have in the course of such trial.

16. This petition is therefore **dismissed**. The rule is discharged. There shall be no order as to costs."

6. Assailing the judgment and order of the High Court as also the sanction order dated 05.11.2020, the learned senior counsel for the appellant has taken us through the scheme of the Maharashtra Control of Organised Crime Act, 1999, as also the record of the case and has put forth a variety of submissions for consideration, which could be summarised as follows:

6.1. Learned senior counsel, with reference to various provisions of MCOCA, has made the opening submissions that this enactment is of drastic consequences where not only minimum period of sentence is provided under Section 3, several measures of extraordinary nature have been provided, like interception of communications (Section 14); special rules of evidence overriding ordinary rules as contained in CrPC and the Indian Evidence Act, 1872[6], with converse burden of proof on the accused (Section 17); use of confessions made to the police officer (Section 18); forfeiture and attachment of property (Section 20) and modified application of CrPC with several protections being overridden. The learned counsel would submit that looking to the drastic and serious consequences, this Court has clearly provided that the provisions of MCOCA have to be strictly construed by the Courts; and the authorities concerned must strictly adhere to the same. The learned counsel has referred to the decision in the case of ***State of Maharashtra & Ors. v. Lalit Somdatta Nagpal & Anr.*: (2007) 4 SCC 171**, particularly paragraph 62 thereof.

[6] Hereinafter also referred to as 'the Evidence Act'.

6.2. The learned senior counsel has further submitted that by virtue of Section 2(1)(d) read with Sections 2(1)(e) and 2(1)(f) of MCOCA, to invoke its provisions, a minimum of two charge-sheets are required to have been filed with twin allegations, i.e., of a) violence and b) the object being of gaining pecuniary benefit or other similar benefit. The learned counsel would submit that in view of these twin requirements, the prosecution cannot rely upon the cases where the allegations only relate to violence but not to the object of gaining pecuniary or other benefit. The learned counsel has particularly referred paragraph 24 of the decision of this Court in the case of ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra & Anr.*: (2005) 5 SCC 294**.

6.3. With reference to the facts of the present case, learned senior counsel for the appellant has strongly contended that even as per the stand of the respondents, the allegations concerning pecuniary benefit occur only in the present case of Crime No. 251 of 2020 and not in other cases. Therefore, according to the learned counsel, the threshold requirement of involvement of the appellant in two or more cases involving the object of gaining pecuniary or similar benefit being not existing, even if those cases are taken on their face value, the provisions of MCOCA are inapplicable to the present case.

6.4. With reference to the contents of the sanction order and the stand of the respondents, the learned senior counsel has submitted that the cases forming the basis of the sanction order did not relate to any pecuniary benefit nor any such consideration had occurred in the order impugned but, in the concluding part, the sanctioning authority had mechanically used the expressions '*to gain pecuniary benefit or undue economic or other advantage*'. According to the learned counsel, the use of alternative, i.e., "or" has no basis whatsoever and thus, the order impugned remains baseless where the propositions of the sanctioning authority do not meet with the threshold requirements of Section 2(1)(f) of MCOCA. The learned counsel has referred to the decision in the case of ***Jagannath Misra v. State of Orissa*:(1966) 3 SCR 134** and has submitted that mere use of the expressions of the statute without proper application to the facts is not countenanced, particularly in the matters where the question of liberty of a person is involved. Thus, according to the learned counsel, there being no such element of 'other advantage' and these words having been used in an arbitrary and formal manner, the prosecution is not entitled to rely upon the same. It has also

been contended that, in fact, the plea of 'other advantage', as taken before this Court, is rather an afterthought and is of an attempt at improvement over the reasons recorded in the sanction order, which is entirely impermissible in view of the decision of this Court in the case of ***Mohindhr Singh Gill & Anr. v. Chief Election Commissioner, New Delhi & Ors.*: (1978) 1 SCC 405**.

6.5. In other limb of submissions, the learned senior counsel has particularly referred to the cases pertaining to Crime Nos. 13 of 2012 and 482 of 2015 and has submitted that these cases could not have been considered at all for the reason that in the case relating to Crime No. 13 of 2012, the appellant was, in fact, acquitted by the Trial Court whereas in the case relating to Crime No. 482 of 2015, the proceedings were quashed by the High Court. It has been submitted that the order impugned ought to have given specific reasons for placing reliance on such cases despite acquittal and quashing. Therefore, again, learned counsel would submit that the order issuing sanction deserves to be set aside.

6.6. Learned senior counsel has further submitted that the sanctioning authority has placed reliance on the confessions recorded under Section 18 of MCOCA and this could not have been done as self-serving exercise. In any case, according to the learned counsel, without meeting the threshold requirement of two charge-sheeted cases with the allegations applicable to MCOCA, no number of confessions in one case could be taken as sufficient. The learned counsel has submitted that any order having drastic consequences like those of application of MCOCA, if proceeding on the basis of irrelevant material, while ignoring the relevant considerations, cannot be approved and has referred to the decision of this Court in the case of ***Khaja Bilal Ahmed v. State of Telangana & Ors.*: (2020) 13 SCC 632**. The learned counsel would submit that when the irrelevant material is excluded in the present case, the sanction order falls to the ground and deserves to be set aside.

6.7. As regards the allegations of the respondents that the appellant was an absconder, it has been submitted that the appellant had no intention to abscond or not to face the judicial process and he has always been available in Nagpur; and had travelled to Delhi to swear the affidavit before this Court. It has been contended that the appellant, like in other cases in the past, would fully cooperate with the investigation and with the Trial Court but the arbitrary, illegal and *mala fide* invocation of the drastic provisions of MCOCA, severely impinging the fundamental rights

of the appellant, could not stand validated by the alleged absconsion of the appellant; and the State was only trying to create false prejudice and to justify its arbitrary and illegal sanctioning order.

