CNR No. MHLA010035842022

ORDER BELOW EXH. 83 IN SPL.C.(MCOCA) No. 84/2022.
(State Vs. Narayan & ors.)

1. The accused No.11 Ajeetsingh Gaherwar has filed this application under Section 227 of the Criminal Procedure for discharge.

2. Read application and the reply filed by learned P.P. vide Exh. 166. Heard learned counsel for accused No.11 and learned P.P. at length. Perused the record of the case.

3. The Ld. counsel for accused No.11 has submitted that initially crime No.97/2022 was registered at Chakur police station for offences punishable under section 302, 201 r/w.34 of I.P.C. Thereafter, police arrested accused No.1 Narayan Irbatanwad, but lateron he fled away from police custody. Therefore, another crime under section 224 of I.P.C. came to be registered against accused No.1 vide Crime No.99/2022. Lateron, as per the sanction accorded by Deputy Inspector General of Police Nanded Range, Nanded the provisions of Section 3(1)(i), 3(2), 3(3) & 3(4) of the MCOC Act are invoked. The accused No.11 has been implicated in this case only on the basis of the statement of accused No.1, that during the period he fled away accused No.11 provided assistance to accused No.1 and accused No.11 has been implicated for offence under section 212 and 216 of I.P.C. in Crime No.97/2022 instead of Crime No.99/2022. It is submitted that the accused No.11 has not committed any crime. There is no prima facie case made out against accused No.11 in the entire charge-sheet. There is no prima facie evidence to connect him with the alleged offence and to show that he is the member of

organised crime syndicate. There is no any offence registered against accused No.11 prior to the registration of this FIR either in individual capacity or with co-accused. There is nothing on record to connect accused No.11 with crime under section 302 of I.P.C. or under MCOC Act. The offence under section 212 and 216 of I.P.C. is triable by J.M.F.C. Police have recorded the statement of one Venkat Shankarrao Shivane, the peon of Master Dinanath Mangeshkar College, Aurad Shahajani. This witness is not a natural witness, he could be one of the accused. There is no specific date as to when accused No.1 had been to accused No.11 and when the witness has provided services as per directions of accused No.1, therefore this witness is not trustworthy and his statement is not admissible. The I.O. has recorded false supplementary statements of witnesses dated 04.04.2022 mentioning the name of accused No.11. The accused No.11 is not the member of organised crime syndicate and continuing unlawful activities. Therefore, the offence under section Section 3(1)(i), 3(2), 3(3) & 3(4) of the MCOC Act are not attracted. There is absolutely no evidence against accused No.11, therefore, accused No.11 is entitled for discharge.

4. In support of his contention he placed reliance on the decision in – **The State of Maharashtra Vs. Rahul Ramchandra Taru, AIR 2011(6) Bom. R. 177**, wherein it is observed that allegations in charge-sheets that offence was committed either singly or jointly as member of organised crime syndicate or on behalf of such syndicate is sine qua non for invoking stringent provisions of the Act. Mere filing of more than one charge-sheet within preceding period of 10 years alleging commission of cognizable offence punishable with imprisonment of three or more years, not sufficient. Reliance is also placed on the decision in **State of Maharashtra Vs. Dr. Shyamsundar**

Eknathrao Sangale, Cri. Revision Application No.226 of 2013 dated 10.12.2013, wherein it is observed that the case against the applicant was based only on the confessions made by the co-accused before the police and while they were in police custody. It is not in dispute that except such confessional statement there was nothing to connect the applicant with the alleged offence. Therefore, the order of discharge is in accordance with law.

