NC: 2024:KHC:25174
WP No. 15943 of 2024
C/W WP No. 15622 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JULY, 2024

R

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 15943 OF 2024 (GM-POLICE)

C/W

WRIT PETITION NO. 15622 OF 2024 (GM-POLICE)

IN W.P.No.15943/2024

BETWEEN:

SRI. SHREEKRISHNA RAMESH @ SREEKI
S/O GOPAL RAMESH
AGED ABOUT 29 YEARS
R/AT NO 239, 10TH MAIN ROAD
1ST BLOCK, NEAR TO HOPCOMS
JAYANAGAR
BENGALURU 11
(PRESENTLY IN JUDICIAL CUSTODY
CRIME NO 0085/2017)

...PETITIONER

(BY **SRI. ARUNA SHYAM, SENIOR COUNSEL FOR*
SRI. DILIPKUMAR GOWDA R, ADVOCATE)

AND:

Digitally signed by Vandana S
Location: HIGH COURT OF KARNATAKA

1. THE STATE OF KARNATAKA
REP BY SECRETARY
DEPARTMENT OF HOME
VIDHANASOUDHA
BENGALURU 01.

2. DEPUTY INSPECTOR GENERAL OF POLICE
ECONOMIC OFFENCES WING, CID
BENGALURU 01.

3. DEPUTY SUPERINTENDENT OF POLICE
SIT (BITCOIN CASES)
CID CAMPUS NO 1,
CARLTON HOUSE, PALACE ROAD
BENGALURU 01.

** Corrected vide Chamber Order dated: 08.07.2024*

4. STATION HOUSE OFFICER
NEPS TUMKURU POLICE
TUMKURU 572 201.

…RESPONDENTS

(BY **SRI.SHASHI KIRAN SHETTY, ADVOCATE GENERAL A/W*
**SRI. RAHUL CARIAPPA, AGA)*

THIS W.P IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO (I) ISSUE A WRIT IN THE NATURE OF CERTIORARI AND QUASH THE ORDER DATED 20-05-2024 PASSED BY RESPONDENT NO.2 IN NO. 01/KCOC/DIGP-EO/CID/2024 IN CRIME NO. 085/2017 REGISTERED BY NEPS TUMKUR DISTRICT AND ALL FURTHER PROCEEDINGS PURSUANT THERETO, PRODUCED AT ANNEXURE-A, IN THE INTER-EST OF JUSTICE AND EQUITY.

IN W.P.No.15622/2024

BETWEEN:

SRI. NARESH KUMAR KHANDELWAL
S/O RADHESHYAM KHANDELWAL
AGED ABOUT 65 YEARS.
REPRESENTING
ROBIN KHANDELWAL
S/O NARESH KUMAR KHANDELWAL
AGED ABOUT 35 YEARS
(NOW IN JUDICIAL CUSTODY)

BOTH RESIDING AT DD TEWARI ROAD
NEAR MARWARI, THAKUR BARI
BOREHAT, BARDHAMAN
WEST BENGAL STATE – 735 101.

…PETITIONER

(BY SRI. SANDESH J.CHOUTA, SENIOR COUNSEL FOR
SRI. SUNIL KUMAR.S., ADVOCATE)

** Corrected vide Chamber Order dated: 08.07.2024*

AND:

1. STATE OF KARNATAKA
BY ITS ADDL. CHIEF SECRETARY
HOME DEPARTMENT
VIKASA SOUDHA
AMBEDKAR VEEDHI
BANGALORE – 560 001.

2. DEPUTY INSPECTOR
GENERAL OF POLICE
(EO) ECONOMIC OFFENCES WING
CID, BENGALURU – 560 001.

3. DEPUTY SUPERINTENDENT
OF POLICE & INVESTIGATING OFFICER
SPECIAL INVESTIGATING TEAM
(BITCOIN CASES), CID CAMPUS
NO.1, CARLTON HOUSE,
PALACE ROAD
BENGALURU – 560 001.

…RESPONDENTS

(BY SRI. SHASHI KIRAN SHETTY, ADVOCATE GENERAL A/W
SRI. RAHUL CARIAYAPPA, AGA)

THIS W.P IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SETTING ASIDE THE SANCTION ACCORDED BY THE RESPONDENT NO.2 VIDE IMPUGNED ORDER DATED: 20.05.2024 BEARING NO.01/KCOC/DIGP-EO/CID/2024, PRODUCED AT ANNEXURE-A, FOR THE INVOCATION OF SECTION 3 OF KCOCA ACT AGAINST THE PETITIOENRS SON ROBIN KHANDELWAL.