7. Learned counsel for the respondent-State has countered the submissions made on behalf of the appellant and, after a detailed reference to the fact-sheet has, *inter alia*, contended as follows:

7.1. The learned counsel for the State has, in the first place, emphatically argued that the appellant is not entitled for any relief from this Court under Article 136 of the Constitution of India in view of the fact that he has been declared an absconder under Section 82 CrPC read with Section 20(3) MCOCA. Learned counsel would submit that all the submissions concerning personal liberty with the application of MCOCA deserve to be rejected when the appellant himself has chosen not to submit to the law.

7.2. Moving on to the conditions prescribed for invocation of MCOCA, the learned counsel has referred to the aforesaid three cases in Crime No. 482 of 2015 (Police Station Nandanwan), Crime No. 196 of 2016 (Police Station Sitabuldi) and Crime No. 83 of 2017 (Police Station Sitabuldi) and has submitted that the charge-sheets have been filed in all these matters and, therefore, the essential condition of more than one charge-sheet, in terms of Section 2(1)(e), has been duly met. Learned counsel would further contend that the facts about one of the crime cases having been quashed and another ending in acquittal, are not material considerations for deciding the question as to whether the appellant was indulging in 'continued unlawful activity' in terms of Section 2(1)(d) of MCOCA.

7.2.1. In regard to the case ending in acquittal, learned counsel for the State has also pointed out the facts that therein, one witness turned hostile and other witnesses did not come forward; and has submitted that in fact, MCOCA seeks to curb such a menace where the offenders get a reprieve because of the witnesses not standing with the prosecution. This, according to the learned counsel, is sufficient to show that MCOCA has rightly been invoked in the present case.

7.3. The learned counsel for the State has further contended that the arguments about the appellant not being involved in the crime referable for invocation of MCOCA are not correct and the suggested interpretation on behalf of the appellant of the expression 'other advantage' is also not

correct. The learned counsel for the respondent-State has referred to the decision of the Full Bench of the Bombay High Court in the case of ***State of Maharashtra v. Jagan Gagansingh Nepali @ Jagya & Anr.*: (2011) SCC OnLine Bombay 1049** to submit that therein, the Bombay High Court has held that crimes of bodily offence could be the crimes committed with an intention to establish supremacy and which could lead to gains other than pecuniary benefit or advantage.

7.4. The learned counsel has also referred to the decision of this Court in the case of ***State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari & Ors.*: 2013 (12) SCC 17** to submit that the confessional statement could definitely be considered when granting sanction under Section 23(2) of MCOCA. Learned counsel would submit that the confessional statements of the gang leader and other co-accused person directly disclose the role of the appellant as an active member of the 'organised crime syndicate'. Thus, in the present case, the confessional statements are limited to the confessor and to the co-accused; and their use in the sanction order cannot be faulted at. Learned counsel has also submitted that there is no prohibition in MCOCA in using the confessional statements while according sanction and, in any case, they could be pressed into service by the sanctioning authority when forming a *prime facie* view of the matter and examining the question of according sanction. The learned counsel has also added that the question of reliability of confessional statement cannot be adjudged at the stage of granting sanction and could only be decided during trial when the witnesses are examined.

7.5. The learned counsel has submitted that when the material placed before the sanctioning authority reveals presence of credible information regarding commission of an offence or organised crime, the same could always be relied upon; and has referred to the decision of this Court in the case of ***Kavitha Lankesh v. State of Karnataka & Ors.*: (2021) SCC OnLine 956**.

7.6. In yet another limb of submissions, learned counsel for the State would argue that the validity of the sanction could always be determined by the Trial Court during the course of trial where the sanctioning authority could be examined with an opportunity of cross-examination to the accused. Learned counsel has relied upon the decision of this Court in the case of ***Vinod G. Asrani v. State of Maharashtra*: (2007) 3 SCC 633** and has contended that for this opportunity being

A available to the appellant during trial, no interference in the sanctioning order is called for.

8. We have given anxious consideration to the rival submissions and have examined the material placed on record with reference to the law applicable.

B

9. While dealing with the rival submissions, pertinent it is to take note of the Statement of Objects and Reasons as also the Preamble of the Maharashtra Control of Organised Crime Act, 1999 and the relevant provisions under reference.

9.1. The Statement of Objects and Reasons for this enactment

C reads as under: -

"STATEMENT OF OBJECTS AND REASONS

Organised crime has been for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract, killing,

D extortion, smuggling in contrabands, illegal trade in narcotics kidnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organised crime being very huge, it has had serious adverse effect on our economy. It was seen that the organised criminal

E syndicates made a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There was reason to believe that organised criminal gangs have been operating in the State and thus, there was immediate need to curb their activities.

F It was also noticed that the organized criminals have been making extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission would be an indispensable aid to law enforcement

G and the administration of justice.

2. The existing legal framework i. e. the penal and procedural laws and the adjudicatory system were found to be rather inadequate to curb or control the menace of organised crime. Government, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power

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to intercept wire, electronic or oral communication to control the menace of the organised crime.

It is the purpose of this Act to achieve there objects."

9.2. Relevant part of the Preamble of MCOCA, that substituted its predecessor Ordinance, reads as under: -

"An Act to make Special Provisions for Prevention and Control of Organised Crime and for coping with, Criminal Activity by Organized Crime Syndicate or Gang, and for matters connected therewith or incidental thereto."

9.3. The relevant definitions and meanings assigned to the expressions "continuing unlawful activity", "organised crime" and "organised crime syndicate", respectively in clauses (d), (e) and (f) of Section 2(1) read as under: -

"**2. Definitions.** (1) In this Act, unless the context otherwise requires, -

*** *** ***

(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;

(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, 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;

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

A 9.4. Different punishments for organised crime with respect to the nature of offence and the nature of involvement of the offender are specified in Section 3 of MCOCA, which reads as under: -

"**3. Punishment for organised crime. -** (1) Whoever commits an offence of organised crime shall, -

B (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;

C (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
D 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
E 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.

F (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.

G (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."

