IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 1388 of 2022

With

R/SPECIAL CRIMINAL APPLICATION NO. 1394 of 2022

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SHAILESHBHAI BHAGWANBHAI DESAI
Versus
STATE OF GUJARAT

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Appearance:
MR YATIN OZA, SENIOR ADVOCATE WITH GAYATRI P VYAS(9391) for the Applicant(s) No. 1
MR KISHAN R CHAKWAWALA(9846) for the Applicant(s) No. 1
NOTICE SERVED for the Respondent(s) No. 2
MR MITESH AMIN, PUBLIC PROSECUTOR WITH MR RONAK RAVAL, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR**
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 20/07/2022

COMMON C.A.V. ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR)

1. Both these petitions have been filed for declaring the provisions of Gujarat Control of Terrorism and Organised Crime Act, 2015 (hereinafter referred to as 'GUJCTOC Act' for short) as ***ultra vires*** to the Constitution of India with a consequential relief to quash the FIRs registered against respective petitioners.

2. We have heard the arguments of Mr. Yatin Oza, learned Senior Advocate appearing for the petitioners and Mr. Mitesh Amin, learned Public Prosecutor appearing for the State regarding admission.

3. Both these petitions are admitted. By this common order, we are only examining the issue relating to grant of interim prayer sought for in paragraphs 7(b) and 7(c) of the respective petitions.

BRIEF BACKGROUND OF THE MATTERS

RE: SPECIAL CRIMINAL APPLICATION NO.1388 OF 2022

4. An FIR came to be registered on 13.03.2020 against the petitioner at DCB Police Station vide I-C.R.No.11191011200035 for the offence punishable under Sections 452, 386, 323, 294(b), 506(1) and 114 of the Indian Penal Code and subsequently charge sheet came to be filed.

5. Another FIR came to be registered against the petitioner on 29.01.2021 at Anandnagar Police Station for the offence punishable under Sections 323, 294(b), 506(2) and 114 of IPC read with Section 135(1) of Gujarat Police Act, 1951.

6. Sola High Court Police Station registered yet another FIR on 01.02.2021 against the petitioner for the offence punishable under Sections 323, 324, 294(b), 427, 506(2) and 114 of IPC as well as under Section 135(1) of Gujarat Police Act, 1951.

7. Impugned FIR came to be registered against petitioner on 8.8.2021 for the offence punishable under Sections 3(1)(ii), 3(2), 3(3), 3(4) of GUJCTOC Act. Hence, contending that Article 22 of the Constitution of India is attracted and registration of FIR against the petitioner under GUJCTOC Act is ***ultra vires*** to the Constitution of India and there is non-application of mind and effect of registration of FIR under GUJCTOC Act would amount to petitioner being tried for the same offence under two different FIRs/charge-sheets and thereby undergoing trial, he seeks for quashing of the same. On these amongst other grounds as urged in the petition, the petitioner has sought for grant of the prayers and in aid of the main relief has sought for grant of interim prayer namely, to stay the investigation and further proceedings, pursuant to registration of FIR by Chanasma Police Station, District Patan, qua petitioner and has also sought for a direction to the investigating agency not to take any coercive steps against petitioner.

RE: SPECIAL CRIMINAL APPLICATION NO.1394 OF 2022

8. Patan City B-Div. Police Station registered an FIR against the petitioner on 19.01.2016 for the offence punishable under Sections 365, 364(B), 394, 389, 307, 114 and 120B of IPC and Section 135(1) of Gujarat Police Act, 1951, pursuant to which, charge-sheet came to be filed.

9. On 28.08.2019, Chanasma Police Station registered another FIR against petitioner for the offence punishable under Sections 504, 506(2) and 114 of IPC read with Section 135(1) of Gujarat Police Act, 1961, which is said to have been stayed by the learned Single Judge vide order dated 17.9.2019 passed in Criminal Misc. Application No.17524 of 2019.

