

THE STATE OF MAHARASHTRA

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v.

PANKAJ JAGSHI GANGAR

(Criminal Appeal No. 1493 Of 2021)

DECEMBER 03, 2021

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[M. R. SHAH AND SANJIV KHANNA, JJ.]

Penal Code, 1860 – ss.384,386,387 r/w. s.34 – Maharashtra Control of Organised Crime Act, 1999 – s.23(1)(a) and s.21(4) – Prosecution case that there was a organized crime by one international gangster and it was also found that from time to time, the respondent was paying the amount to such organized crime syndicate and other gangs which they used to use the said amount for taking help of other members by paying amount to them and it was also found that the respondent was running the Matka business – After investigation a charge sheet was submitted under the provisions of the IPC as well as under the Maharashtra Control of Organised Crime Act, 1999 (MCOCA) – The respondent-accused filed the bail application before the Special Judge, which was rejected – The Single Judge of the High Court was also not inclined to grant any relief to the respondent and the application was withdrawn – Thereafter, the accused filed writ petition before the Division Bench of the High Court and sought to strike down s. 23(1)(a) and s.21(4) of the MCOCA, as the said provisions were unconstitutional and violative of Arts.14 and 21 of the Constitution – The Division Bench of the High Court observed that the order passed by the Additional Commissioner of Police granting approval for invocation of the provisions of the MCOCA suffers from non application of mind and granted interim relief to the respondent by releasing the him on bail – On appeal, held: The High Court has not at all considered the seriousness of the offences alleged against the accused – After the investigation it was found that the respondent-accused is running the Matka business; is providing funds to a international gangster and his gangs; that the accused is arranging funds for the expenses of purchasing weapons, information and he is active member of organized crime syndicate – High Court has not considered the allegations with respect to other offences under

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- A *the IPC – High Court acquitted the accused for the offence under the MCOCA at the interim relief stage and granted the final relief at the interim stage exonerating the respondent from MCOCA, which is wholly impermissible – This can be said to be forum shopping by the accused which is highly deprecated and which cannot be approved – Therefore, the impugned order passed by the Division Bench of the High Court is quashed and set aside – Respondent-accused directed to surrender and face trial.*
- B *Allowing the appeal, the Court*

HELD: 1. At the outset, it is required to be noted that the

- C allegations against the respondent – accused are very serious in nature i.e. offences under Sections 384, 386, 387 read with Section 34 of the IPC. On considering the material on record the investigating agency has invoked the provisions of the Maharashtra Control of Organised Crime Act, 1999 (MCOCA).
- D After investigation a charge sheet has been filed against the accused for the offences under the IPC as well as under the MCOCA. By the impugned order, the Division Bench of the High Court has released the accused on bail that too by way of interim relief. As per the law laid down by this Court in the catena of decisions, the Division Bench ought not to have released the
- E accused on bail by way of interim relief [see the decision of this Court in the case of M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others (Criminal Appeal No.330 of 2021 decided on 13.04.2021)]. [Para 9][314-E-H]

2. It is required to be noted that while releasing the accused

- F on bail that too by way of interim relief the High Court has not at all considered the seriousness of the offences alleged against the accused. After the investigation it has been found that the respondent – accused is running the Matka business; is providing funds to a international gangster and his gangs; that the accused is arranging funds for the expenses of purchasing weapons, information and he is active member of organized crime syndicate. By the impugned order, the High Court has observed that the sanction to invoke the provisions of the MCOCA is bad in law as there is no evidence on record. Therefore, even the High Court
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has not at all considered the allegations with respect to other offences under the IPC. Even such an observation at the interim relief stage on the sanction to prosecute/invoke the provisions of MCOCA was not warranted. Virtually the High Court has acquitted the accused for the offence under the MCOCA at the interim relief stage and has granted the final relief at the interim stage exonerating the respondent from MCOCA, which is wholly impermissible. [Para 9.1][314-H; 315-A-C]

3. It is required to be noted that by the detailed judgment and order, the Special Judge/MCOCA refused to release the accused on bail. The accused challenged the same before the High Court. The bail application preferred by the accused was heard by the Single judge. Learned Single Judge was not inclined to release the accused on bail and therefore the accused withdrew the same and thereafter preferred the writ petition before the Division Bench of the High Court under the guise of challenging the vires of MCOCA and without noticing the above, the Division Bench of the High Court has released the accused on bail that too by way of interim relief, which otherwise the accused could not get before the learned Single Judge and he withdrew the bail application. The aforesaid can be said to be forum shopping by the accused which is highly deprecated and which cannot be approved. On this ground also, the accused is not entitled to be released on bail and the impugned order passed by the High Court releasing the accused on bail deserves to be quashed and set aside. [Para 9.2][315-D-F]

M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others (Criminal Appeal No.330 of 2021 decided on 13.04.2021)] – referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1493 of 2021.