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9.5. The approval for investigation and sanction for prosecution have been granted in terms of Section 23 of MCOCA, which reads as under: -

> **23. Cognizance of, and investigation into, an offence. -** (1) Notwithstanding anything contained in the Code, -
>
> (a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;
>
> (b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.
>
> (2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police."

10. As noticed, learned counsel for the State has emphatically argued in the very first place that the appellant has been declared as an 'absconder' in terms of Section 82 CrPC and Section 20(3) MCOCA and hence, his case deserves no consideration. The appellant's answer to this plea of the respondent has been that he had no intention to abscond or not to face the judicial process; and that the illegal and *mala fide* invocation of MCOCA, impinging upon his fundamental rights, could not stand validated by the alleged absconsion. Though we cannot ignore the submissions on behalf of the State altogether in this regard; and it remains seriously questionable if the appellant deserves indulgence under Article 136 of the Constitution of India but, in totality of the circumstances, where notices had been issued to the respondents, we have considered it proper to first examine the matter on merits; and to advert to this aspect of absconsion in the last.

11. A comprehensive look at the objects and reasons for enactment of MCOCA, its overall purpose signified in its Preamble, and the relevant definitions in Section 2 as also the punishments provided in Section 3, leave nothing to doubt that this enactment is for making special provisions for dealing with the menace of organised crime causing serious threat to the society. No doubt, the enactment makes stringent provisions with several extraordinary measures but, the peculiar nature of the mischief sought to be tackled, i.e., of organised crime, has obviously led to such

A extraordinary measures, particularly when the existing legal framework was found to be rather inadequate to control the menace.

12. A long deal of arguments has been advanced before us on behalf of the appellant that looking to the drastic and serious consequences, the provisions have to be strictly construed and the authorities are bound B to strictly adhere to the same. The question is as to what are the connotations of 'strict construction' by the Courts and 'strict adherence' by the authorities in the context of an enactment like MCOCA? For determination of this question, apposite it shall be to refer to the cited decisions and the applicable legal principles.

C 12.1. The case of ***Lalit Somdatta Nagpal***(supra) was one involving questions relating to the application of MCOCA in respect of the offences alleged to have been committed under Sections 3 and 7 of the Essential Commodities Act, 1955. Having particular regard to the enactment of Essential Commodities (Special Provisions) Act, 1981, which was to remain in force for 15 years only and therein, the power to D impose punishment was limited upto 2 years, this Court held that even when power of the Court to impose punishment was limited to 2 years, the offence continued to remain punishable upto a maximum period of 7 years, so as to attract the provisions of MCOCA. Having said that and having disapproved the views of the High Court, this Court, of course, E agreed with the other submissions on behalf of the respondents as regards strict interpretation of the provisions and strict observance by the authorities while observing as under: -

> "**62.** However, we are in agreement with the submission that having regard to the stringent provisions of mcoca, its provisions F will have to be very strictly interpreted and the authorities concerned would have to be bound down to the strict observance of the said provisions. There can be no doubt that the provisions of mcoca have been enacted to deal with organised criminal activity in relation to offences which are likely to create terror and to endanger and unsettle the economy of the country for which G stringent measures have been adopted. The provisions of mcoca seek to deprive a citizen of his right to freedom at the very initial stage of the investigation, making it extremely difficult for him to obtain bail. Other provisions relating to the admission of evidence relating to the electronic media have also been provided for. In such a situation it is to be seen whether the investigation H

from its very inception has been conducted strictly in accordance with the provisions of the Act." A

12.1.1. In relation to the particular fact situation concerning the individual accused persons, this Court found that the sanction had been granted with complete non-application of mind and hence, disapproved the same in the following words: - B

"**67.** In the instant case, though sanction had been given by the Special Inspector General of Police, Kolhapur Range, on 31-8-2004, granting permission under Section 23(1)(*a*) of mcoca, 1999 to apply its provisions to the alleged offences said to have been committed by Anil Nagpal, Lalit Nagpal and Vijay Nagpal, such C sanction reveals complete non-application of mind as the same appears to have been given upon consideration of an enactment which is non est. Even if the subsequent approval order of 22-8-2005 is to be taken into consideration, the organised crime referred to in the said order is with regard to the alleged violation of sales tax and excise laws, which, in our view, was not intended to be D the basis for application of the provisions of mcoca, 1999. To apply the provisions of mcoca something more in the nature of coercive acts and violence is required to be spelt out so as to bring the unlawful activity complained of within the definition of "organised crime" in Section 2(1)(*e*) of MCOCA. E

68. In our view, both the sanctions which formed the very basis of the investigation have been given mechanically and are vitiated and cannot be sustained. In taking recourse to the provisions of mcoca, 1999, which has the effect of curtailing the liberty of an individual and keeping him virtually incarcerated, a great F responsibility has been cast on the authorities in ensuring that the provisions of the Act are strictly adhered to and followed, which unfortunately does not appear to have been done in the instant case."

12.2. In the case of ***Ranjitsing Brahmajeetsing Sharma*** (supra), G during the tenure of the appellant as Commissioner of Police, Pune, fake stamp papers worth Rs. 2.91 lakhs were seized, whereupon an FIR for offences under Sections 120-B, 255, 249, 260, 263(a) and (b), 478, 472 and 474 read with Section 34 IPC was registered. Prior to that, one Abdul Karim Ladsa Telgi was arrested and proceeded against for the H

A alleged offences of printing counterfeits stamps and forgery. The provisions of MCOCA were invoked against the said Telgi and therein, the role of the appellant was said to be of rendering help and support to the organised crime syndicate while functioning as the Commissioner of Police at different places. Therein, this Court was essentially concerned with the operation of Section 24 of MCOCA, providing for punishment of public servants failing in discharge of their duties. Taking an overall view of the matter with reference to its facts, this Court formed the *prima facie* opinion that the High Court might not have been entirely correct in coming to the conclusion that the appellant committed an offence under Sections 3(2) as well as 24 of MCOCA and thus, the interim bail granted to the appellant was continued.