THESE PETITIONS ARE COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Both these petitions takes exception to the impugned order at Annexure-A dated 20.05.2024 passed by the 2nd respondent - Deputy Inspector General of Police (EO), CID, Bangalore, granting approval / permission to the 3rd respondent – Deputy Superintendent of Police / Investigating Officer to invoke Section 3 of the Karnataka Control of Organized Crimes Act, 2000 (for short 'the KCOCA') against Sri. Krishna Ramesh @ Shriki, the petitioner in W.P.No.15943/2024 as well as against one Robin Khandelwal, son of Sri.Naresh Kumar Khandelwal, petitioner in W.P.No.15622/2024.

2. Briefly stated, the facts giving rise to the present petitions are as under:-

On 17.07.2017, pursuant to the complaint lodged by one Harish B.V., the Director of Uno Coin Technologies Pvt. Ltd., the Tumakuru Police Authorities registered criminal proceedings in Crime No.85/2017 against unknown persons for offences punishable under Sections 66, 66(c), 67, and 68 of the Information Technology Act, 2000 (for short 'the I.T.Act') r/w Section 420 of IPC before the Magistrate. The said case was transferred to the Cyber Economics Narcotics Police Station, Tumakuru, for further investigation.

2.1 On 13.09.2019, the I.O. submitted a 'C' final report (undetected) which was accepted by the court on 25.10.2019.

Subsequently, the I.O. submitted a request dated 22.01.2021 seeking permission to reopen and continue the investigation in the case which was accepted by the court on 28.01.2021 which granted permission to continue with the investigation and the case continued to remain undetected upto 30.06.2023 when the State Government formed a Special Investigation Team (SIT), to which, the instant case was handed over for further investigation on 14.07.2023. On 01.03.2024, the case was handed over to the I.O. and without the charge sheet being filed, the petitioner in W.P.No.15943/2024 was arrested on 07.05.2024, while the son of the petitioner in W.P.No.15622/2024 was arrested on 23.05.2024 and both of them were arrayed as accused Nos. 1 and 2 respectively.

2.2 Meanwhile, the following criminal proceedings were initiated against both the aforesaid accused persons as hereunder:-

Crime No.9/2019 dated 07.08.2019	Sections 43, 66 and 66(c) of I.T.Act r/w Sections 120B, 379, 411, 414, 201, 204, 34, 35 and 37 of IPC.	Charge sheet filed; however, cognizance is not taken so far.
Crime No.91/2020 dated 04.11.2020	Sections 20b, 23b, 24, 25, 27, 27A and 29 of NDPS Act r/w Sections 37, 109, 119 and 201 IPC.	Charge sheet filed on 01.12.2021; cognizance taken on 09.02.2022; Addl.charge sheet filed on 15.06.2024 and cognizance taken on 15.06.2024.
Crime No.287/2020 dated 19.11.2020	Sections 403, 406 and 34 IPC	Charge sheet filed and cognizance taken on 10.02.2021; Addl. charge sheet filed and cognizance taken on 23.04.2024.

Crime No.153/2020 dated 27.11.2020	Sections 66(c) and 66(d) of the I.T.Act r/w Section 34, 465, 468, 471, 419, 120B, 379, 420 and 384 IPC.	Charge sheet filed on 22.02.2021 and cognizance taken on 01.03.2021.
Crime No.45/2020 dated 23.12.2020	Sections 66(c) and 66(d) of the I.T.Act r/w Section 420 IPC.	Charge sheet filed and cognizance taken on 23.02.2021.

2.3 It is an undisputed fact that in all the aforesaid cases, both accused persons have been enlarged on bail and Section 3 of KCOCA was not invoked by the respondents against the accused persons. However, for the first time on 17.05.2024, the 3rd respondent – I.O. submitted an application under Section 24(1)(a) of KCOCA to the 2nd respondent seeking approval / permission to invoke Section 3 of KCOCA against the accused persons in the very first Crime No.85/2017 lodged against unknown persons. The said application was allowed by the 2nd respondent – competent authority vide impugned order dated 20.05.2024 passed under Section 24(1)(a) of KCOCA, thereby granting approval / permission in favour of 3rd respondent to invoke Section 3 of KCOCA against the accused persons in Crime No.85/2017, NEPS, Tumakuru.

2.4 Aggrieved by the impugned order, petitioners are before this Court by way of the present petitions.

3. Heard Sri.Sandesh J. Chouta and Sri.Aruna Shyam, learned Senior counsel appearing for the petitioners and Sri.Shashi Kiran Shetty, learned Advocate General appearing for the respondents – State.