5. Per contra, learned P.P. has submitted that the application filed by accused No.11 for discharge is not maintainable. There is ample evidence against accused No.11 to frame the charges against him. For deciding the application for discharge the roving inquiry into pros and cons and the weight of evidence as of a trial is not necessary. The evidence collected by the investigating officer prima facie discloses the involvement of accused No.11 in the offence. The accused No.11 during period of abscondance of accused No.1 who is a gang leader and main culprit of the offence helped him by providing car and motorcycle and giving him shelter. At the time of purchasing land of accused No.1 he was present. The accused No.11 knowing that the accused No.1 has fled away from the custody of police he has helped him by providing shelter and facilitated him to commit the offence. The offence under section 120-B and section 34 of I.P.C. is also attracted against the accused. There is prima facie evidence in respect of offence under section 212 and 216 r/w.34 of I.P.C. There is confessional statement of accused No.3 Sudhir Rapatwar and No.9 Ramesh Bhalerao. There are more than six charge-sheets filed against accused No.1. The offences were committed in order to grab the property. There is prima facie evidence against accused No.11. There are no grounds to discharge the accused No.11. Therefore, learned P.P. prayed for rejection of the application.

6. In support of his contention he placed reliance on the decision in **Govind Sakharam Ubhe Vs. State of Maharashtra, 2009 ALL MR (Cri) 1903**, wherein the Hon'ble Bombay High Court has observed as under -

> "At the stage of Section 227 of the Code, the court has power to sift the materials collected by the prosecution to find out whether there is prima facie case against the accused or not. It has to be satisfied that there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him. The Court's inquiry must not be directed to find out whether the case will end in conviction. Though roving inquiry is not permissible, the court can consider whether the material collected by the prosecution if accepted as it is without being subjected to cross-examination gives rise to strong and grave suspicion for presuming that the accused has committed the offence and that unrebutted material will lead to a conviction. If at the stage of Section 227 or 228, the scales as to the guilt or innocence of the accused are even then the court must proceed to frame a charge. There is no question of giving benefit of doubt to the accused and discharge the accused at that stage because the scales are even. That can be done only at the conclusion of trial. If there is a strong suspicion which leads the court to think that there is a ground for presuming that the accused has committed an offence, then the court will proceed to frame the charge. But if two views are possible and the court is satisfied that the evidence gives rise to some suspicion but not grave suspicion against the accused, the court will be within its right to discharge the accused. Suspicion has to be strong and grave suspicion leading the court to presume that the accused has committed an offence. While basic infirmities and broad probabilities can be considered, the court cannot make a roving inquiry into the pros and cons of the matter and weigh the evidence as if it is conducting a trial. Probative value of the material cannot be gone into at that stage."

7. In the light of the rival submissions of the both counsels I have gone through the record of the case. Considering the police papers it shows that on the basis of the report lodged by one

Manmanth Abande, A.D. No.22/2022 was registered under Sec. 174 of Cr.P.C. On 19.03.2022 a dead body of unknown person was found in Chapoli Shivar, Gat No. 211 where quarrying work was done. There were injuries on the body by sharp edged weapons. In the course of inquiry, it was revealed that some unknown persons had assaulted the said person by means of edged weapons on his head, face, neck and back and committed his murder. Therefore, P.S.I. Tukaram Phad, attached to Chakur Police Station, lodged FIR of the incident. On 20.03.2022 Chakur Police registered Cr. No. 97/2022 for offence under Sec.302 of I.P.C. against unknown persons. Police tried to find out the identity of the dead person. They found that the son of Shivsamb Davangave, R/o Shirur-Tajband namely Sachin @ Lalya was missing since 18.03.2022. After getting information police called Shivsamb Davangave to police station and he identified the dead body and the articles and clothes was of his son Sachin @ Lalya. Shivsamb Davangave suspected that the accused No.1 Narayan due to landed dispute by doing conspiracy with other accused committed the murder of his son. The accused No. 1 Narayan was absconding. Police find out the mobile location of accused No.1 at Sangareddy, Hyderabad. Police went there and arrested him and he was kept in police station, but he fled away from police custody. Therefore, Cr. No. 98/2022 is registered against him under Sec. 224 of I.P.C. Police arrested the other accused.