10. On 24.06.2021, Patan City B-Division Police Station registered yet another FIR against petitioner for the offence punishable under Sections 392, 325, 294(b), 506(1) and 397 of IPC read with Section 135 of Gujarat Police Act, 1951, pursuant to which, charge sheet came to be filed.

11. On the same lines/grounds as urged in Special Criminal Application No.1388 of 2022, petitioner has sought for quashing of the provisions of GUJCTOC Act, as being ***ultra-vires*** to the Constitution of India.

12. It is the contention of Mr. Yatin Oza, learned Senior Advocate appearing for petitioners that Section 16 of GUJCTOC Act gives over-riding effect over Evidence Act and though State Legislature has power, it cannot over-ride the laws made by the Parliament and in such circumstances, President has to give assent to the State Legislation which has not been done. He would submit that State had forwarded its legislation under Article 254 of the Constitution of India and President has given assent under Article 201 of the Constitution of India and as such, present law invoked against the petitioners is highly arbitrary and would not stand the test of law and is liable to be quashed. By drawing attention of the Court to Sections 2(c) and 2(e) of GUJCTOC Act and The Prevention of Anti-Social Activities Act (hereinafter referred to as 'PASA Act' for short), he would contend that said provisions of PASA Act would take within its sweep all the parameters of defining a 'dangerous person' and as such, there is no need for implementation of the provisions of GUJCTOC Act, as the State has enough measures in the form of Legislation to cope with such criminal activities. He would further submit that in order to invoke provisions of Section 3 of GUJCTOC Act, a person requires to be a member of an organised crime syndicate, which would mean a gang indulging in the activity of organised crime. Drawing attention of the Court to the contents of FIRs registered against the petitioner in Special Criminal Application No.1388 of 2022, he would submit that said petitioner can nowhere be termed to have committed such acts which would par-take the character of an organised crime. He would also submit that 2nd and 3rd FIRs registered against the petitioner by Anandnagar Police Station and Sola High Court Police Station are false as there is no whisper about the present petitioner herein having participated in any criminal activity though complainant has named different persons. Hence, with a pre-determined mindset, FIRs and charge-sheets having been filed against petitioners and contends that same requires to be stayed and as such, he prays for grant of interim relief as sought for.

13. Mr. Yatin Oza, learned Senior Advocate would also elaborate his submissions by contending that Mr. Bhavesh Baldevbhai Desai Rabari, who is accused No.1, is facing 11 cases and Mr. Shailesh Bhagwanbhai Desai Rabari is shown as accused in all the FIRs of having passive role. He would contend that prosecuting agency for registering an FIR under GUJCTOC Act cannot take note of registration of other FIRs but only the charge-sheet that has been filed has to be taken into consideration, as evident from Section 2(1)(c) of GUJCTOC Act. He would also also submit that the offence under three FIRs is alleged to have been committed in Ahmedabad and not in Chanasma and on this ground also, the FIR is liable to be quashed. He would submit that filing of charge-sheet is ***sine qua non*** for invoking the provisions of GUJCTOC Act. He would also contend that registration of three FIRs for certain offences in which the petitioner is arraigned as an accused is on the ground that he was accompanying other accused and was a silent spectator. Hence, by relying upon judgment of the Hon'ble Apex Court in the case of ***State of Maharashtra Vs. Bharat Shantilal Shah and Others*** reported in ***(2008)18 Supreme Court Cases page 5,*** he seeks for interim order being granted.

14. Per contra, Mr. Mitesh Amin, learned Public Prosecutor appearing for the State would reiterate the grounds urged, facts pleaded and pleas putforward in the reply statement to seek for rejection of the interim prayer. He would contend that from 01.11.2021, both the petitioners were absconding and warrant is issued against them. He would contend that when GUJCTOC Act has come into force, it has come to the notice of the authorities that consideration of seriousness of offences would not be in the realm of scrutiny at the time of registration of FIRs under GUJCTOC Act. He would further submit that petitioner and two others are hired for recovery of money and they being member of an organised crime or making preparatory arrangement is sufficient to invoke the provisions of GUJCTOC Act. He would submit that Mr. Bhargav Baldevbhai Desai (Petitioner in Special Criminal

Application No.1394 of 2022) had kidnapped a doctor and a charge sheet has been filed for said offence. Contending that investigation is at nascent stage and further investigation requires to be done on the basis of material available and as such, he has sought for rejection of interim prayer.

