

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 144 OF 2022

PETITIONER : Dr. Lokpriya Uddhav Sakhare,
Aged 45 years, Occupation Service,
R/o Mahalaxmi Plalace-1, Flat No.402,
Narhari Nagar, Manewada-Beas Road,
Nagpur – 440 027.

VERSUS

RESPONDENTS : 1] State of Maharashtra,
through the Director General of Police,
Katol Road, Nagpur.

2] State of Maharashtra,
through Police Station Officer,
Police Station, Ajni, Nagpur.

Shri. Firdos Mirza, Advocate for the petitioner.
Shri S. M. Ghodeswar, A.P.P. for respondent nos.1 and 2.

CORAM : V. M. DESHPANDE and AMIT B. BORKAR, JJ.
DATE : APRIL 13, 2022.

ORAL JUDGMENT (PER : V. M. Deshpande, J.)

1. **Rule.** Rule made returnable forthwith. Heard finally by
consent of the learned counsel for the parties.

2. Heard Shri Firdos Mirza, learned counsel for the petitioner and Shri S. M. Ghodeswar, learned Additional Public Prosecutor for the respondents.

3. Though very attractive arguments were made by the learned counsel for the petitioner before this Court, closure scrutiny of the entire case of the prosecution, which is presented before this Court in reply, we are of the view that the arguments advanced by the learned counsel for the petitioner needs to be rejected.

4. This case has a genesis of how parents are desperate to see that their progeny/child/ward is admitted in professional course like medicines and for that there can be allurements by the sharks which are having a free swing in the society and they always look for their prey and such parents are the easiest one.

5. An offence was registered with Police Station, Ajni, Nagpur by one Dr. Shilpa Suresh Dhekle, a Medical Practitioner at Pune. She was very much interested to see that her daughter is admitted in medical course. Since, the challenge in this writ petition

is only in respect of the order passed by respondent no.1 – Director General Of Police, Nagpur, dated 25.01.2022 granting sanction under Section 23(2) of the Maharashtra Control of Organized Crime (MCOC) Act, 1999, we will not comment on the merits and demerits of the first information report since it will cause prejudice not only to the accused persons, but also to the prosecution.

6. Suffice to say, the first informant and her husband were allured by the persons named in the first information report to part with Rs.41,00,000/- (Rupees Forty one lakhs only) with an assurance that her daughter will get admission in Government Medical College. The present petitioner is the Assistant Professor at a Government Medical College. The first information report describes him as “Sakhare Mama”. Incidentally the surname of the present petitioner is Sakhare. After registration of the crime, it appears that the petitioner was apprehending his arrest and therefore, he approached before the learned Judge of the trial Court by moving an application under Section 438 of the Code of Criminal Procedure. However, he was unsuccessful. Therefore, he approached to this Court by filing an application under Section 438 of the Code of Criminal Procedure.

It is registered as Criminal Application (ABA) No. 761/2021 and the Hon'ble Single Judge of this Court (Coram : Vinay Joshi, J.) on 02.11.2021 has protected the petitioner from his arrest. It is informed to the Court that as on today, ABA No. 761/2021 is awaiting its final verdict from the Court and the interim protection is in operation in favour of the petitioner.

7. In the meanwhile, a proposal was submitted by the authority from the Economic Offences Wing to the Competent Authority under the MCOC Act for seeking accord of sanction to invoke the provisions of the MCOC Act. The respondent no.1 authority by the impugned order has granted the sanction. The same is challenged before this Court.

8. The submission of the petitioner before this Court is that he is not the accused in any of the offences which are registered against the syndicate though the petitioner is shown as one of the members of the said syndicate. He submits that as on today two charge-sheets against the present petitioner are not filed and therefore, the sanction granted by the authority needs to be set aside.

The learned counsel for the petitioner has also invited our attention to the verdict given by the Hon'ble Apex Court in the case of ***Mahipal Singh .vs. Central Bureau of Investigation and another***, reported in ***(2014) 11 SCC 282*** and submitted that the case of the petitioner is completely covered by the said authoritative pronouncement of the Hon'ble Apex Court. Incidentally he has also relied upon the decisions of this Court, of which the copies are annexed along with the petition itself.