4. In addition to reiterating the various contentions urged in the petitions and referring to the material on record, learned Senior counsel for the petitioners submit that the impugned order passed by the 2nd respondent is vitiated on account of complete non-application of mind, inasmuch as absolutely no reasons are assigned by him before passing the impugned unreasoned and non-speaking order which is vitiated on this ground alone. It is also submitted that necessary ingredients to invoke Section 3 of KCOCA are completely absent as against both the accused persons, in that, the mandatory requirements of being involved in continuing unlawful activity constituting organized crime punishable under Section 3 of the KCOCA which was preceded by more than one charge sheet being filed and cognizance being taken against them for a period preceding 10 years from 17.07.2017 when the instant Crime No.85/2017 was registered are completely missing and absent and as such, the 2nd respondent did not have jurisdiction or authority of law to grant approval / permission under Section 24(1)(a) of KCOCA.

4.1 It is also submitted that by virtue of the impugned order, the instant case in Crime No.85/2017 which was earlier pending before the Magistrate has now being transferred to the jurisdictional Sessions

Court, before whom the accused persons have filed bail applications and the impugned order is nothing but a malafide attempt to prevent the accused persons from obtaining bail though they have been enlarged on bail in the other criminal cases referred to supra. It is therefore submitted that the impugned order deserves to be quashed. In support of their contentions, learned Senior counsel have placed reliance upon the following judgments:-

(i) Mahipal Singh v. CBI & Anr. - (2014)11 SCC 282;

(ii) Prasad Shrikant Purohit v. State of Maharashtra & Anr. - (2015) 7 SCC 440;

(iii) State of Maharashtra v. Shiva @ Shivaji Ramaji Sonawane -(2015) 14 SCC 272;

(iv) State of Gujaraj v. Sandip Omprakash Gupta - 2022 SCC Online SC 1727;

(v) Kavitha Lankesh v.State of Karnataka - (2022) 12 SCC 753;

(vi) Zakir Abdul Mirajkar v. State of Maharashtra 2022 SCC Online 1092.

5. Per contra, learned Advocate General for the respondents – State would reiterate the various contentions urged in the statement of objections and submitted that the petitions are not maintainable and are liable to be dismissed. It was submitted that though the accused persons were involved in a crime / offence punishable under Section 3 of KCOCA

as long back as on 17.07.2017 itself in Crime No.85/2017, the said crime / offence committed by the accused persons was detected only on 22.12.2023 onwards by the respondents, who accordingly arrested the accused persons. It was submitted that as on the date of detection of the offence / crime committed by the accused persons punishable under Section 3 of KCOCA, 4 charge sheets in the preceding period of 10 years had been filed and cognizance had been taken which would constitute continuing unlawful activity amounting to organized crime committed by the accused persons within the meaning of Section 3 of KCOCA and consequently, though Crime No.85/2017 was registered on 17.07.2017, the date of detection of the offence under Section 3 of KCOCA i.e., 22.12.2023 onwards was relevant and had to be reckoned from that date and not as on the date of commission of the offence i.e., in the year 2017 and accordingly, the 2nd respondent was fully justified in passing the impugned order which does not warrant interference in the present petition.

In support of his contentions, learned Advocate General has placed reliance upon the following judgments:-

(i) Kavitha Lankesh vs. State of Karnataka - (2022) 12 SCC 753;

(ii) Anil Sadashiv Nanduskar v State of Maharashtra - 2007 SCC Online Bom 1702;

(iii) Mahipal Singh v. CBI - (2014) 11 SCC 282;

(iv) Vinod G. Asrani v. State of Maharashtra - (2007) 3 SCC 633;

(v) S. Narayan v.State of Karnataka - 2019 SCC Online Kar 2968;

(vi) State of Maharashtra v. Kamal Ahmed Mohamed Vakil Ansari - (2013) 12 SCC 17;

(vii) Kamaljeet Singh (In judicial Custody v. State - 2008 SCC Online Del 110;

(viii) Abhishek v. State of Maharashtra, (2022) 8 SCC 282;

(ix) Balram Kumawat v. Union of India - (2003) 7 SCC 628;

(x) Raju. Vs. State of Karnataka - 2017 SCC OnLine Kar 6969;

(xi) Manjunath N. Nanjundaiah v. State of Karnataka - 2016 SCC OnLine Kar 9054 ;

(xii) Black's Law Dictionary (9th Edition)

(xiii) Karnataka Police Manual, Volume II (1998)

(xiv) State (NCT OF DELHI) v. Brijesh Singh Alias Arun Kumar and Anr. - (2017) 10 SCC 779

6. I have given my anxious consideration to the rival submissions and perused the material on record.

7. Before adverting to the rival submissions, it would be relevant to extract the statutory provisions which are germane for the present discussion.

Section 24 of the KCOCA, reads as under:-

24. Cognizance of and investigation into an offence. *- (1) Notwithstanding anything contained in the Code, -*

(a) No information about the commission of an offence of organized crime under this Act shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;

(b) No investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.

