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

GUJCTOC CASE NO. 8 OF 2021

State of Gujarat …..Complainant

VERSUS

Ahmedmiya Bahauddinmiya Saiyed ….Applicant/Accused No.10

Sub: Application seeking discharge from the offence.
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Appearance:
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Mr.A.M. Shahjada Ld. Advocate for the Applicant/accused
Mr. B.N. Limbachiya, Learned Spl.PP for Opponent-State.
****

ORDER BELOW DISCHARGE APPLICATION EXH.73

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.11192061210309/2021 registered with Viramgam Town Police Station, for the offence u/s 3(1)(b), 3(2), 3(4), 3(5) of Gujarat Control of Terrorism and Organized Crime Act, 2015 (in short "GujCTOC Act").

2. Ld. Advocate Mr.A.M. Shahjada on behalf of the applicant – accused No.10 Ahmedmiya Bahauddinmiya Saiyed submits that the

applicant/accused is charge-sheeted for the offences u/s 3(1)(b), 3(2), 3(4), 3(5) of GujCTOC Act. The FIR of GujCTOC offence came to be registered against 9 accused persons and applicant was not named nor any allegations were made against the applicant in the FIR. Chargesheet came to be filed and applicant is named as accused no.10. Following 4 FIRs are shown against the applicant/accused to invoke the present offence under GujCTOC:

1. Viramgam Town Police Station FIR CR No. 23/2010 for offence u/s 307, 324, 323 of IPC.

2. Viramgam Town Police Station FIR CR No. 45/2010 for offence u/s 143, 147, 148, 149, 324, 323 of IPC.

3. Viramgam Town Police Station FIR CR No. 10/2012 for offence u/s 307, 337, 147, 148, 149, 304, 506(2) of IPC 324, 323,etc. of IPC and Sec. 25(1)(B)(A) of Arms Act.

4. Viramgam Town Police Station FIR CR No. 32/2018 for offence u/s 143, 147, 148, 149, 186 of IPC and Sec. 3 of The Damage to Public Property Act 1984.

It is submitted that as per the chargesheet, applicant is implicated in the offence on the basis of 3 statements u/s 164 of Cr.P.C. and statements of secret witnesses and on the basis of confessional statement u/s 16(1) of GujCTOC Act of 4 accused persons in the offence. The allegations against the applicant /accused is of organized crime in Viramgam town and adjoining area by forming a gang known as Fracture gang to have supremacy over others and creating terror. It is alleged that applicant had assaulted a government officer in 2018 and had caused damage to the public property. As per the chargesheet between 2010 to 2012, it is alleged that applicant was aiding the accused against whom FIR was lodged. There is no evidence that applicant had any relation with the said accused person or providing any kind of aid. Applicant/accused is acquitted in all the offences shown against the applicant/accused except 1 offence, which pertains to damage to the public property allegedly by the applicant and others. The said incident had taken place as Nagarpalika was not providing proper service and mob had gathered and some incident took place and the offence is registered against the mob and the applicant is falsely implicated due to political rivalry as he was Ex Councilor of Viramgam Nagarpalika and at present his uncle is Councilor.

2.1 Looking to the chargesheet there is no evidence against the applicant for offence under GujCTOC. In the present case the I.O. has recorded statement of the witnesses who have already given their deposition in the cases pending before different Courts wherein applicant is acquitted and thereafter the investigation has recorded statements of those witnesses who do not support original case before the Court and on that basis further statements in this case are recorded to implicate the applicant in GujCTOC offence. Therefore, only one offence of damage to public property is pending. It is further submitted that after promulgation of the GujCTOC Act no offences was registered against the applicant/accused as member of the syndicate and so there is no continuing unlawful activity. 3 offences are of 2010 and 2012 while 1 offence is of 2018. All the offences are before filing of the chargesheet on 21/1/2019. It is submitted that Hon'ble High Court of Gujarat while releasing the applicant on bail has observed the in the order that offence of 2018 is in respect to IPC and The Damage to Public Property Act in respect of agitation and prima-facie it cannot be said to be an act of organized crime. As per list of statements produced by the applicant at Sr. No.26 -Witness Sufiyan Allarakha states that Mandli Yasinbhai was using fracture gang for his own benefit. Witness at Sr. No.29 - Mohammed Faizal Shabbirbhai states that the gang works for Yasin Paradize, while Witness at Sr. No.21 Yasin @ Attu Mandli states that fracture gang was working for Yasinbhai in 2016/2017. Confessional statements are given in fear and pressure of Yasinbhai. There is no evidence that applicant has formed Fracture Gang or he aided the said gang. It is further submitted that applicant has produced copy of judgments of the offences in which the applicant/accused is acquitted vide list Exh.88. It is accordingly, urged to discharge the applicant from the offence.