12.2.1. In the said case, this Court referred to the objects and reasons for the enactment and the connotations of the expression "any unlawful means" in the following words: -

"**24.** The Statement of Objects and Reasons clearly states as to why the said Act had to be enacted. Thus, it will be safe to presume that the expression "any unlawful means" must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control. In other words, an offence falling within the definition of organised crime and committed by an organised crime syndicate is the offence contemplated by the Statement of Objects and Reasons. There are offences and offences under the Penal Code, 1860 and other penal statutes providing for punishment of three years or more and in relation to such offences more than one charge-sheet may be filed. As we have indicated hereinbefore, only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA. Furthermore, mens rea is a necessary ingredient for commission of a crime under MCOCA."

12.3. It is, thus, not in doubt that the provisions of MCOCA need to be strictly construed and for their application, an unlawful activity has to fall within the periphery of organised crime. However, the question still remains as to the import of the requirement of 'strict construction' of the stringent provisions? A brief reference to the fundamental legal principles in that regard shall be apposite.

12.4. In the *Principles of Statutory Interpretation* by *Justice G.P. Singh*[7], the rule of construction applicable to a penal statute has, *inter alia*, been stated in the following terms: -

> "Story, J. in agreeing to the rule in its "true and sober sense" stated the same as follows: "Penal statutes are not to be enlarged by implication or extended to cases not obviously within their words and purport. But where the words are general, and include various classes of persons, I know of no authority, which would justify the court in restricting them to one class, or in giving them the narrowest interpretation, where the mischief to be redressed by the statute is equally applicable to all of them. And where a word is used in a statute, which has various known significations, I know of no rule, that requires the court to adopt one in preference to another, simply because it is more restrained, if the objects of the statute equally apply to the largest and broadest sense of the word."

12.5. The meaning and import of the expression "strict construction" have also been explained in *Advanced Law Lexicon* by *P. Ramanatha Aiyar*[8], as follows: -

> "**Strict construction.** "Strict construction of a statute is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute, as well as within its spirit or reason, not so as to defeat the manifest purpose of the Legislature, but so as to resolve all reasonable doubts against the applicability of the statue to the particular case. William M. Life et. al., *Brief Making and the Use of Law Books*, 343 (3d ed. 1914).
>
> "Strict interpretation is an equivocal expression, for it means either literal or narrow. When a provision is ambiguous, one of its meanings may be wider than the other, and the strict (*i.e.* narrow) sense is not necessarily the strict (*i.e.* literal) sense." John Salmond, *Jurisprudence* 171 n(t) (Glanville L. Williams ed., 10th ed., 1947).
>
> "Strict construction" is that which refuses to expand the law by implications or equitable considerations, and confines its operation to cases which are clearly within the letter of the statute, as well

[7] 14th Edition p. 978.
[8] 5th Edition p. 4956.

A as within its spirit or reason. When the sense of the law is manifest, and leads to nothing absurd, there can be no reason not to adopt it. Statutes exercising the power of taxation in any of its forms, or delegating the power to political sub-divisions, are to be strictly construed."

B 12.6. So far as the applicability of the rule of strict construction *qua* MCOCA is concerned, it being a special penal statute, this much is clear that no one is to be made subject to this law by implication or by presumption; and all doubts concerning its application would, ordinarily, be resolved in favour of the accused. However, the rule of strict construction cannot be applied in an impracticable manner so as to render C the statute itself nugatory. In other words, the rule of strict construction of a penal statute or a special penal statute is not intended to put all the provisions in such a tight iron cast that they become practically unworkable, and thereby, the entire purpose of the law is defeated. At this juncture, we may profitably refer to a decision of this Court in the case of ***Balram*** D ***Kumawat v. Union of India & Ors.*****:(2003) 7 SCC 628**, that the purpose of law is not to allow the offender to sneak out of the meshes of law. This Court said, *inter alia*, as under: -

"**23.** Furthermore, even in relation to a penal statute any narrow and pedantic, literal and lexical construction may not always be E given effect to. The law would have to be interpreted having regard to the subject-matter of the offence and the object of the law it seeks to achieve. The purpose of the law is not to allow the offender to sneak out of the meshes of law. Criminal jurisprudence does not say so."

F Therein, this Court, after reference to a large number of decisions, ultimately exposited as follows: -

"**36.** These decisions are authorities for the proposition that the rule of strict construction of a regulatory/penal statute may not be adhered to, if thereby the plain intention of Parliament to combat G crimes of special nature would be defeated."

12.7. As regards application of MCOCA, what is required to be seen is as to whether the basic and threshold requirements, as per combined reading of clauses (d), (e) and (f) of Section 2(1) thereof, are fulfilled. If they are not so fulfilled, mere use of the expressions of the H statute in the sanction order would be of no effect but, on the other hand,

if the requirements are fulfilled, mere want of any expression or word in a particular passage in the sanction order would not take away the substance of the matter. In other words, strict adherence by the authorities concerned to the requirements of MCOCA also cannot be stretched beyond common sense and practical requirements in terms of the letter and spirit of the statute.

12.8. In the case of ***Kavitha Lankesh*** (supra), this Court has exposited on the fundamentals for invocation of similar provisions of Karnataka Control of Organised Crime Act, 2000, *inter alia*, in the following words: -

> "**21.** What is crucial in this provision is the factum of recording of offence of organized crime and not of recording of a crime against an offender as such. Further, the right question to be posed at this stage is : whether prior approval accorded by the competent authority under Section 24(1)(a) is valid? In that, whether there was discernible information about commission of an offence of organized crime by known and unknown persons as being members of the organized crime syndicate? Resultantly, what needed to be enquired into by the appropriate authority (in the present case, Commissioner of Police) is : whether the factum of commission of offence of organized crime by an organized crime syndicate can be culled out from the material placed before him for grant of prior approval? That alone is the question to be enquired into even by the Court at this stage. It is cardinal to observe that only after registration of FIR, investigation for the concerned offence would proceed — in which the details about the specific role and the identity of the persons involved in such offence can be unravelled and referred to in the chargesheet to be filed before the competent Court.
>
> *** *** ***
>
> **27.** At the stage of granting prior approval under Section 24(1)(a) of the 2000 Act, therefore, the competent authority is not required to wade through the material placed by the Investigating Agency before him along with the proposal for grant of prior approval to ascertain the specific role of each accused. The competent authority has to focus essentially on the factum whether the information/material reveals the commission of a crime which is an organized crime committed by the organized crime syndicate.

