

**IN THE COURT OF
PRINCIPAL DISTRICT & SESSIONS JUDGE
AHMEDABAD (RURAL) @ AHMEDABAD.**

GUJCTOC NO. 1 OF 2024

State of Gujarat

.....Complainant

VERSUS

Dipakbhai Laxmanbhai Asoda

....Applicant/Accused

Sub: Application seeking discharge from the offence.

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Appearance:

Mr. M.M. Soni Ld. Advocate for the Applicant/accused

Mr. B.N. Limbachiya, Learned Spl.PP for Opponent-State.

ORDER BELOW DISCHARGE APPLICATION EXH.11

1. The applicant/accused has preferred this application U/s 227 of Cr.P.C. seeking discharge in connection with offence registered vide FIR CR No.11188003210362 of 2021 registered with Bhiloda Police Station, District District: Aravalli for the offence u/s 3(1)(i), 3(1)(ii), 3(2), 3(3), 3(4), 3(5) & 4 of Gujarat Control of Terrorism and Organized Crime Act, 2015 (in short "GujCTOC Act").
2. Ld. Advocate Mr.M.M. Soni on behalf of the applicant – accused Dipakbhai Laxmanbhai Asoda submits that the

applicant/accused is charge sheeted for the offences u/s 3(1)(i), 3(1)(ii), 3(2), 3(3), 3(4), 3(5) & 4 of GujCTOC Act. It is submitted that applicant is not a part or member of the organized crime syndicate. All the offences against the applicant are in respect of Prohibition Act wherein in not a single offence applicant was found in conscious possession and whatever offences shown against the applicant/accused is only on basis of statement of the co-accused, the police has arraigned him as accused on the basis of the statement of co-accused. As per the prosecution total 8 offences are registered against the applicant in which 3 offences are committed with main accused. It is submitted that there is no continuing unlawful activity with regard to the applicant/accused as there is no connection of the first offence alleged to have been committed by the applicant and last offence alleged to have been committed by the syndicate. In many of the offences applicant/accused is acquitted and therefore, those cases cannot be counted as continuing unlawful activity. The offence registered in the past cannot be considered for registering offence under GujCTOC Act. The police has malafidely registered two offences in a single day which reveals attempt of prosecuting agency to book the applicant/accused in any manner. It is submitted that basic ingredients of the offences are not attracted as

applicant is not member of the crime syndicate, nor he has committed any offence resulted into death of a person or any offence which is punishable for not less than 5 year. He has not conspired, abetted or facilitated act of terrorism nor has harbored the accused who has committed such offence. The applicant does not hold any property derived from commission of such offence or through organized crime syndicate funds. The FIR against the applicant is abuse of due process of law. Reliance is placed by Ld. Advocate for the applicant on the following decisions and submitted that if it appears to the Court that prosecution case would result into acquittal after trial then Court should exercise its discretion for discharge. It is accordingly, urged to discharge the applicant/accused from the offence.

1. **2018(0) AIJEL HC 240087, Premalbhai Sanjaybhai Patel vs State of Gujarat.**
2. **2017(0) AIJEL HC 238504, Shivshankar Dudhnath Upadhyay vs State of Gujarat.**
3. **2017(0) AIJEL HC 238554, Balwantsinh Khengali Jadeja vs VB Rathod.**

3. Ld Spl. Public Prosecutor Mr. B.N. Limbachiya has opposed the discharge application. It is stated that applicant is charged for the offences u/s 3(1)(i), 3(1)(ii), 3(2), 3(3), 3(4), 3(5) & 4 of GujCTOC Act. As per the prosecution case the accused persons from 2013 to 2021 through their organized crime syndicate have indulged into various