9. Per contra, Shri Ghodeswar, learned Additional Public Prosecutor for the respondents has invited our attention to the detailed reply filed on behalf of the respondents and also pointed out the authoritative pronouncement of the Hon'ble Apex Court in the case of ***Kavita Lankesh .vs. State of Karnatak and others***, reported in ***2021(4) CRIME (SC) 309***.

10. With the assistance of both the learned counsel for the parties, we have gone through the contents of these reported cases.

11. It would be useful to have a glance towards the

statements of facts which are made on affidavit by one Shri Nilesh Shriram Palve, Assistant Commissioner of Police, Sitabuldi Division, Nagpur, in which in paragraph 7 he has specifically pointed out the Court that during the course of investigation, the investigating agency has found various incriminating material against the present petitioner. As per the affidavit, the investigating agency has collected continuous WhatsApp chat that happened in between the petitioner and the gang leader of the syndicate, whose name appears in the impugned order i.e. Chandrashekhar Atram. The investigating agency has also procured the screen shots of WhatsApp chatting with the present petitioner which shows that he was calling with the syndicate leader Shri Chandrashekhar Atram. This particular material was before the sanctioning authority and the sanctioning authority therefore, was having advantage of going through the material collected during the course of the investigation to formulate the opinion as to whether the sanction is required to be granted or not.

12. The impugned order shows that the sanction is granted by the sanctioning authority for the offence punishable under

Sections 3(1)(ii), 3(2), 3(4), 4 of the MCOC Act. Precisely, this was before the Hon'ble Apex Court for consideration in *Kavita Lankesh's* case (supra). Paragraph 26 of *Kavita's* judgment deals with the said aspect and it would be useful to reproduce entire paragraph 26 from *Kavita's* judgment and it is reproduced herein as under :

*“26. 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. 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. This Court in *Prasad Shrikant Purohit* (supra at footnote no.10) in paragraphs 61 and 98 expounded that at the stage of taking cognizance, the competent Court takes cognizance of the offence and not the offender. This analogy applies even at the stage of grant of prior approval for invocation of provisions of the 2000 Act. The prior sanction under [Section 24\(2\)](#), however, may require enquiry into the specific role of the offender in the commission of organized crime,*

namely, he himself singly or jointly or as a member of the organized crime syndicate indulged in commission of the stated offences so as to attract the punishment provided under Section 3(1) of the 2000 Act. However, if the role of the offender is merely that of a facilitator or of an abettor as referred to in Section 3(2), 3(3), 3(4) or 3(5), the requirement of named person being involved in more than two chargesheets registered against him in the past is not relevant. Regardless of that, he can be proceeded under the 2000 Act, if the material collected by the Investigating Agency reveals that he had nexus with the accused who is a member of the organized crime syndicate or such nexus is related to the offence in the nature of organized crime. Thus, he need not be a person who had direct role in the commission of an organized crime as such.”

13. In view of the final word from the Hon’ble Apex Court in paragraph 26 in *Kavita’s* case (supra) in respect of the offence under Sections 3(1)(ii), 3(2), 3(4), 4 of the MCOC Act, we are of the view that the present petition is nothing but to see that the investigation is stalled and to create various hurdles in further investigation in very serious offence. At this stage, it would not be proper on the part of the Court to make any comment on the entire prosecution case inasmuch as free hand will have to be given to the Investigating Officer and the prosecuting agency to bring on record the other

victims also.

14. We are of the view that the purpose of the petition was to point out that there is no nexus in between the petitioner and crime syndicate. However, from the reply filed by the respondents and the material which available with the prosecuting agency as stated in paragraph 7 of the reply, we are of the view that at least at this stage there cannot be any doubt in anyone's mind that there is nexus of the present petitioner with the crime syndicate. Resultantly we pass the following order :

ORDER

The Criminal Writ Petition is dismissed.

Rule stands discharged.

(AMIT B. BORKAR J.)

(VM.DESHPANDE, J.)

Diwale