(2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of an Additional Director General of Police.

Section 3 of KCOCA, reads as under:-

3. Punishment for organized crime *- (1) whoever commits an organized crime shall, -*

(i) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, which shall not be less than one lakh rupees.

(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 five lakh rupees.

(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organized crime or any act preparatory to organized 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 a fine, which shall not be less than five lakh rupees.

(3) Whoever harbors or conceals or attempts to harbor or conceal, any member of an organized 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 a fine, which shall not be less than five lakh rupees.

(4) Any person who is a member of an organized 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 a fine which shall not be less than five lakh rupees.

(5) Whoever holds any property derived or obtained from commission of an organized crime or which has been acquired through the organized 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 a fine, which shall not be less than two lakh rupees.

Section 2(e), 2(d) and 2(f) of KCOCA, reads as under:-

2. Definitions.-

*(e) **"Organized crime"** means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;*

*(d) **"Continuing unlawful activity"** means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years*

or more, undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheet have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;

(f) ***"Organized crime syndicate",*** *means a group of two or more persons who acting either singly or collectively, as a syndicate or gang, indulge in activities of organized crime;*

8. The statutory scheme envisaged under the aforesaid provisions will indicate that before invocation of Section 3 of KCOCA against any person, it is necessary that prior approval of a police officer not below the rank of DIG of Police is mandatory to be obtained by the Investigating officer, who would only thereafter be entitled to record information about the commission of the crime.

9. Section 3 of the KCOCA provides for punishment of organized crime and in this context, it is relevant to state that the provision mandates punishment for the "crime / offence" and not the "criminal / offender"; there is no gainsaying the fact that in criminal law, cognizance is taken by a court of the offence and not the offender and punishment is for the offence committed by the offender.

10. Section 2(f) of the KCOCA defines an organized crime syndicate, while Section 2(e) defines organized crime as to mean any continuing unlawful activity. The expression "continuing unlawful activity"

has been defined under Section 2(d) of the KCOCA as to mean, an activity undertaken by the accused person in respect of which, more than one charge sheet have been filed before a competent court within the preceding period of 10 years and that court has taken cognizance of such offence.

11. The aforesaid statutory provision are sufficient to come to the conclusion that before Section 3 of the KCOCA is invoked against an accused, it is absolutely essential that the said accused is involved in continuing unlawful activity, in respect of which, at least two charge sheets have been filed and the court has taken cognizance within a period of 10 years preceding the date of commission of the offence; in other words, Section 3 of KCOCA can be invoked against a person, only if as on the date of the alleged commission of offence, minimum of two charge sheets prior to the said date of alleged commission of offence have been filed and cognizance has been taken by the court. It follows therefrom that it is the date of commission of the offence that has to be reckoned and not the date of detection of the offence especially when the punishment is for the offence committed on a particular date and not on the date when it is detected.

12. In the instant case, it is an undisputed fact that the accused persons are alleged to have committed an offence under Section 3 KCOCA on 17.07.2017 in Crime No.85/2017 and in the absence of the

mandatory requirements of charge sheets having been filed and cognizance having been taken within a period of 10 years prior to that date i.e., on 17.07.2017 , it cannot be said that in the pending crime No.85/2017, the offence punishable under Section 3 KCOCA can be invoked as against the accused persons and consequently, the impugned order passed by the 2nd respondent invoking Section 3 of KCOCA in relation to an offence said to have been committed on 17.07.2017 is clearly without jurisdiction or authority of law and the same deserves to be quashed.

14. In the case of ***Kavitha Lankesh vs. State of Karnataka & others – (2022) 12 SCC 753,*** a Three Judge Bench of the Apex Court while dealing with the provisions of the KCOCA held as under:-

> ***23.*** *The moot question to be answered in these appeals is about the purport of Section 24 of the 2000 Act. Section 24(1)(a), which is crucial for our purpose, reads thus:*
>
> *"**24. Cognizance of and investigation into an offence**.—(1) Notwithstanding anything contained in the Code—*
>
> *(a) no information about the commission of an offence of organised crime under this Act shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;"*
>
> ***24.*** *The purport of this section, upon its textual construct, posits that information regarding commission of an offence of organised crime under the 2000 Act can be recorded by a police*

officer only upon obtaining prior approval of the police officer not below the rank of the Deputy Inspector General of Police. That is the quintessence for recording of offence of organised crime under the Act by a police officer.