offences of attempt to murder, attempt to murder, loot, rioting, abduction, prohibition Act, criminal intimidation, etc. in the district of Aravalli and Gandhinagar area. The main accused of the syndicate is Bhanwarlal @ Suko @ Huko @ Mahara s/o Babubhai Dund and applicant is member of the syndicate and is co-accused. 15 offences of Prohibition Act are registered against the syndicate between 2013 to 2021 out of which 4 offences are committed with main accused Bhanwarlal @ Suko. Out of 15 offences 12 offences are prior to promulgation of GujCTOC Act and 3 offences are registered after promulgation of the Act i.e. after 1/12/2019. Relying upon the decision in the case of **Zakir Abdul Mirajkar vs State of Maharashtra, 2022 SCC Online SC 1092** it is contended that more than one chargesheet is not required to be filed with respect to each accused person but more than one chargesheet is required to be filed against syndicate and considering the provisions of GujCTOC Act, the offence of GujCOTC is attracted against the applicant/accused and there is sufficient evidence to proceed for trial against the present applicant/accused. It is further submitted that whether the applicant continued his unlawful activity or not would be a subject matter of trial. So far as the evidence collected in the charge-sheet is concerned, the same are sufficient to put the accused for trial. He has placed reliance

on the affidavit of I.O. (Exh.19), chargesheet & case papers and has urged the court to reject the discharge application.

4. Heard Ld. Advocate for the applicant/accused and Ld. Spl. P.P on behalf of the prosecution. The Court has gone through the discharge application, chargesheet & case papers and affidavit of the I.O. To decide the discharge application it would be relevant to refer the provision and case law which are pertinent to decide discharge application. It would be relevant to quote Section 227 of Cr.PC for the ready reference.

"227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

5. It would also relevant to consider the principles laid down by the Hon'ble Apex Court in the matter titled as **Union of India Vs. Prafulla Kumar Samal & Ors 1979 (3) SCC 4** wherein, the Hon'ble Apex Court had elaborately discussed the scope of Section 227 Cr.PC in para 7 and have summed up the principles while considering discharge application in para 10 as under:

"7. Section 227 of the Code runs thus:

"If, upon consideration of the record of the case and the documents

submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing." The words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

6. As per the prosecution case, the applicant - accused Dipakbhai Laxmanbhai Asoda is chargesheeted for the offences u/s 3(1)(i), 3(1)(ii), 3(2), 3(3), 3(4), 3(5) & 4 of GujCTOC Act registered as FIR/CR

No.11188003210362 of 2021 with Bhiloda Police Station, District District. It is contended that there has been no continuous unlawful activity by the applicant and prohibition offences are not to be considered to invoke offence under GujCTOC Act.

7. At this juncture, it would be relevant to refer some of the provisions which would have bearing on the point of decision which are as under:

*“It would be appropriate to refer to sections **2(1) (a), 2 (1) (c), 2 (1) (e) and 2 (1) (f) of the GUJCTOC Act, which are as under:***

- (i) *“Sec.2. (1) In this Act, unless the context otherwise requires,*
- (a) *“abet” with its grammatical variations and cognate expressions includes-*
- (i) *the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner an organised crime syndicate;*
- (ii) *the passing on or publication of without any lawful authority, any Information likely to assist the organised crime syndicate and the passing on or publication of or distribution of, any document or matter obtained from the organised crime syndicate; and*
- (iii) *the rendering of any assistance, whether financial or otherwise, to the organised crime syndicate for committing an offence under this Act;*
- (ii) **2 (1) (c) “continuing unlawful activity” means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment for a term 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;**

The ingredients of a '**continuing unlawful activity**' are as follows:

- a. The activity must be prohibited by law for the time being in force;
- b. The activity must be a cognizable act punishable with imprisonment of three years or more;
- c. The activity may be undertaken either singly or jointly as a member of an organized crime syndicate or on behalf of such a syndicate;
- d. More than one charge-sheet should have been filed in respect of the activity before a competent court within the preceeding period of ten years; and
- e. The Court should have taken cognizance of the offence.