15. Having heard the learned advocates appearing for the parties and on perusal of records, we are of the considered view that following point would arise for our consideration:

(i) Whether investigation commenced pursuant to registration of FIRs on 8.8.2021 against respective petitioners for the offence punishable under Sections 3(1)(ii), 3(2), 3(3) and 3(4) of GUJCTOC Act requires to be stayed or not ?

(ii) What order ?

RE: POINT NO.(1)

16. ***Ut res magis valeat quam pereat –*** that the thing may avail rather than perish; that the transaction may be valid rather than invalid. The Courts strongly lean against the construction, which reduces the Statute to a futility. A Statute or a provision in the Statute would be read to make it effective and operative. Normally, the Courts while pronouncing upon constitutionality of a Statute would start with a presumption in favour of constitutionality and prefer the construction which keeps the Statute within the competence of legislation.

17. The Hon'ble Apex Court in the case of ***P. S. Sathappan (Dead) by LRs. Vs. Andhra Bank Ltd., AIR 2004 SC 5152*** has held that if one interpretation leads to a conflict whereas another leads to harmonious construction, latter should prevail.

18. In the case of ***State of Bihar and Ors. Vs. Bihar Distillery Ltd. & Ors.*** reported in ***(1997)2 Supreme Court Cases Page 453,*** it came to be held by the Hon'ble Apex Court that Courts would strike down an enactment only when it is not possible to sustain and Courts would not approach in examining the enactment with a view to pick holes or to search for defects of drafting and any defects of drafting should be ironed out as a part of the attempt to sustain the validity of the enactment.

19. It is a trite law that while deciding the validity of a Statute, the endeavour of the Court is to find out the intention of legislation, upon considering various reasons, which gave rise to its birth and mischief which the enactment is sought to remedy.

20. So long as the investigating officer exercises his investigating powers well within the provisions of law and within the legal bounds, such investigation cannot be stalled and thereby investigation of a cognizable offence and various stages thereon including interrogation of the accused would be in the exclusive domain of the investigating agency. If it is established that such exercise of power by the investigating officer is ***mala-fide*** or is abuse of power or non-compliance of the provisions of the Code of Criminal Procedure, would warrant exercise of inherent power under Section 482 of Cr.P.C. or extra-ordinary power being exercised under Article 226 of the Constitution of India.

21. Hon'ble Apex Court in the case of ***State of Bihar Vs. P.P. Sharma*** reported in ***1992 Supp1 Supreme Court Cases page 222*** has held at paragraph 47 that the investigating officer is the arm of the law and plays a pivotal role in the dispensation of criminal justice and maintenance of law and order. The police investigation is, therefore, the foundation stone on which the whole edifice of criminal trial rests as error in its chain of investigation may result in miscarriage of justice and the prosecution entails with acquittal. The duty of the investigating officer, therefore, is to ascertain facts, to extract truth from half-truth or garbled version, connecting the chain of events. Investigation is a tardy and tedious process. Enough power, therefore, has been given to the police officer in the area of investigatory process, granting him or her great latitude to exercise his discretionary power to make a successful investigation. The Courts normally do not venture to monitor investigation processes as long as the investigation does not transgress any provision of law, as held by the Hon'ble Apex Court in the case of ***Dukhishyam Benupani v. Arun Kumar Bajoria*** reported in ***(1998)1 Supreme Court Cases page 52.***

22. Hon'ble Apex Court in the case of ***Skoda Auto Volkswagen India Pvt. Ltd. Vs. State of Uttar Pradesh & Ors.*** reported in ***2020 SCC Online 958*** has observed to the following effect:

> "**41**. It is needless to point out that ever since the decision of the Privy Council in **King Emperor vs. Khwaja Nazir Ahmed**, **AIR 1945 PC 18,** the law is well settled that Courts would not thwart any investigation. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on. As cautioned by this Court in **State of Haryana vs. Bhajan Lal**, **1992 Supp (1) SCC 335,** the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. While examining a complaint, the quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint. In **S.M. Datta vs. State of Gujarat**, **(2001) 7 SCC 659,** this Court again cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule. In **S.M. Datta** (supra), this Court held that if a perusal of the first information report leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere."