A In that, the prior approval is qua offence and not the offender as such. As long as the incidents referred to in earlier crimes are committed by a group of persons and one common individual was involved in all the incidents, the offence under the 2000 Act can be invoked…"

B 13. Having taken note of the relevant principles, we may proceed with their application to the present case.

14. The main plank of the case argued on behalf of the appellant has been that the threshold requirement of his involvement in two or more cases, involving the object of gaining pecuniary or similar benefits C is not existing and, therefore, even if the referred cases are taken on their face value, the provisions of MCOCA are not applicable. While examining this line of arguments, we are constrained to observe that the submissions on behalf of the appellant are rather premised on an incorrectly framed question which has, obviously, led to incorrectly framed contentions. The wrong premise of the contentions of the appellant could D be noticed from the very opening paragraph in the written submissions which reads as under: -

"1. The only issue that arises for the kind consideration of this Hon'ble Court in the present matter is:

E "*Whether the minimum threshold laid down in Section 2(d) of the Act viz. minimum two charge-sheeted cases with allegations of violence for pecuniary benefit has been fulfilled in the present matter?*"

Yet further, it has been submitted in paragraph 3 about the essential F ingredients to invoke MCOCA as under: -

"3. By virtue of Section 2(d) read with Sections 2(e) and 2(f) of the Act, to invoke the provisions of MCOCA two chargesheets are required to have been filed with the following allegations:

a. Violence; and

G b. The object of gaining pecuniary benefit or other similar benefit."

Neither the question aforesaid is correct nor the suggested ingredients are in conformity with the plain provisions of the statute.

14.1. A bare look at clause (e) of Section 2(1) of MCOCA makes H it clear that 'organised crime' means any unlawful activity by an individual

singly or jointly, either as a member of 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. The suggestions on behalf of the appellant to limit the activity only to the use of violence is obviously incorrect when it omits to mention the wide-ranging activities contemplated by clause (e) of Section 2(1) of MCOCA, i.e., threat or violence or intimidation or coercion or other unlawful means. Actual use of violence is not always a *sine qua non* for an activity falling within the mischief of organised crime, when undertaken by an individual singly or jointly as part of organised crime syndicate or on behalf of such syndicate. Threat of violence or even intimidation or even coercion would fall within the mischief. This apart, use of other unlawful means would also fall within the same mischief.

14.2. The second part of the requirement of the nature of activity, i.e., its objective, has also not been projected correctly on behalf of the appellant. The requirement of law is not limited to pecuniary benefits but it could also be of 'gaining undue economic or other advantage'. The frame of the proposition that the object ought to be gaining pecuniary benefit or other 'similar' benefit is not correct as it misses out the specific phraseology of the enactment which refers to undue economic or other advantage apart from pecuniary benefit.

14.3. This aspect has gone into consideration of the Full Bench of Bombay High Court in the case of ***Jagan Gagansingh Nepali @ Jagya*** (supra), wherein the Court examined precisely the connotations of the expression "other advantage" occurring in Section 2(1)(d) of the Act. The question formulated had been as under: -

> "**2.** The question, therefore, that we are called upon to answer is "as to whether the term "other advantage" has to be read as *ejusdem generis* with the words "gaining pecuniary benefits, or gaining undue economic advantage" or whether the said term "other advantage" is required to be given a wider meaning"".

14.3.1. The Full Bench of the Bombay High Court gave the answer to the question formulated as under: -

> **"42.** For the reasons aforesaid, we answer the issue that the term "other advantage" cannot be read as *ejusdem generis* with the words "pecuniary benefits" and "undue economic".

14.3.2. While giving answer aforesaid, the High Court took note of the principles applicable and exposited, *inter alia*, as under: -

"**31.** Applying these principles, it can be seen that the existing legal framework i.e. the penal and procedural laws and the adjudicatory system were found to be inadequate to curb or control the menace of organised crime. It was found that the organised crime had become a serious threat to the society beyond national boundaries and is fuelled by the illegal wealth achieved by contract, killing, extortion, smuggling in contrabands, illegal trade in narcotics, kidnapping for ransom, collection of protection money and money laundering etc. It was found that the illegal wealth and black money generated by the organised crime being very huge, it had serious adverse effect on the economy. It was further seen that the organised criminal syndicates made a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. It was further found that the organised criminals have been making extensive use of wire and oral communications in their criminal activities. In this background, it was found necessary to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime.

32. The Preface would show that it was also found that the criminal activities like murders of tycoons related to film industry as well by builders, extortion of money from businessmen, abduction etc. showed that criminal gangs are active in the State. It can, thus, be seen that it was hoped that with the passing of this law, unlawful elements spreading terrorism in the society can be controlled to a great extent and it will go a long way in minimizing the feeling of fear spread in the society.

33. It is pertinent to note that in both Statement of Objects and Reasons and the Preface, though certain activities have been mentioned the same are followed by the term "etc". It is, thus, clear that the activities mentioned in the Statement of Objects and Reasons and the Preface are only illustrative in nature and not exhaustive. It is, thus, clear that the legislative intent is not only to curb only the activities mentioned in the Statement of Objects and Reasons or Preface but to curb various other activities

of the organised crime syndicate so that unlawful elements spreading terrorism in the society can be controlled to a great extent, with an intention that the feeling of fear spread in the society is minimised.