(iii) 2(1)(e) "organised crime" means any continuing unlawful activity and terrorist act including extortion, land grabbing, contract killing, economic offences, cyber crimes having severe consequences, running large scale gambling rackets, human trafficking racket for Prostitution or ransom 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;

The ingredients of 'organized crime' are as under:

- a. The existence of a continuing unlawful activity;
- b. Engagement in the above activity by an individual;
- c. The individual may be acting singly or jointly either as a member of an organized crime syndicate or on behalf of such a syndicate;
- d. The use of violence or its threat or intimidation or coercion or other unlawful means; and
- e. The object being to gain pecuniary benefits or undue economic or other advantage either for the person undertaking the activity or any other person or for promoting insurgency.

(iv) 2(1)(f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulging in activities of organised crime;

The elements of the definition of 'organized crime syndicate' are as follows:

- a. A group of two or more persons;
- b. Who act singly or collectively, as a syndicate or gang;
and
- c. Indulge in activities of organized crime.

Further, it is appropriate to refer to the provisions of the GUJCTOC Act, which read as follows:

3. (1) *Whoever commits an offence of organised crime shall,—*
 - (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 lakh;*
 - (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 lakhs.*
- (2) *Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or 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 lakhs.*
- (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 lakhs.”*

8. On perusal of the provisions of the GCTOC Act, the prosecution has to show that the accused is member of syndicate or a gang and individual charge sheet is not necessary and charge sheet or offences against syndicate must have been registered. As per the charge sheet

papers the applicant – accused along with other co-accused persons is member of organized crime syndicate operating in Aravalli, Sabarkantha, Ahmedabad City and Gandhinagar District. As per the prosecution case accused persons including the present applicant are part of crime syndicate, indulged in offence like scuffle, criminal intimidation, murder, attempt to murder, rioting, kidnapping, loot, prohibition offences, etc. There are statements of witnesses recorded during the investigation of this offence wherein, they have stated that the present applicant-accused was also part of syndicate who are indulged in committing various nature of offences. Contention is taken on behalf of the applicant that prohibition offences are not to be covered/considered for invoking GujCTOC offence and there is no continuing unlawful activity.

8.1 Definition of “***continuing unlawful activity***” is given in **Sec.2 (1) (c) of the Act. As per the definition** an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment **for a term 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. It reveals during investigation that 15 offences are registered against the crime syndicate, which includes 12 offences are prior to promulgation of GujCTOC Act and 3 offences after promulgation of the Act. 1 offence before promulgation of the Act and 2 offences after promulgation of the Act have been committed by the applicant/accused with the main accused Bhanwarlal @ Suko @ Huko @ Maharaj Babubhai Dund of the syndicate wherein cognizance has been taken by the competent Court.

9. The Hon'ble High Court of Gujarat in the case of **Rameshbhai Vallabhbai Abhangi vs. State of Gujarat R/Criminal Misc. Application (For Quashing & Set Aside FIR/Order) No. 2049 of 2021 With Criminal Misc. Application (For Stay) No. 1 of 2021 in R/Criminal Misc. Application No. 2049 of 2021 dated 02/08/2024** has held in Para 11.2 and 11.3 as under:

"[11.2] The Hon'ble Apex Court in the case of Zakir Abdul Mirajkar (supra), on the same issue has answered by elaborately discussing and considering the decisions in the case of Kavitha Lankesh (supra); State of Maharashtra & Ors. vs. Lalit Somdatta Nagpal & Anr. reported in (2007) 4 SCC 171 and Govind Sakharam Ubhe vs. State of Maharashtra and has been pleased to hold in paragraph Nos.76 and 77(c) as under:

"76. The appellants argued that gambling is punishable with a maximum sentence of 2 years and does not, therefore, fall within the scope of

MCOCA (which requires the commission of a crime punishable with imprisonment of 3 years or more). However, not all the offences punishable under MCOCA have this requirement. The appellants have been charged under the following provisions of MCOCA:

a. Section 3(1) i.e., the offence of committing organized crime requires the accused to have committed a cognizable offence which is punishable with imprisonment of three years or more.