23. Hon'ble Apex Court in the matter of ***State of Haryana & Others Vs. Bhajanlal & Others*** reported in ***1992 SCC Supl. (1) page 335*** has held that Section 156 of Cr.P.C. gives the police unfettered power to investigate all cases where they suspect a cognizable offence having been committed. In appropriate cases, an aggrieved person can always seek a remedy by invoking power of the High Court under Article 226 of the Constitution of India and this Court would always possesses the power to issue a writ of restraining Police Officer from misusing his legal powers. It came to be held thus:

> "**60**. The sum and substance of the above deliberation results in a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. It needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of such power will be tantamount to

recognition of 'Divine Power' which no authority on earth can enjoy."

24. Thus, it would emerge from the above analysis of case laws that the issue regarding constitutionality of the Statute which has been canvassed, if being examined on merits at this stage, would prejudice the rights of petitioners or State. As such, said issue is kept open and we turn our attention to the fact which has unfolded in theses two matters. It would lead us to Section 3 of GUJCTOC Act and it reads thus:

"3. (1) Whoever commits an offence of terrorist act or 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 fine which shall not be less than rupees ten lakhs ;

(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 fine which shall not be less than rupees five lakhs.

(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of any terrorist act or an organised crime or any act preparatory to any terrorist act or organised

crime, shall 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 fine which shall not be less than rupees five lakhs.

(3) Whoever intentionally harbours or conceals or attempts to harbour or conceal any person who has committed an offence of any terrorist act or any member of an organised crime syndicate shall 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 fine which shall not be less than rupees five lakhs.

(4) Any person who is a member of an organised crime syndicate shall 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 fine which shall not be less than rupees five lakhs.

(5) Whoever holds any property derived, or obtained from commission of terrorist act or an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with imprisonment for 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 which shall not be less than rupees two lakhs."

25. In the instant case, an FIR came to be registered against both petitioners for the offence punishable under Sections 3(1)(ii), 3(2), 3(3) and 3(4) of GUJCTOC Act. A plain reading of the above extracted provisions would indicate that whoever commits an offence of terrorist act or organised crime including conspiring or attempting to commit or advocates, abates or knowingly facilitates commission of any organised crime or any act preparatory to any organised crime would be punishable with imprisonment which would not be less than five years and which may extend to imprisonment for life apart from being liable to pay fine – vide section 3(1)(ii) of GUJCTOC Act. Even intentionally harbouring or concealing or attempts made in that regard would attract Section 3(3) of GUJCTOC Act. Sub-Section (4) of Section 3 spells that any person who is a member of an organised crime syndicate would be liable to be punished with imprisonment for a term not less than five years and may extend to life imprisonment and also liable to fine. Thus, the expression 'organised crime' would acquire significance which expression is defined under Section 2(e) of GUJCTOC Act, which reads thus:

> "(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 expression '**organised crime syndicate**' is defined under Section 2(f) , which reads thus:

> "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;"

26. A harmonious construction of the aforesaid provisions would indicate that any continuing unlawful activity and terrorist act including extortion, land grabbing, contract killing, etc. as defined under Section 2(e) of GUJCTOC Act 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 would par-take the character of an '***organised crime***'. A group of two or more persons who, acting either singly or collectively as a syndicate or gang indulging in activities of organised crime would attract the definition of organised crime.