25. *What is crucial in this provision is the factum of recording of offence of organised crime and not of recording of a crime against an offender as such. Further, the right question to be posed at this stage is : whether prior approval accorded by the competent authority under Section 24(1)(a) is valid? In that, whether there was discernible information about commission of an offence of organised crime by known and unknown persons as being members of the organised crime syndicate? Resultantly, what needed to be enquired into by the appropriate authority (in the present case, Commissioner of Police) is : whether the factum of commission of offence of organised crime by an organised crime syndicate can be culled out from the material placed before him for grant of prior approval? That alone is the question to be enquired into even by the Court at this stage. It is cardinal to observe that only after registration of FIR, investigation for the offence concerned would proceed — in which the details about the specific role and the identity of the persons involved in such offence can be unravelled and referred to in the charge-sheet to be filed before the competent court.*

26. *Concededly, the original FIR registered in the present case was for an ordinary crime of murder against unknown persons. At the relevant time, the material regarding offence having been committed by an organised crime syndicate was not known. That information came to the fore only after investigation of the offence by the SIT, as has been mentioned in the report submitted to the Commissioner of Police, Bengaluru City for seeking his prior approval to invoke Section 3 of the 2000 Act.*

Once again, at this stage, the Commissioner of Police had focussed only on the factum of information regarding the commission of organised crime by an organised crime syndicate and on being prima facie satisfied about the presence of material on record in that regard, rightly proceeded to accord prior approval for invoking Section 3 of the 2000 Act. The prior approval was not for registering crime against individual offenders as such, but for recording of information regarding commission of an offence of organised crime under the 2000 Act. Therefore, the specific role of the accused concerned is not required to be and is not so mentioned in the stated prior approval. That aspect would be unravelled during the investigation, after registration of offence of organised crime. The High Court, thus, examined the matter by applying erroneous scale. The observations made by the High Court in the impugned judgment [Mohan Nayak N. v. State of Karnataka, 2021 SCC OnLine Kar 14701] clearly reveal that it has glossed over the core and tangible facts.

27. *Notably, the High Court, without analysing the material presented along with charge-sheet on the basis of which cognizance has been taken by the competent court including against the writ petitioner Mohan Nayak N., concerning commission of organised crime by the organised crime syndicate of which he is allegedly a member, committed manifest error and exceeded its jurisdiction in quashing the charge-sheet filed before the competent court qua the writ petitioner Mohan Nayak N. regarding the offences under Sections 3(1)(i), 3(2), 3(3) and 3(4) of the 2000 Act. The High Court did so being impressed by the exposition of this Court in Lalit Somdatta Nagpal [State of Maharashtra v. Lalit Somdatta Nagpal, (2007) 4 SCC 171 : (2007) 2 SCC (Cri) 241] , in particular para 63 thereof. Indeed, that exposition would have bearing only if the entire material was to be analysed by the High Court to conclude that the facts do not*

disclose justification for application of provisions of the 2000 Act including qua the writ petitioner Mohan Nayak N., provided he was being proceeded only for the offence of organised crime punishable under Section 3(1) of the 2000 Act. For, the reported decision deals with the argument regarding invocation of provision analogous to Section 3(1) of the 2000 Act. Be it noted that requirement of more than two charge-sheets is in reference to the continuing unlawful activities of the organised crime syndicate and not qua individual member thereof.

28. *Reliance was also placed on Brijesh Singh [State (NCT of Delhi) v. Brijesh Singh, (2017) 10 SCC 779, para 25 : (2018) 1 SCC (Cri) 117] . Even this decision is of no avail to the private respondent Mohan Nayak N. for the same reason noted whilst distinguishing Lalit Somdatta Nagpal [State of Maharashtra v. Lalit Somdatta Nagpal, (2007) 4 SCC 171 : (2007) 2 SCC (Cri) 241] . Further, the questions considered in that case, as can be discerned from SCC para 12 of the reported decision [State (NCT of Delhi) v. Brijesh Singh, (2017) 10 SCC 779 : (2018) 1 SCC (Cri) 117] , are regarding jurisdiction of the competent court to take notice of charge-sheets filed against the accused outside the State. It is not an authority on the issue under consideration.*

29. *We may hasten to add that the fact that the investigating agency was unable to collect material during investigation against the writ petitioner Mohan Nayak N. for the offence under Section 3(1) of the 2000 Act, does not mean that the information regarding commission of a crime by him within the meaning of Sections 3(2), 3(3) or 3(4) of the 2000 Act cannot be recorded and investigated against him as being a member of the organised crime syndicate and/or having played role of an abettor, being party to the conspiracy to commit organised crime or of being a facilitator, as the case may be. For the latter category of*

offence, it is not essential that more than two charge-sheets have been filed against the person so named, before a competent court within the preceding period of ten years and that court had taken cognizance of such offence. That requirement applies essentially to an offence punishable only under Section 3(1) of the 2000 Act.