8. According to the prosecution, the accused No. 1 Narayan is the main culprit and gang leader and he used to commit organised crimes in Latur and Nanded District with the help of different members. He had dispute with the father of deceased Sachin in respect of a plot and Civil dispute is pending amongst them. Therefore, he gave contract (Supari) to accused No. 2 & 3 and the

JCL to kill deceased Sachin in consideration of facilitating to open a Dhaba on the disputed land and giving Rs. 1,00,000/- to them. According to the prosecution, the accused No. 8 Dhanaji i.e. his brother and his son accused No. 10 Markandey used to look after his financial affairs. A meeting in respect of the conspiracy was held on 12.03.2022 in Godavari Bar in order to execute the contract between accused No. 1, 7, 8 and 10. The accused No. 2, 3 and the JCL after playing Dhulwad with the deceased on 18.03.2022 took the deceased to Chapoli Shivar by their motorcycle. The JCL, accused No. 3 Sudhir and Accused No. 4 Amol went to bring weapons and the JCL and accused No.3 brought the sickle and knife. They took the deceased at the quarrying work under pretext of giving meal and thereafter accused No. 3 Sudhir assaulted Sachin from his back side by means of sickle on his chest. The JCL assaulted him by means of knife on his neck and face. Then accused No. 2 took the knife and assaulted him on his head, cheek and nose. The accused No. 3 assaulted him by means of stones. After the incident, they went away by motorcycle. While going the motorcycle was punctured, therefore they made call to accused No. 4 Amol and informed him that the work is done and called him with his motorcycle. Amol Kadam came by motorcycle alongwith accused No. 9 Ramesh. They gave their motorcycle to them and taken the punctured motorcycle. Thereafter, they took bath in a lake with their clothes. Thereafter, they made phone call to accused No.5. The accused No.3 transferred Rs. 200/- to accused No. 4 and asked him to fill petrol in the motorcycle. Thereafter, they buried the sickle and knife used for commission of murder and concealed the weapons. The accused No. 3 made phone call to accused No. 1 and informed him that the work is done and asked him to transfer money. Thereafter, accused No. 1 transferred Rs. 5,000/- in the account of accused No. 3 Sudhir by online transfer. Thereafter accused No. 3

transferred Rs. 2,000/- in the account of accused No. 4 Amol and asked him to purchase new clothes for them. The accused Amol Kadam and Ramesh Bhalerao purchased T Shirt, night pant, underwear and gave to accused No. 2, 3 and the JCL. The accused No. 4 transferred Rs. 1,350/- in the account of Laxmikant Rathi for purchasing the clothes and Rs. 150/- in the account of witness Ashraf Momin for repairing the motorcycle. Thereafter, they destroyed their wearing clothes, belt, shoes, chappal by pouring petrol and setting on fire and destroyed the evidence. The accused No. 3 has transferred Rs. 900/- in the account of witness Balaji Kamble for purchasing new chappal and foot wears.

9. The P.M. Report shows that the Medical Officer has noted 9 injuries on the person of the deceased and the cause of death is due to hemorrhagic shock due to excessive hemorrhage due to multiple injuries.

10. According to prosecution as per the disclosure statement of accused No.2 and 3, the sickle and knife used in the offence has been recovered under Sec. 27 of the Evidence Act, and the places of offence are detected. As per the disclosure statement of accused No. 4, the Bajaj Discover Motorcycle has been seized.

11. According to prosecution the confessional statement of accused No. 3 Sudhir and accused No. 9 Ramesh Bhalerao has been recorded under Sec. 18 of the MCOC Act before S.P. Parbhani, wherein, they have stated that the offence has been committed as per the contract given by accused No. 1 for consideration of providing Dhaba and Rs. 1,00,000/- and accordingly accused No. 2, 3 and JCL assaulted Sachin by means of knife, sickle and stones and thereafter they destroyed their clothes and concealed the weapons. There is

evidence in the form of CC TV footage to show that the deceased was last seen together with accused No. 2,3 and JCL. There is evidence in the form of online money transfer and disclosure statement of the accused in respect of the places where the offence has been committed and where the conspiracy was heLd.