27. In the instant case, Mr. Yatin Oza, learned Senior Advocate, as already noticed hereinabove, has sought to contend that impugned FIRs have been registered on the ground that petitioners as well as others have been involved in various serious and heinous organised crime and have committed attempt to murder, abduction, extortion, loot and threatening various persons in various districts and petitioners not being involved in two FIRs registered by Anandnagar Police Station and Sola High Court Police Station requires to be examined and rejected for the simple reason namely, FIR I-C.R.No.11191011200035 registered on 13.03.2020 against four named persons and two unknown persons whereunder it has been recorded in the FIR itself as under:-

> "In January 2020 I was present on duty, at that time in the afternoon about four persons came to our office and at that time the staff members were present. and our employer was not present in the office, therefore these four persons came and started using unparliamentary language against our employer Jayantibhai Jakasbhai since ha had outstanding amount of Raghubhai and he was not repaying so these persons were sent for recovery. Therefore they had asked for the contact number of our employer and started misbehaving and n from amongst these persons one person gave his name Devubhai Rabari and given his mobile No. 8980821919. And informed me that when your employer comes then ask him to call on this number and thereafter left from there. Therefore we had informed in this regard to our employer Jayantibhai Jakasniya on telephone and personally also informed him.
>
> Thereafter again all these four persons again came in

February 2020 to our office and again misbehaved with us and asked where is your employer? And asked why is he not paying back the money to Raghubhai saying this they had issued threats to us and gone, therefore again in this regard we had informed our employer.

Thereafter on the last 11/03/2020 the above four persons came to our office and informed me that Devubhai Rabari has sent to collect money of Raghubhai, and inform your employer that if by tomorrow he does not pay then we will vandalize your office and kill you all. They issued such threats and went away and amongst themselves they were addressing each other by name Bhavesh and Vipul. I can identify them on seeing.

Thereafter on last 12/03/2020 myself, Virendrabhai Trivedi, Nareshbhai Solanki, Rajubhai Rathod and Maheshbhai Parmar were present in our office. And approximately in the afternoon at about two oclock the above Devubhai Rabari came with his four associates, Vipul and Bhaves who came on 11/03/2020 and other than these two other persons who came in January came to our office and said to use that where is your employer? Saying this they had forcibly entered into our office and why have you opened the office? Saying this they assaulted us using kicks and fists blows and threatened to kill us and forcibly pushed us out of the office and locked the office and these persons took away the keys to the office and said to us that inform your employer that send rupees fifty lakh only then he will get the possession of the office and if anyone comes back here then we will kill them saying this they driven us out. All these facts we had immediately informed to our employer."

28. In the second FIR that has been registered bearing FIR No.I-C.R.11191045210090, the investigation has been complete and charge-sheet has been filed. Likewise, in the supplementary charge sheet that has been filed, petitioner in Special Criminal Application No.1388 of 2022 has been arraigned as an accused with an allegation that accused i.e. petitioner had descended while complainant was parking his car and broke the glass of the car using stick and assaulted the complainant and demanded an explanation as to why he had complained against accused persons in the Police Station and had pointed knife to the complainant and in the scuffle that ensued, the complainant has been injured on his left hand first finger and they have collectively threatened the complainant. Third FIR which has been relied upon by the prosecution in the case of petitioner in Special Criminal Application No.1388 of 2022 would clearly indicate that apart from naming three accused, it was also stated by the complainant that three unknown persons had come and all of them together had assaulted and after investigation, the charge sheet has been filed.

29. Even in the case of petitioner in Special Criminal Application No.1394 of 2022, investigation is conducted in respect of FIRs registered against Bhavesh Baldevbhai Desai Rabari and there is a reference to the name of petitioner in

Special Criminal Application No.1388 of 2022 apart from petitioner in Special Criminal Application No.1394 of 2022 having been implicated. In the second FIR registered against the petitioner in Special Criminal Application No.1394 of 2022, complainant has specifically named the petitioner. Thus, it would emerge from the records of the case on hand that both petitioners have been prima facie implicated in more than two FIRs and charge-sheets have been filed and complicity and involvement of petitioners will have to be tested after trial. If this Court were to embark upon expressing any opinion on the said issue relating to three respective FIRs registered against respective petitioners, it would definitely prejudice the rights of the petitioners or the prosecution and as such, we refrain from expressing our opinion in that regard.