From the Judgment and Order dated 29.01.2019 of the High Court of Judicature at Bombay in Criminal Writ Petition No.4639 of 2018.

Sachin Patil, Rahul Chitnis, Aaditya A. Pande, Geo Joseph, Advs. for the Appellant.

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- A Siddhartha Dave, Sr. Adv., Aditya Verma, Ms. Priyamvada Mishra, Aditya Singh, Advs. for the Respondent.

The Judgment of the Court was delivered by

M. R. SHAH, J.

- B 1. Feeling aggrieved and dissatisfied with the impugned order dated 29.01.2019 passed by the Division Bench of the High Court of Judicature at Bombay in Criminal Writ Petition No. 4639 of 2018 by which the Division Bench by way of an interim relief directed the respondent herein – accused be released on bail in Special MCOC No.24 of 2017 arising out of C.R. No.I-190 of 2017, registered with Kasarvadavli Police Station, C the State of Maharashtra has preferred the present appeal.

2. At the outset, it is required to be noted that the present is a glaring example of fourm shopping by the accused which cannot be approved at all. The facts speak for itself, which are as under:-

- D 2.1 That an FIR was registered as C.R. No.I-190 of 2017 for the offences under Sections 384, 386, 387 read with Section 34 of the IPC against three named accused persons namely Iqbal Ibrahim Kaskar, Israr Jamil Sayyed and Mumtaz Ejaj Shaikh @ Raju. The case on behalf of the prosecution has been elaborately dealt with and considered by the learned Special Judge (MCOC), Thane, in his order dated 26.03.2018,
- E passed below Exh. 15 in MCOC No.24 of 2017, by which the learned Special Judge rejected the application submitted by the respondent herein for bail and therefore the same is not repeated. However, it is to be noted that during the course of the investigation, it was found that there is organized crime by international gangster Shakil Babu Mohiddin Shaikh @ Chhota Shakil @ C.S. and Iqbal Ibrahim Kaskar @ Iqbal Hasan Shaikh Ibrahim and it was also found that from time to time, the respondent herein was paying the amount to such organized crime syndicate and other gangs which they used to use the said amount for taking help of other members by paying amount to them and it was also found that the respondent herein is running the Matka business in Borivali, Mumbai,
- F G after prior sanction the provisions of Maharashtra Control of Organised Crime Act (MCOCA) came to be applied. After investigation a charge sheet was submitted under the provisions of the IPC as well as under the MCOCA. The respondent herein – accused filed the bail application before the learned Special Judge. By a detailed and reasoned judgment and order and after considering the statements relied upon by the H

prosecution which are part of the charge sheet, the learned Special Judge A rejected the said bail application vide order dated 26.03.2018.

3. Feeling aggrieved and dissatisfied with the rejection of the bail application by the learned Special Judge, the respondent herein – accused approached the High Court by way of bail application No.855 of 2018. The same was heard by the learned Single Judge. From the order dated 13.07.2018 passed by the learned Single Judge, it appears and it cannot be disputed that after hearing the learned counsel appearing on behalf of the respondent herein - accused at length and when the High Court was not inclined to grant any relief, the learned counsel on instructions withdrew the said bail application. Therefore, the aforesaid bail application came to be dismissed as withdrawn by the learned Single Judge vide order dated 13.07.2018. Immediately on withdrawal of the aforesaid bail application the respondent – accused filed the writ petition before the Division Bench of the High Court and prayed for the following reliefs:-

“(a) Strike down Section 23(1)(a) of the MCOCA being absolutely arbitrary, unguided, uncalanized and thus, unconstitutional being violative of the Articles 14, 19 and 21 of the Constitution of India; or to save it from unconstitutionality to read down, expound, delineate the ambit & scope of the words ‘prior approval’ occurring in Section 23(1)(a) of MCOCA so as to ensure that the same is not rendered an empty formality dependent upon whims, fancies, prejudices and caprices of, the concerned officer;

(b) Strike down the provision of Section 21(4) of MCOCA and declare the twin conditions imposed for release on bail, as encapsulated therein, to be unconstitutional and violative of Article 14 and 21 of the Constitution of India;