30. *As regards offences punishable under Sections 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 organised 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 organised crime syndicate. This position is expounded in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057] which has been quoted with approval in para 85 of the judgment in Prasad Shrikant Purohit [Prasad Shrikant Purohit v. State of Maharashtra, (2015) 7 SCC 440 : (2015) 3 SCC (Cri) 138] . The same reads thus : (Prasad Shrikant Purohit case [Prasad Shrikant Purohit v. State of Maharashtra, (2015) 7 SCC 440 : (2015) 3 SCC (Cri) 138] , SCC p. 489)*

"85. A reading of para 31 in Ranjitsing Brahmajeetsing Sharma case [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057] 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 the 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 syndicate" 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 the MCOCA."

(emphasis supplied)

31. *It is not necessary to multiply authorities in this regard. Suffice it to observe that the High Court in the present case was essentially concerned with the legality of prior approval granted by the Commissioner of Police, Bengaluru City dated 14-8-2018 for invoking Section 3 of the 2000 Act and thus, to allow recording of information regarding commission of offence of organised crime under the 2000 Act and to investigate the same. As aforesaid, while considering the proposal for grant of prior approval under Section 24(1)(a) of the 2000 Act, what is essential is the satisfaction of the competent authority that the material placed before him does reveal presence of credible information regarding commission of an offence of organised crime by the organised crime syndicate and, therefore, allow invocation of Section 3 of the 2000 Act. As a consequence of which, investigation of that crime can be taken forward by the investigating agency and charge-sheet can be filed before the court concerned and upon grant of sanction by the competent authority under Section 24(2), the competent court can take cognizance of the case.*

32. *At the stage of granting prior approval under Section 24(1)(a) of the 2000 Act, therefore, the competent authority is not*

required to wade through the material placed by the investigating agency before him along with the proposal for grant of prior approval to ascertain the specific role of each accused. The competent authority has to focus essentially on the factum whether the information/material reveals the commission of a crime which is an organised crime committed by the organised crime syndicate. In that, the prior approval is qua offence and not the offender as such. As long as the incidents referred to in earlier crimes are committed by a group of persons and one common individual was involved in all the incidents, the offence under the 2000 Act can be invoked. This Court in Prasad Shrikant Purohit [Prasad Shrikant Purohit v. State of Maharashtra, (2015) 7 SCC 440 : (2015) 3 SCC (Cri) 138] in SCC paras 61 and 98 expounded that at the stage of taking cognizance, the competent court takes cognizance of the offence and not the offender. This analogy applies even at the stage of grant of prior approval for invocation of provisions of the 2000 Act. The prior sanction under Section 24(2), however, may require enquiry into the specific role of the offender in the commission of organised crime, namely, he himself singly or jointly or as a member of the organised crime syndicate indulged in commission of the stated offences so as to attract the punishment provided under Section 3(1) of the 2000 Act. However, if the role of the offender is merely that of a facilitator or of an abettor as referred to in Sections 3(2), 3(3), 3(4) or 3(5), the requirement of named person being involved in more than two charge-sheets registered against him in the past is not relevant. Regardless of that, he can be proceeded under the 2000 Act, if the material collected by the investigating agency reveals that he had nexus with the accused who is a member of the organised crime syndicate or such nexus is related to the offence in the nature of organised crime. Thus, he need not be a person who had direct role in the commission of an organised crime as such.

15. In ***Prasad Srikanth Purohit's case supra, (2015) 7 SCC 440,*** the Apex Court held as under:-

> ***39.*** *Having thus ascertained the scope involved in these appeals by virtue of the orders impugned herein, when we consider the submissions of the learned counsel for the appellants, we find that the sum and substance of the submissions can be summarised as under:*
>
> *"That the definition of 'continuing unlawful activity', 'organised crime' or 'organised crime syndicate' as defined under Sections 2(1)(d), (e) and (f) of MCOCA was not cumulatively satisfied in order to proceed with Special Case No. 1 of 2009 for the alleged commission of offence of organised crime under Section 3 of MCOCA."*
>
> ***41.*** *In the first instance, it will be profitable to examine the scheme of MCOCA by making a cursory glance to the Objects and Reasons and thereafter to make an intensive reading of the abovereferred to provisions. When we peruse the Objects and Reasons, it discloses that organised crime has been posing very serious threat to our society for quite some years and it was also noted that organised crime syndicates had a common cause with terrorist gangs. In the Objects and Reasons, the foremost consideration was the serious threat to the society by those who were indulging in organised crimes in the recent years apart from organised crime criminals operating hand in glove with terrorist gangs. It is common knowledge that for the terrorist gangs, the sole object is to create panic in the minds of peace loving members of the society and in that process attempt to achieve some hidden agenda which cannot be easily identified, but certainly will not be in the general interest or well being of the*