34. It can, thus, clearly be seen that the purpose behind enacting the MCOCA was to curb the activities of the organised crime syndicates or gangs. The perusal of the Preamble and the Statement of Objects and Reasons and Preface, in our considered view, does not lead to any narrower meaning that MCOCA has been enacted only for the purpose of curbing activities which involve pecuniary gains or undue economic advantages. The mischief which is sought to be cured by enactment of MCOCA is to curb and control menace of organised crime. The law has been enacted with the hope that the elements spread by the organised crime in the Society can be controlled to a great extent and for minimizing the fear spread in the society. If a narrower meaning as sought to be placed is accepted, it will frustrate the object rather than curing the mischief for which the Act has been enacted.

35. For appreciating this issue, it would also be relevant to refer to sub-section (4) of section 3 of MCOCA. It can be seen that the said provision also provides for punishment only by virtue of a person being a member of the organised crime syndicate. If the contention advanced by the respondents is to be accepted, sub-section (4) of section 3 will be rendered redundant. We are also of the considered view that there could be various "unlawful continuing activities" by a member of "organised crime syndicate" or by any person on behalf of such a syndicate which can be for the advantages other than economic or pecuniary..."

14.4. We have no hesitation in endorsing the views of Full Bench decision of Bombay High Court in the case of ***Jagan Gagansingh Nepali @ Jagya*** (supra). Looking to the object and purpose of this enactment, the expression 'other advantage' cannot be read in a restrictive manner and is required to be given its full effect. The High Court has rightly said that there could be advantage to a person committing a crime which may not be directly leading to pecuniary advantage or benefit but could be of getting a strong hold or supremacy in the society or even in the syndicate itself. As noticed above, the purpose of this enactment is to be kept in view while interpreting any

A expression therein and in the name of strict construction, its spirit and object cannot be whittled down.

15. A chart has been placed before us on behalf of the appellant in relation to the aforesaid seven cases with certain comments. As regards the case at Serial No. 1, it is submitted that no pecuniary benefit or B undue economic gain was alleged in the matter where it was alleged that during house search, the police found a sword from the house of Keval Patel and the appellant was staying there as a tenant. As regards the case at Serial No. 2, it is submitted that the allegation against the appellant had been of giving blow with knife to the complainant due to previous enmity and quarrel on account of friendship with a girl. Again, C it is submitted that none of the members of the alleged crime syndicate are accused persons and no pecuniary benefit or other advantage is alleged. The said case resulted in acquittal with one witness turning hostile and other witnesses not turning up. As regards the case at Serial No. 3, it is contended that this was the first joint offence with the accused D Roshan Sheikh and in fact, it had been the matter of cross FIRs; and the same were quashed by the High Court on 13.04.2016. It is submitted that it had been a matter of clash between two groups of people and no elements of pecuniary benefit or undue economic gain or other advantage was alleged. As regards the case at Serial No. 4, it is submitted that the incident took place in a bar because of some argument between the E waiter and the customer and no such element of pecuniary benefit or undue economic gain or other advantage is shown. As regards the case at Serial No. 5, it is submitted that this has also been a matter of counter FIRs where first FIR was lodged by Sameer Sharma and the appellant is an eye-witness therein; and no pecuniary benefit or undue economic F gain or other advantage to the accused is shown in this crime. As regards the case at serial No. 6, it is submitted that the charge-sheet does not disclose any act committed by any syndicate, or any crime for pecuniary gain; that during investigation, offences under Section 3/25 of Arms Act was deleted; and taking this case also into account was not correct.

G 15.1. The common thread of "violence" or "threat of violence" or "unlawful means" running through all of these cases is not a matter requiring any analysis, for the same being apparent on the face of record. Significantly, the aforesaid had not been the cases involving the appellant singularly; and more significantly, the alleged team leader Roshan Sheikh is the co-accused in at least three previous cases. This is apart from the H

recurrence of other co-accused persons in one case or the other. It has rightly been pointed out on behalf of the respondent-State that in order to attract MCOCA, every previous case need not be of the object of gaining pecuniary benefit alone. The cases in question, apart from involving the offences against human body and property, also include variety of other offences including those of rioting while armed with deadly weapons; causing insult to provoke breach of peace; and criminal intimidation. They also include the offence under the Arms Act. In all the referred cases, use of violence has specifically been alleged.

15.2. The crime chart aforesaid, the nature of activities and the persons involved leave nothing to doubt that the involvement of the appellant in such crimes and unlawful activities which are aimed at gaining pecuniary advantages or of gaining supremacy and thereby, leading to other unwarranted advantages is clearly made out.

16. The criticism of the impugned sanction order dated 05.11.2020, that it had been of mere repetition of the expression of statute, is also difficult to be accepted. The High Court, in the impugned order, has rightly observed that the said order is required to be viewed in its totality, and its substance cannot be ignored by isolated reference to a particular line or expression. We have reproduced the relevant contents of the order dated 05.11.2020 particularly those concerning the present appellant; and we have not an iota of doubt that firstly, the approving authority, and then, the sanctioning authority, were conscious of the requirement of law and indeed examined the matter only with reference to such requirement; and issued the orders in question only after arriving at the requisite satisfaction. It has rightly been pointed out on behalf of the respondent that in such matters, the competent authority has to focus essentially on the factum whether the material in question reveals the commission of crime, which is an organised crime, committed by the organised crime syndicate.

16.1. In view of above, reference to the decision of this Court in ***Jagannath Misra*** (supra), which essentially related to a matter of preventive detention, hardly makes out any case for interference. The question of arriving at satisfaction has been dealt with by this Court in the following: -

> "Now we have pointed out that the order of detention in this case refers to six out of eight possible grounds on which a person can be detained under Section 3(2)(15). Of these eight grounds

A under Section 3(2)(15) one refers to foreigners *i.e.,* of being of hostile origin. Therefore in the present case the order really mentions six out of seven possible grounds which can apply to an Indian whose detention is ordered under Section 3(2)(15). We do not say that it is not possible to detain a citizen on six out of seven possible grounds under Section 3(2)(15); but if that is done it is necessary that the authority detaining a citizen should be satisfied about each one of the grounds that the detention is necessary thereon. But if it appears that though the order of detention mentions a large number of grounds the authority concerned did not apply its mind to all those grounds before passing the order, there can in our opinion be no doubt in such a case that the order was passed without applying the mind of the authority concerned to the real necessity of detention. In the present case as we have already pointed out six grounds out of possible seven grounds on which a citizen can be detained have been mentioned in the order; but in the affidavit of the Minister we find mention of only two of those grounds, namely, safety of India (which may be assumed to be the same as public safety) and the maintenance of public order. In these circumstances there can be little doubt that the authority concerned did not apply its mind properly before the order in question was passed in the present case. Such discrepancy between the grounds mentioned in the order and the grounds stated in the affidavit of the authority concerned can only show an amount of casualness in passing the order of detention against the provisions of Section 44 of the Act. This casualness also shows that the mind of the authority concerned was really not applied to the question of detention of the petitioner in the present case. In this view of the matter we are of opinion that the petitioner is entitled to release as the order by which he was detained is no order under the Rules for it was passed without the application of the mind of the authority concerned.