(c) To quash and set aside the impugned prior approval Order dated 10.10.2017 (Exh-B supra) issued under impugned Section 23(1)(a) qua the petitioner, and consequently to quash the proceedings qua the Petitioner in Special MCOCA Case no.24 of 2017 under Section 384, 386, 387, 34 & 120 (b) of IPC and 3(1)(ii), 3(2), 3(4) and 3(5) of MCOCA, 1999 arising out of C.R. No. I/ 190 of 2017 (Exh-A supra) of Kasarvadavli Police Station, at Thane and Charge Sheet dated 29.11.2017 (Exh-F supra) insofar as the offences under Sec 3(1)(ii), 3(2), 3(4) and 3(5) of MCOCA have been invoked qua him;

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- A (d) To set the petitioner at liberty on such terms as deemed fit in the interest of justice;
- (e) At the interim/ad-interim stage, pending final disposal, of the instant Application, the Petitioner may please be released from custody in Special MCOCA Case No.24 of 2017, arising out of C.R. No.I-190/2017 registered with Kasarvadavli Police Station, Thane, on such interim bail, on suitable terms and conditions, as this Hon'ble Court deems fit and proper;"
- B 3.1 By the impugned order the High Court has directed to issue RULE in the writ petition challenging vires of Section 23(1)(a) of the MCOCA and on the prayer to strike down the provisions of Section 21(4) of the MCOCA and to declare the twin conditions imposed for release on bail to be unconstitutional and violative of Articles 14 and 21 of the Constitution of India. Therefore, as such the constitutionality of aforesaid two provisions is yet to be considered by the High Court in the pending writ petition. However, in writ petition challenging the vires of aforesaid two provisions, the High Court has also considered and dealt with on merits the sanction/approval by the Additional Commissioner of Police to invoke the provisions of MCOCA and though a detailed appreciation of evidence is not required at this stage, and as if the High Court was exercising the powers conferred under Section 482 Cr.PC
- C and/or considering the discharge application, the High Court has observed that the order passed by the Additional Commissioner of Police dated 10.10.2017 granting approval for invocation of the provisions of the MCOCA suffers from non application of mind.
- D Thereafter after holding so and while admitting writ petition challenging vires of aforesaid two provisions, the High Court has granted the interim relief by directing that the respondent herein – accused be released on bail in Special MCOC No.24 of 2017 arising out of C.R. No.I-190/2017. Thus, the High Court has as such granted the relief of bail which the respondent – accused could not get before the learned Single Judge in the bail application.
- E 4. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court releasing the respondent herein – accused on bail that too by way of interim relief, the State Government has preferred the present appeal.
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5. Learned counsel appearing on behalf of the appellant – State has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in releasing the respondent – accused on bail and that too by way of interim relief. A

5.1 It is submitted that while releasing the accused on bail, the High Court has not at all considered the gravity of the offences alleged. It is submitted that the High Court has also not properly appreciated and considered the fact that earlier by a detailed judgment and order the learned Special Judge/MCOCA Judge rejected the bail application and even thereafter the accused preferred the bail application before the High Court, which was heard by the learned Single Judge and after hearing the learned counsel appearing on behalf of the respective parties including the learned counsel appearing on behalf of the accused, as the learned Single Judge was not inclined to release the accused on bail, the accused withdrew the said bail application and thereafter filed a writ petition before the Division Bench of the High Court under the guise of challenging the vires of the provisions of MCOCA and prayed for interim relief which unfortunately has been granted by the Division Bench of the High Court. B

5.2 It is submitted that the High Court has not at all considered the fact that after the investigation a detailed charge sheet has been filed by the investigating agency against the accused. C

5.3 It is submitted that as such releasing the accused on bail by the Division Bench of the High Court by way of interim relief is unsustainable in law in view of the decision of this court in the case of **M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others** (Criminal Appeal No.330 of 2021 decided on 13.04.2021) D

5.4 It is submitted that as such by the impugned order the High Court has virtually acquitted the accused for the offences under the MCOCA and that too at the interim stage. It is submitted that at the interim stage, the High Court has set aside the approval/sanction given by the appropriate authority invoking the MCOCA, which is inopportune and untimely. E

5.5 It is submitted that as such there was sufficient material on record collected by the investigating agency, which was part of the charge sheet that the respondent – accused arranges funds for the expenses of F