3. Ld Spl. Public Prosecutor Mr. B.N. Limbachiya has opposed the discharge application. He states that applicant is charged for the offence u/s 3(1)(b), 3(2), 3(4), 3(5) of GujCTOC Act. As per the prosecution case, the accused persons formed organized crime syndicate and as part of crime syndicate created network in Ahmedabad rural, Ahmedabad City, Banaskantha, Sabarkantha, Surendrangar, etc. and indulged in offence like murder, attempt to murder with weapons, kidnapping, loot, atrocity, offence against women, etc. The said organized crime syndicate is popularly known as Fracture Gang and 55 offences are registered against the crime syndicate. Secret witnesses have given their statements u/s 164 of Cr.P.C. and 4 accused persons have given confessional statements u/s 16(1) of GujCTOC Act. Witnesses have stated that the Gang was formed by Ahmedshah bapu (applicant) and if any of the member gets arrested he was funding to get him released. He was also helping by giving money and supplying arms. Accused in his statement u/s 16(1) has also made confession that there is enmity between Setvad and Mandlivas of Viramgam village since many. Applicant and his uncle Jilani bapu are leaders of Setvad and they had assaulted people of Mandlivaas. Also they instigated people for damage to public property for not. It is submitted that 19 offences are registered against the crime syndicate -fracture gang after 1/12/2019 and 4 offences are registered

against the applicant/accused. Relying upon the decision in the case of **Zakir Abdul Mirajkar vs State of Maharashtra, 2022 SCC Online SC 1092** and contended that more than one chargesheet is not required to be filed with respect to each accused person 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 trail against the present applicant/accused. He has placed reliance on the affidavit of I.O. (Exh.71) 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 no.10 Ahmedmiya Bahauddinmiya Saiyed is chargesheeted for the offences under 3(1)(b), 3(2), 3(4), 3(5) of GujCTOC Act registered vide FIR CR No.11192061210309/2021 registered with Viramgam Town Police Station. It is the contention on behalf of the applicant – accused that applicant is not named in the FIR and applicant is made an accused in **GujCTOC** offence on the basis that applicant was involved in the following 4 offences/FIRs.

1. Viramgam Town Police Station FIR CR No. 23/2010 for offence u/s 307, 324, 323 of IPC.

2. Viramgam Town Police Station FIR CR No. 45/2010 for offence u/s 143, 147, 148, 149, 324, 323 of IPC.

3. Viramgam Town Police Station FIR CR No. 10/2012 for offence u/s 307, 337, 147, 148, 149, 304, 506(2) of IPC 324, 323,etc. of IPC and Sec. 25(1)(B)(A) of Arms Act.

4. Viramgam Town Police Station FIR CR No. 32/2018 for offence u/s 143, 147, 148, 149, 186 of IPC and Sec. 3 of The Damage to Public Property Act 1984.

It is contended that on the basis of such FIRs the provision of GCTOC ought not to have been invoked by the prosecution as 3 offences are of 2010 and 2012 while 1 offence is of 2018. All the offences are before filing of the chargesheet on 21/1/2019. In all offences except offence registered with Viramgam Town Police Station FIR CR No. 32/2018 applicant is acquitted by the competent Court. No FIR is registered against the applicant/accused after 2019 and there is no evidence in the chargesheet against the applicant/accused 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. As per the chargesheet papers the applicant – accused along with other co-accused persons is member of organized crime syndicate operating in Viramgam town and adjoining area known as Fracture gang. As per the prosecution case accused persons including the present applicant are part of crime syndicate, indulged in offence like attempt to murder with weapons, kidnapping, loot, atrocity, etc. It reveals during investigation that there is prima/facie material against the applicant/accused of his been member of the crime syndicate. Secret witnesses have given their statements and 4 accused persons have given confessional statements u/s 16(1) of GujCTOC Act. Prima-facie from the evidence available on record it appears that syndicate / fracture Gang was formed by Ahmedshah bapu (applicant) and he was funding the members for their release if they get arrested. He was also helping by giving money and supplying arms to the co-accused. On perusal of the provision of the GCTOC Act, the prosecution has to show that the accused is member of syndicate or a gang and individual chargesheet is not necessary and chargesheet or offences against syndicate must have been registered.

9. The Hon'ble High Court of Gujarat in the case of **Rameshbhai Vallabhbhai 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 decision, even if it is believed that applicant is acquitted in 3 offences out of 4 FIRs registered him and there is no FIR registered against him after promulgation of the Act, 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 and rendering assistance to other co-accused / members of the syndicate who are indulged in committing organized crime. In all 55 offences are registered against

the crime syndicate / fracture gang and 14 offences are registered after 1/12/2019. There are statements of witnesses recorded during the investigation of this offence wherein, they have stated that the present applicant – accused was also a part of crime syndicate indulged in committing various nature of offences. In the present case 3 witnesses have given their statements u/s 164 of Cr.P.C. and 4 accused have given confessional statements u/s 16(1) of GujCTOC Act and have stated against the applicant – accused that he was member of syndicate/gang and he was aiding the members 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 no.5 can get discharge from the offences leveled against him as there is prima facie evidence against the applicant-accused no.10 for trial. Hence, following final order is passed in the interest of justice:-

-:F I N A L O R D E R :-

1. The discharge application – Exh.73 preferred by Ahmedmiya Bahauddinmiya Saiyed – Accused No.10 is **rejected**.

Date : 8/4/2025

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