society. Those who prefer to act in such clandestine manner and activities will formulate their own mind-set and ill-will towards others and attempt to achieve their objectives by indulging in unlawful hazardous criminal activities unmindful of the serious consequences and in majority of such cases it results in severe loss of life of innocent people apart from extensive damage to the properties of public at large. It was further found that the existing legal framework, that is, the penal and procedural laws and the adjudicatory system, were found to be inadequate to curb or control the menace of "organised crime". The Objects and Reasons also state that such "organised crimes" were filled by illegal wealth generated by contract killing, extrusion, smuggling in contraband, illegal trade in narcotics, kidnapping for ransom, collection of protection money, money laundering, etc. Keeping the above serious repercussions referred to in the Objects and Reasons in view, when we examine Sections 2(1)(d), (e) and (f), which defines "continuing unlawful activity", "organised crime" or "organised crime syndicate", we find that the three definitions are closely interlinked.

42. *The definition of "continuing unlawful activity" under Section 2(1)(d) mainly refers to an activity prohibited by law. The said activity should be a cognizable offence, punishable with imprisonment of three years or more. The commission of such offence should have been undertaken either by an individual singly or by joining with others either as a member of an "organised crime syndicate" or even if as an individual or by joining hands with others even if not as a member of a "organised crime syndicate" such commission of an offence should have been on behalf of such syndicate. It further states that in order to come within the definition of "continuing unlawful activity" there should have been more than one charge-sheet filed before a competent*

court within the preceding period of 10 years and that the said court should have taken cognizance of such offence.

43. *Before getting into the nuances of the said definition of "continuing unlawful activity", it will be worthwhile to get a broad idea of the definition of "organised crime" under Section 2(1)(e) and "organised crime syndicate" under Section 2(1)(f). An "organised crime" should be any "continuing unlawful activity" either by an individual singly or jointly, either as a member of an "organised crime syndicate" or on behalf of such syndicate. The main ingredient of the said definition is that such "continuing unlawful activity" should have been indulged in by use of violence or threat of violence or intimidation or coercion or other unlawful means. Further, such violence and other activity should have been indulged in with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. Therefore, an "organised crime" by nature of violent action indulged in by an individual singly or jointly either as a member of an "organised crime syndicate" or on behalf of such syndicate should have been either with an object of making pecuniary gains or undue economic or other advantage or for promoting insurgency. If the object was for making pecuniary gains it can be either for himself or for any other person. But we notice for promoting insurgency, there is no such requirement of any personal interest or the interest of any other person or body. The mere indulgence in a violent activity, etc. either for pecuniary gain or other advantage or for promoting insurgency as an individual, either singly or jointly as a member of "organised crime syndicate" or on behalf of a such syndicate would be sufficient for bringing the said activity within the four corners of the definition of "organised crime".*

44. *An "organised crime syndicate" is a group of two or more persons who by acting singly or collectively as a syndicate or gang indulge in activities of "organised crime".*

45. *By conspectus reading of the above three definitions, if in the preceding 10 years from the date of third continuing unlawful activity if more than one charge-sheet has been filed before a competent court which had taken cognizance of such offence which would result in imposition of a punishment of three years or more, undertaken by a person individually or jointly either as a member of an "organised crime syndicate" or on its behalf, such crime if falls within the definition of "organised crime", the invocation of MCOCA would be the resultant position.*

46. *Keeping the above broad prescription as the outcome of the definition of Sections 2(1)(d), (e) and (f) in mind, when we refer to Section 3, we find that it is a penal provision under which, various punishments for the commission of "organised crime" have been set out and such punishment can be up to life imprisonment and even death, apart from fine, subject to minimum of rupees one lakh to maximum of rupees five lakhs. The imprisonment ranges from five years to life imprisonment and can also result in imposition of death penalty. Section 17 prescribes Special Rules of evidence notwithstanding anything contrary contained in CrPC or the Evidence Act, 1872 for the purposes of trial and punishment for offences under MCOCA. Section 18 of the Act is again a non obstante clause which states that irrespective of any provision in the Code or in the Evidence Act, 1872 and subject to the provisions of the said section, a confession made by a person before a police officer not below the rank of Superintendent of Police and recorded by such police officer either in writing or in any mechanical devices like cassettes, tapes or soundtracks from which sounds or images can be reproduced, shall be admissible in*

the trial of such person or co-accused, abettor or conspirator provided they are charged and tried in the same case together with the accused. Section 20 is yet another provision under MCOCA which prescribes that where a person is convicted of any of the offence punishable under MCOCA, the Special Court may in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order shall stand forfeited to the State Government free from all encumbrances, etc.