30. For the aforesaid cumulative reasons, we are of the considered view that impugned FIR registered against the petitioners cannot be termed as having been registered without there being any basis or foundation. It is on the basis of the impugned FIR the investigation has to be proceeded with. Hence, the jurisdictional police have commenced investigation in that direction and petitioners seem to be not co-operating with the investigating agency and is said to have absconded and accordingly, charge-sheet has been filed against the remaining accused. In the light of the seriousness of offences and name of the petitioners having been disclosed, investigating agency should be permitted to proceed with investigation, as stalling the investigation may lead to valuable material evidence being lost or destroyed.

31. Hon'ble Apex Court in the matter of Kavitha ***Lankesh Vs. State of Karnataka and Others reported in 2021 SCC OnLine SC 956*** has held that if a person happens to be a member of an organised crime syndicate who had committed the offences, as reflected in respective FIRs and charge-sheets, and it can be established that there is material about petitioners' nexus with the accused who is a member of such organised crime syndicate, it would suffice to proceed with investigation. It came to be held by Hon'ble Apex Court to the following effect:

> "**25.** As regards offences punishable under Section 3(2), 3(3), 3(4) or 3(5), it can proceed against any person sans such previous offence registered against him, if there is material to indicate that he happens to be a member of the organized crime syndicate who had

committed the offences in question and it can be established that there is material about his nexus with the accused who is a member of the organized crime syndicate. This position is expounded in the case of Ranjitsingh Brahmajeetsing Sharma v. State of Maharashtra which has been quoted with approval in paragraph 85 of the judgment in Prasad Shrikant Purohit. The same reads thus:

> "85. A reading of para 31 in Ranjitsing Brahmajeetsing Sharma case ? shows that in order to invoke MCOCA even if a person may or may not have any direct role to play as regards the commission of an organised crime, if a nexus either with an accused who is a member of an "organised crime syndicate" or with the offence in the nature of an "organised crime" is established that would attract the invocation of Section 3(2) of MCOCA. Therefore, even if one may not have any direct role to play relating to the commission of an "organised crime", but when the nexus of such person with an accused who is a member of the "organised crime svndicate" or such nexus is related to the offence in the nature of "organised crime" is established by showing his involvement with the accused or the offence in the nature of such "organised crime", that by itself would attract the provisions of MCOCA. The said statement of law by this Court, therefore, makes the position clear as to in what circumstances MCOCA can be applied in respect of a person depending upon his involvement in an organised crime in the manner set out in the said paragraph. In paras 36 and 37, it was made further clear that such an analysis to be made to ascertain the invocation of MCOCA against a person need not necessarily go to the extent for holding a person guilty of such offence and that even a finding to that extent need not be recorded. But such findings have to be necessarily recorded for the purpose of arriving at an objective finding on

> the basis of materials on record only for the limited purpose of grant of bail and not for any other purpose. Such a requirement is, therefore, imminent under Section 21(4)(b) of MCOCA.""
>
> (emphasis supplied)

32. The FIRs which resulted in registration of the impugned FIR which is sought to be staved off by respective petitioners on the ground that they were not initially named in the FIR by the complainant would not be a ground for quashing the impugned FIR inasmuch as, even in those FIRs, 2-3 persons are stated to be unknown. Thus, ***prima facie*** case found against the petitioners in the aforesaid offences requires to be investigated by the investigating officer who registered the impugned FIRs and as such, staying of the investigation would result in the valuable evidence being wiped out or concealed or lost or destroyed. Hence, we answer point No.1 in the negative.

RE: POINT NO.(2)

33. In view of the aforesaid discussion, we are of the considered view that petitioners are not entitled to the interim relief and we refuse to grant the interim relief as sought for in the respective Special Criminal Applications.

34. Post these Special Criminal Applications along with Special Civil Application No.10638 of 2020 and connected matters for hearing in usual course.

(ARAVIND KUMAR,CJ)

(ASHUTOSH J. SHASTRI, J)

RADHAKRISHNAN K.V.