12. According to the prosecution the accused No. 1 is running a gang of Origanised Crime Syndicate in Latur and Nanded District with the help of different members and he used to commit serious offences for economic gain with the help of the members of Organised Crime Syndicate. He was absconding. Police tried to trace out him in various places at Maharashtra, M.P., U.P., Rajsthan, Delhi, Chandigad, Uttaranchal, Haryana etc. On 01.06.2022 in the night the accused No. 1 had come to meet his wife. When, P.I. Balaji Mohite went to chess him, the accused No. 1 assaulted him and therefore, he made fire in self defence and thereby he sustained injury and Cr. No. 305/2022 came to be registered against accused No. 1 under Sec. 307 of I.P.C. Thereafter, as per the sanction accorded by I.G. Nanded, the offence under Sec. 3(1)(i), 3(2), 3(3) and 3(4) of MCOC Act has been registered against all the accused.

13. According to prosecution the accused No.11 was well conversant with the main accused No.1 Narayan Irbatanwad. When the accused No.1 was absconding the accused No.11 had helped him and provided assistance and residence in his college and also provided a car and motorcycle to facilitate him to fled away. In the course of investigation the I.O. has recorded the statement of witness Venkat Shivane the peon of Master Dinanath Mangeshkar College, Aurad Shahajani, who has stated that the accused No.1 used to visit accused No.11 frequently and accused No.11 had introduced him with accused No.1 and directed him to make arrangement of his

residence and meal. On 18.05.2022 the accused No.1 had came to meet accused No.11 in the college and he had stayed two days in the college. At that time the accused No.1 had disclosed that a crime of murder has been registered against him and he has run away from the custody of police. The accused No.11 had directed him not to disclose the said fact to anybody and to make arrangement of his residence and meal by giving Rs.500/-. The witness has further stated that on 3rd day the accused No.11 gave the key of his car for facilitating him to fled away at Bhalki (Karnataka) and also provided a motorcycle. In the course of investigation police have seized the car and motorcycle of accused No.11. The statement of witness Venkat Shinde has been recorded under Section 164 of Cr.P.C. and he has narrated the same fact.

14. It shows that Crime No.102/2023 has been registered against accused No.1 at Mukhed police station Nanded for offence under section 324, 141, 143, 147, 148, 149, 504, 506 and Section 4/25 of the Indian Arms Act and charge-sheet was submitted vide RCC No.203/2013. Crime No.3008/2014 has been registered against accused No.1 at Gandhi Chowk police station for offence under section 20(B)(1) of the NDPS Act and charge-sheet was submitted vide Spl.Case No.03/2014. Crime No.134/2019 has been registered against accused No.1 and another at Ahmedpur police station Dist.Latur for offence under section 302, 120-B of I.P.C. and S.C.No.58/2019 is pending against him. All the charge-sheets are submitted before registration of Crime No.97/2022. After registration of Crime No.97/2022, Crime No.99/2022 has been registered at Chakur police Station for offence under Section 224 of I.P.C. and Crime No.305/2022 has been registered at MIDC police station, Latur under section 307, 353, 332 and 506 of I.P.C.

15. It is submitted that no any crime has been registered against the accused No.11 before registration of Crime No.97/2022. Therefore, the provisions of Section 3(1)(i), 3(2), 3(3) & 3(4) of MCOC Act are not attracted. The Hon'ble Bombay High Court in the case of **Govind Sakharam Ubhe** (Cited supra) in para No.37 observed thus,