There is another aspect of the order which leads to the same conclusion and unmistakably shows casualness in the making of the order. Where a number of grounds are the basis of a detention order, we would expect the various grounds to be joined by the conjunctive "and" and the use of the disjunctive "or" in such a case makes no sense. In the present order however we find that the disjunctive "or" has been used, showing that the order is more

or less a copy of Section 3(2)(15) without any application of the mind of the authority concerned to the grounds which apply in the present case."

16.2. In the said case, where there was discrepancy in the detention order and the affidavit of the Minister as regard the grounds of detention, this Court found that the authority concerned did not apply its mind properly. In the present case, on the contrary, the meticulously drawn sanction order dated 05.11.2020 leaves nothing to doubt that the sanctioning authority had indeed applied its mind to all the material and relevant aspects. Therefore, this contention on behalf of the appellant must fail.

17. A long deal of arguments on behalf of appellant before us had also been about the sanctioning authority purportedly taking the irrelevant factors into account and for that matter, acquittal in relation to Crime No. 13 of 2012 and of quashing the proceedings in Crime No. 482 of 2015 have been referred. In our view, this line of arguments also remains bereft of substance.

17.1. The threshold requirement in terms of clause (d) of MCOCA is that of the activity/activities undertaken by the accused persons either singly or jointly, as a member of an organized crime syndicate, which involves a cognizable offence punishable with imprisonment of 3 years or more and in respect of which, more than one charge-sheets have been filed before the competent Court within 10 years and cognizance had been taken.

17.2. Crime No. 13 of 2012 was registered on 11.01.2012 and involved two accused persons including the appellant and related to the offence under Section 307 IPC read with Section 34 IPC. Thus, the prescribed period and nature of offence with reference to prescribed punishment were met. Cognizance had also been taken in the said case and that is how it went to trial. The prosecution therein could examine only one person as the alleged eye-witness but, he turned hostile and did not support the case of the prosecution. The prosecution failed to examine the other witnesses including the complainant and the injured and even the non-bailable warrant issued in their relation were returned unserved with the report that they were not traceable. Thus, the prosecution failed to substantiate the charges. We shall comment on the said nature of acquittal a little later but, relevant it is to observe for the present purpose

A that the said case answers to all the requirements of clause (d) of Section 2(1) of MCOCA.

17.3. As regards the other case, being Crime No. 482 of 2015 dated 20.12.2015, the offences had been of Sections 143, 147, 148, 149, 294, 324, 325 IPC. The co-accused person of the previously referred B Crime No. 13 of 2012 was the co-accused person in this case too, apart from the other co-accused persons, including Roshan Sheikh, said to be the team leader. The said case also answers to all the requirements of clause (d) of Section 2(1) of MCOCA. In the said case, there had been a cross FIR in Crime No. 481 of 2015 and it appears that there was a settlement for which, the High Court, by its order dated 13.04.2016, C considered it appropriate to quash the proceedings. We would refer to the implications of such quashing of proceedings also a little later. Suffice it to notice for the present purpose that the said case too answers to all the requirements of clause (d) of Section 2(1) of MCOCA.

17.4. There is no dispute to the fact that at least two more cases, D being of Crime No. 196 of 2016 and of Crime No. 83 of 2017, both of Sitabuldi Police Station, are also pending wherein charge-sheets have been filed and they include varying offences, including those of Sections 148 and 326 IPC, clearly meeting with all the essential requirements. In both these cases, the appellant is an accused person alongwith a few E common co-accused persons, including the alleged team leader Roshan Sheikh. It is not the case of the appellant that cognizance had not been taken in those cases.

17.5. The submissions about taking irrelevant factors into account with reference to the said two cases resulting in acquittal and discharge F must fail for the simple reason that for the purpose of clause (d) of Section 2(1) of MCOCA, the result of a particular matter is not decisive of the question as to whether the activity in question answers to the description of 'continuing unlawful activity' or not. These had not been offences committed single-handed by the appellant and charge-sheets were indeed filed therein. The matter of settlement because of cross- G cases or a matter of acquittal because of the witnesses not turning up, could hardly be of any relevance so far as clause (d) of Section 2(1) of MCOCA is concerned. Therefore, it cannot be said that any irrelevant matter has been taken into consideration by the sanctioning authority. The case of ***Khaja Bilal Ahmed*** (supra) as relied upon on behalf of the H appellant, even otherwise, has no direct application for being related to a

preventive detention matter. In any case, there is no quarrel with the proposition therein that for a detaining authority, it is incumbent that its satisfaction must not be based on irrelevant or invalid grounds but, we are clearly of the view that in the present case, the authority cannot be said to have proceeded on any irrelevant consideration. What is significant and pertinent for the purpose of Section 2(1)(d) is the involvement of the person concerned in the referred activity and filing of charge-sheet and taking of cognizance in the offence as predicated. Acquittal or discharge is of no significance.