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- A purchasing weapons, information and he is active member of the organized crime syndicate.
 - 6. Making the above submissions, it is prayed to allow the present appeal.
- B The present appeal is opposed by Shri Siddhartha Dave, learned Senior Advocate appearing on behalf of the respondent – accused.
 - 7.1 It is submitted that in the facts and circumstances of the case and on considering the material available on record, the High Court has rightly held that the sanction to prosecute the accused under the MCOCA is bad in law. It is submitted that the High Court has specifically observed
 - C that there is no tangible material to invoke the provisions of the MCOCA. It is submitted that therefore the High Court has rightly released the accused on bail.
 - 7.2 It is submitted that the respondent has been released on bail by the High Court in the year 2019 and more than two years have passed
 - D and there are no allegations that the accused has misused the liberty while granting bail to him. Therefore, it is requested not to cancel the bail granted by the High Court, in exercise of powers under Article 136 of the Constitution of India.
- E We have heard the learned counsel appearing on behalf of the respective parties at length.
- F At the outset, it is required to be noted that the allegations against the respondent – accused are very serious in nature i.e. offences under Sections 384, 386, 387 read with Section 34 of the IPC. On considering the material on record the investigating agency has invoked
 - G the provisions of the MCOCA. After investigation a charge sheet has been filed against the accused for the offences under the IPC as well as under the MCOCA. By the impugned order, the Division Bench of the High Court has released the accused on bail that too by way of interim relief. As per the law laid down by this Court in the catena of decisions,
 - H the Division Bench ought not to have released the accused on bail by way of interim relief [see the decision of this Court in the case of **M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others** (Criminal Appeal No.330 of 2021 decided on 13.04.2021)]
- H 9.1 It is required to be noted that while releasing the accused on bail that too by way of interim relief the High Court has not at all

considered the seriousness of the offences alleged against the accused. After the investigation it has been found that the respondent – accused is running the Matka business; is providing funds to the Chhota Shakil and his gangs; that the accused is arranging funds for the expenses of purchasing weapons, information and he is active member of organized crime syndicate. By the impugned order, the High Court has observed that the sanction to invoke the provisions of the MCOCA is bad in law as there is no evidence on record. Therefore, even the High Court has not at all considered the allegations with respect to other offences under the IPC. Even such an observation at the interim relief stage on the sanction to prosecute/invoke the provisions of MCOCA was not warranted. Virtually the High Court has acquitted the accused for the offence under the MCOCA at the interim relief stage and has granted the final relief at the interim stage exonerating the respondent from MCOCA, which is wholly impermissible.

9.2 It is required to be noted that by the detailed judgment and order, the learned Special Judge/MCOCA refused to release the accused on bail. The accused challenged the same before the High Court. The bail application preferred by the accused was heard by the learned Single judge. Learned Single Judge was not inclined to release the accused on bail and therefore the accused withdrew the same and thereafter preferred the writ petition before the Division Bench of the High Court under the guise of challenging the vires of MCOCA and without noticing the above, the Division Bench of the High Court has released the accused on bail that too by way of interim relief, which otherwise the accused could not get before the learned Single Judge and he withdrew the bail application. The aforesaid can be said to be forum shopping by the accused which is highly deprecated and which cannot be approved. On this ground also, the accused is not entitled to be released on bail and the impugned order passed by the High Court releasing the accused on bail deserves to be quashed and set aside.

10. Now so far as the submissions on behalf of the accused that as the accused is released in the year 2019 pursuant to the impugned order passed by the High Court and thereafter he has not misused the liberty shown to him while releasing him on bail therefore the impugned order may not be quashed and the bail may not be cancelled is concerned, it is required to be noted that as per the law laid down by this Court in the catena of decisions quashing and setting aside the wrong order releasing

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- A the accused on bail and to cancel the bail of the accused on misuse of liberty etc., both stand on different footing and the different criteria shall be applicable. It is not a question of cancellation of bail but it is a question of quashing and setting aside the wrong order passed by the court releasing the accused on bail.
- B 11. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned order dated 29.01.2019 passed by the Division Bench of the High Court in Criminal Writ Petition No.4639 of 2018 releasing the respondent – accused on bail in connection with Special MCOC No.24 of 2017 arising out of C.R. No. I-190 of 2017 registered with Kasarvadavli Police, is hereby quashed and set aside.
- C Consequently the respondent – accused is directed to surrender forthwith and to face the trial. If the respondent does not surrender forthwith, his presence be secured by the concerned Court by issuing non-bailable warrant. The present appeal is accordingly allowed.

Ankit Gyan

Appeal allowed.