b. One part of Section 3(2) also contains a similar requirement to Section 3(1), namely persons can attempting be to accused commit, of conspiring, advocating, or knowingly facilitating the commission of an organised crime or any act preparatory to organised crime, only if the offence in question is a cognizable one, which is punishable with imprisonment of at least three years. However, those accused of abetting the commission of organized crime need not themselves be charged with committing a cognizable offence punishable with imprisonment of at least three years. They need only be abetting those who are guilty of committing a cognizable offence punishable with imprisonment of at least three years, which offence amounts to an organized crime. The definition of “abet” in Section 2(1)(a) would be applicable in such cases.

c. Section 3(4) provides that any person who is a member of an organized crime syndicate is liable to be penalized. The definition of an organized crime syndicate in Section 2(1)(f) indicates that it is necessary to indulge in organized crime to be considered a member. Section 2(1)(e) indicates that persons are said to commit organized crime when they are involved in continuing unlawful activity. Continuing unlawful activity, in turn, means a prohibited activity which is a cognizable offence punishable with imprisonment of at least three years.

d. Section 3(5) stipulates that those who hold any property derived or obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds are liable to be punished. Once again, the definition of an organized crime requires the commission of a cognizable offence punishable with imprisonment of three years of more. Hence, Section 3(5) MCOCA may be invoked only with respect to offences which are punishable with imprisonment of three years of more.

77(c). More than one charge-sheet is not required to be filed with respect to each accused person.

The appellants have argued that in the preceding ten 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.

[11.3] In view of above proposition of law and as per section 2(1)(a) of the GUJCTOC Act, a person abetting an offence is against those accused for abetting commission of offence crime need not be charged with cognizable offence punishable with imprisonment of three years as abetting an offence is also an offence under Section 2(1)(a) of the GUJCTOC Act. Herein, allegation against accused is of abetment and member of syndicate.....”

10. Considering the principles laid down in the above decisions the fact remains that the applicant – accused is prosecuted not only on the basis of FIRs/chargesheet filed against him, but as a member of syndicate. 2 offences out of 8 offences are registered against syndicate after promulgation of the Act and 1 offence out of 7 offences is registered against the applicant after promulgation of the Act in individual capacity as member of the syndicate. In the case of **Kavitha Lankesh vs State of Karnataka and others reported in (2022) 12 SCC 753 (3 Judges Bench)** wherein the Hon'ble Apex Court has considered the requirement for invocation of offence u/s 3(1) and Sec.3(2) to 3(5) of Karnataka Control of Organized Crimes Act, 2020 and it was held that the offence should be considered in context with Organized Crime Syndicate and not against individual person. There are witnesses who have stated against the applicant that applicant is member of the syndicate and applicant/accused has committed 3 offences with the main accused Bhanwarlal @ Suko @ Huko @

Maharaj Babubhai Dund of the syndicate. Having regard to the nature of evidence against the applicant in the chargesheet case papers, considering the provisions of the GujCTOC Act and case laws referred hereinabove this Court do not find any merits in the contentions raised by the applicant – accused so as to discharge him.

11. In view of facts and circumstances noted hereinabove this Court is of the opinion that this is not a fit case where the applicant-accused **Dipakbhai Laxmanbhai Asoda** can get discharge from the offences leveled against him as there is prima facie evidence against the applicant-accused for trial. Hence, following final order is passed in the interest of justice:-

:-FINAL ORDER :-

The **discharge application – Exh.11** preferred by **Accused Dipakbhai Laxmanbhai Asoda** is rejected.

Date : 6/5/2025

(Kamal M. Sojitra)
Principal District & Sessions Judge
&
Designated Spl. Judge (GujCTOC)
Ahmedabad (Rural)
U.I.C No.GJ01494

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