18. As regards the use of confessional statement by the sanctioning authority, we are unable to find any fault therein. In the first place, noticeable it is that the confessional statements of the co-accused persons, including the alleged team leader, have not been used by the sanctioning authority as the only basis of the sanction order. Those have been referred as the part of evidence collected in the present offence, which included various other pieces of evidence, i.e., mobile phones, vehicles, pen drive, weapons etc. In any case, the value attached to the confessional statement, while overriding the provisions of CrPC and the Evidence Act in terms of Section 18 of MCOCA, cannot be gainsaid and cannot be ignored. This Court has, in the case of ***Kamal Ahmed Mohammed Vakil Ansari*** (supra), observed and held, *inter alia*, as under: -

> "**71.** Section 18 of Mcoca through a non obstante clause overrides the mandate contained in Sections 25 and 26 of the Evidence Act, by rendering a confession as admissible, even if it is made to a police officer (not below the rank of Deputy Commissioner of Police). Therefore, even though Sections 25 and 26 of the Evidence Act render inadmissible confessional statements made to a police officer, or while in police custody, Section 18 of Mcoca overrides the said provisions and bestows admissibility to such confessional statements, as would fall within the purview of Section 18 of Mcoca.
>
> **72.** It is however relevant to mention that Section 18 of Mcoca makes such confessional statements admissible only for "the trial of such person, or co-accused, abettor or conspirator". Since Section 18 of Mcoca is an exception to the rule laid down in Sections 25 and 26 of the Evidence Act, the same will have to be interpreted strictly, and for the limited purpose contemplated thereunder. The admissibility of a confessional statement would

clearly be taken as overriding Sections 25 and 26 of the Evidence Act for purposes of admissibility, but must mandatorily be limited to the accused confessor himself, and to a co-accused (abettor or conspirator)."

18.1. The reference in the confessional statements of the two co-accused persons in relation to the appellant is not a factor entirely irrelevant for the appellant being a co-accused person with them. The detailed discussion by the sanctioning authority to the substantial pieces of evidence collected in the matter rather fortifies the conclusion that the sanctioning authority has meticulously applied its mind to all the relevant factors and has taken an overall view of the matter before forming the final opinion in favour of granting the sanction. The contention in that regard also fails.

18.2. The learned counsel for the State has fairly and rightly indicated, with reference to the decision of this Court in the case of ***Vinod G. Asrani*** (supra), that the validity of sanction could always be determined by the Trial Court during the course of trial where sanctioning authority could be examined and the appellant will have sufficient opportunity to contest the same, including that of cross-examining the sanctioning authority. In fact, the High Court has also taken care in its impugned order to make it clear that the observations were only *prima facie* and nothing in the order would influence or prejudice the trial or pre-empt any legitimate defence of the appellant. In ***Vinod G. Asrani*** (supra), this Court has observed and held as under: -

"**9.** …The scheme under Section 23 of MCOCA is similar and Section 23(1)(*a*) provides a safeguard that no investigation into an offence under mcoca should be commenced without the approval of the authorities concerned. Once such approval is obtained, an investigation is commenced. Those who are subsequently found to be involved in the commission of the organised crime can very well be proceeded against once sanction is obtained against them under Section 23(2) of MCOCA.

10. As to whether any offence has at all been made out against the petitioner for prosecution under MCOCA, the High Court has rightly pointed out that the accused will have sufficient opportunity to contest the same before the Special Court."

18.3. For what has been discussed hereinabove, this appeal must fail on merits. A

19. Having said so, we deem it appropriate to revert to the two aspects of the matter which we had partly left for discussion at a later stage: one being of acquittal and discharge in the respective criminal cases; and second being the effect of the fact that the appellant has been declared as an 'absconder'. B

20. As noticed, in the case relating to Crime No. 13 of 2012, the appellant and the co-accused person were acquitted by the Trial Court for the only private witnesses examined in the matter turning hostile and all other witnesses including the complainant and the injured person not turning up at all. The enactment in question, i.e., MCOCA, essentially intends to deal with the criminal activities by an organised crime syndicate or gangs; and protection of witnesses is also one of the avowed objectives of this enactment. It has rightly been contended on behalf of the respondents that MCOCA seeks to curb such menace, where a criminal case cannot be taken to its logical conclusion because of the witnesses either turning hostile or not turning up at all. The provision for witness protection, as contained in Section 19 of MCOCA is one of those steps. Having examined the judgment of the Sessions Court dated 09.05.2017, as placed on record on behalf of the appellant, we could only say that the very reason of acquittal in the said case rather fortifies the requirements of invocation of MCOCA against the appellant, of course, when other requirements of Sections 2(1)(d), (e) and (f) are fulfilled. They are indeed fulfilled, as noticed above. C D E

21. As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an 'absconder' and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence. By way of reference, we may observe that in relation to the indulgence of pre-arrest bail in terms of Section 438 CrPC, this Court has repeatedly said that when an accused is absconding and is declared as proclaimed offender, there is no question of giving him the benefit of Section 438 CrPC.[9] What has been observed and said in relation to Section 438 CrPC applies with F G

[9] For example, ***Prem Shankar Prasad v. State of Bihar and Anr.*****: (2021) SCC OnLine SC 955**. H

more vigour to the extraordinary jurisdiction of this Court under Article 136 of the Constitution of India. The submissions on behalf of the appellant for consideration of his case because of application of stringent provisions impinging his fundamental rights does not take away the impact of the blameworthy conduct of the appellant. Any claim towards fundamental rights also cannot be justifiably made without the person concerned himself adhering to and submitting to the process of law.

22. Thus, challenge to the judgment as passed by the High Court on 16.12.2021, and to the sanctioning order dated 05.11.2020, was required to be rejected when the appellant had indeed been declared absconder. However, as observed hereinbefore, we have considered it proper to first examine the matter on merits because notices had been issued to the respondents and it had appeared serving the cause of justice to deal with the matter on merits. As noticed, all the contentions urged on behalf of the appellant remain baseless and challenge herein ought to fail. Thus, we need not say any more in the present case as regards the effect of absconsion.

23. Accordingly, and in view of the above, this appeal fails and is, therefore, dismissed.

Ankit Gyan
(Assisted by : Rahul Rathi, LCRA)

Appeal dismissed.