> "….. 2(1)(d) which defines `continuing unlawful activity' sets down a period of 10 years within which more than one charge-sheet have to be filed. The members of the crime syndicate operate either singly or jointly in commission of organized crime. They operate in different modules. A person may be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situations, the MCOCA can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOCA. This is evident from section 3(4) of the MCOCA which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum of fine of Rs.5 lakhs. The charge under the MCOCA ropes in a person who as a member of the organized crime syndicate commits organized crime i.e. acts of extortion by giving threats, etc. to gain economic advantage or supremacy, as a member of the crime syndicate singly or jointly. Charge is in respect of unlawful activities of the organized crime syndicate. <u>Therefore, if within a period of preceding ten years, one charge-sheet has been filed in respect of organized crime committed by the members of a particular crime syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOCA against him even if he is involved in one case.</u> The organized crime committed by him will be a part of the continuing unlawful activity of the organized crime syndicate. What is important is the nexus or the link of the person with organized crime syndicate. The link with the `organized crime syndicate' is the crux of the term `continuing unlawful activity'. If this link is not established, that person cannot be roped in…."

16. The Hon'ble Apex Court in **Zakir Abdul Mirajkar Vs. The State of Maharashtra & Ors., 2022 ALL MR (Cri) 3798 SC.,** relying on the decision in **Govind Sakharam Ubhe** (Cited supra) observed that, the appellants have argued that in preceding 10 years, more than one charge-sheet has not been filed in respect of each of them. This submission does not hold water. It is settled law that more than one charge-sheet is required to be filed in respect of the organized crime syndicate and not in respect of each person who is alleged to be a member of such a syndicate.

17. Considering the ratio laid down by the Hon'ble High Court Bombay and the Hon'ble Apex Court it is well settled that more than one charge-sheet is required to be filed in respect of the organized crime syndicate and not in respect of each person who is alleged to be member of such syndicate. From the statements of witness Venkat Shivane prima facie it shows that the accused No.11 had harboured the main accused No.1 and provided residence in his college, provided meal and also provided car and motorcycle to facilitate him to flee away. According to prosecution accused No.11 was present at the time of purchase of the property of accused No.1. The vehicles provided by accused No.11 to accused No.1 are seized. As per the definition of word 'abet' in Section 1(a)(iii) of the MCOC Act, the rendering of any assistance, whether financial or otherwise to the organized crime syndicate includes the abatement of the commission of offence under MCOC Act. As per the provisions of Section 3(3) of the MCOC Act, whoever harbours or conceals or attempts to harbour or conceal, any member of an organized crime syndicate shall be punishable with imprisonment for a term which shall not be less than 5 years but which may extent to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of Rs.5 lakhs.

18. The material produced on record creates a grave suspicion leading to presume that the accused No.11 is involved in harbouring and concealing the main accused who is involved in continuing unlawful activities. The accused No.11 prima facie appears to have abated the unlawful activity of accused No.1. While deciding the application for discharge the court has not to examine whether the case will end in conviction or not. The roving inquiry is not permissible while deciding the application for discharge. If there is strong suspicion which leads the court to think that there is a ground for presuming that the accused has committed an offence, then the court will proceed to frame the charge. The question whether the accused No.11 has in fact abated the organized crime and whether the offences under MCOC Act attracts against him is to be determined at the stage of the trial. Considering the record of the case, it shows that there are no strong and substantial grounds to discharge the accused No.11. It cannot be said that there are no sufficient grounds for proceeding against accused No.11. Therefore, the application filed by accused No.11 deserves to be rejected. Hence the following order.

ORDER

Application is rejected.

(P. & D. in the open Court).

Digitally signed by RAJU BANDU ROTE
Date: 2024.08.16 18:11:02 +0530

(R. B. Rote)

Date: 12.08.2024

Additional Sessions Judge, and
Special Court, Latur.

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER".

(H. R. Shinde)
Stenographer (Grade-1)
NAME OF STENOGRAPHER

Name of the Judge (With Court Room No.)	:	Shri R. B. Rote, Additional Sessions Judge, Latur
Date for pronouncement of Judgment/Order	:	12.08.2024
Judgment/Order signed by P.O. on	:	12.08.2024