54. *The submission of the learned counsel for the appellants was that under Section 2(1)(d), in order to constitute a "continuing unlawful activity" two earlier charge-sheets in the preceding 10 years should exist and that such charge-sheets should have been taken cognizance by the competent court within the said period of 10 years and it must have been accomplished. It was also contended that for ascertaining the said position, the date of the third occurrence should be the relevant date for counting the preceding 10 years. Insofar as that claim is concerned, it can be straightaway accepted that since Section 2(1)(d) uses the expression "an activity" in the very opening set of expressions, which is prohibited by law, the date of such activity, namely, the third one can be taken as the relevant date for the purpose of finding out the two earlier charge-sheets in the preceding 10 years, in which event in the present case, the preceding 10 years will have to be counted from 29-9-2008 which was the date when the third occurrence of Malegaon bomb blast took place.*

16. Similarly, in ***Shivas' case supra, (2015) 14 SCC 272,*** the Apex Court held as under:-

> ***10.*** *The very fact that more than one charge-sheets had been filed against the respondents alleging offences punishable with more than three years' imprisonment is not enough. As rightly pointed out by the High Court commission of offences prior to the enactment of MCOCA does not by itself constitute an offence under MCOCA. Registration of cases, filing of charge-sheets and taking of cognizance by the competent court in relation to the offence alleged to have been committed by the respondents in the past is but one of the requirements for invocation of Section 3 of MCOCA. Continuation of unlawful activities is the second and equally important requirement that ought to be satisfied. It is only if an organised crime is committed by the accused after the promulgation of MCOCA that he may, seen in the light of the previous charge-sheets and the cognizance taken by the competent court, be said to have committed an offence under Section 3 of the Act.*

17. In ***Sandeep Omprakash Gupta's case supra,*** **- 2022 SCC OnLine SC 1727,** the Apex Court held as under:-

> *21. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the decision rendered by a coordinate Bench of this Court in the case of Shiva alias Shivaji Ramaji Sonawane (supra) requires a relook and the issue be referred to a larger Bench.*
>
> ***AN OVERVIEW OF THE Gujarat Control of Terrorism and Organised Crime Act, 2015***
>
> *22. The Gujarat Control of Terrorism Act, 2015, as its long title indicates, is 'an Act to make special provisions for the prevention*

and control of terrorist acts and for coping with criminal activities by organised crime syndicates and for the matters connected therewith or incidental there to'. The statement of objects and reasons contains the reasons, which constitute the foundation for the legislature to step in:

First, organised crime which is in existence for some years poses a serious threat to society;

Secondly, organised crime is not confined by national boundaries;

Thirdly, organised crime is fuelled by illegal wealth generated by contract killing, extortion, smuggling and contraband, illegal trade in narcotics, kidnapping for ransom, collection of protection money and money laundering, and other activities;

Fourthly, the illegal wealth and black money generated by organised crime pose adverse effects on the economy;

Fifthly, organised crime syndicates make common cause with terrorists fostering narcoterrorism which extends beyond national boundaries;

Sixthly, the existing legal framework in terms of penal and procedural laws and the adjudicatory system were found inadequate to curb and control organised crime; and

Seventhly, the special law was enacted with 'stringent and deterrent provisions' including in certain circumstances, the power to intercept wire, electronic or oral communication.

23. In understanding the ambit of the enactment, emphasis must be given to three definitions:

a. Organised crime (Section 2(1)(e));1

b. Organised crime syndicate (Section 2(1)(f));2 and

c. Continuing unlawful activity (Section 2(1)(c).3

24. The expression 'organised crime' is defined with reference to a continuing unlawful activity. The definition is exhaustive since it is prefaced by the word 'means'. The ingredients of an organised crime are:

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 organised 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.

25. The above definition of organised crime, as its elements indicate, incorporates two other concepts namely, a continuing unlawful activity and an organised crime syndicate. Hence, it becomes necessary to understand the ambit of both those expressions. The ingredients of a continuing unlawful activity are:

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 organised 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 preceding period of ten years; and

e. The court should have taken cognizance of the offence.

26. The elements of the definition of 'organised crime syndicate' are:

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 organised crime.

27. Section 2(1)(c) while defining 'continuing unlawful activity' and Section 2(1)(e) while defining 'organised crime', both contain the expression 'as a member of an organised crime syndicate or on behalf of such syndicate'. While defining an organised crime syndicate, Section 2(1)(f) refers to 'activities of organised crime'.

28. Section 3 provides for the punishment for organised crime.4 Sub-section (1) of Section 3 covers 'whoever commits an offence of organised crime'. Subsection (2) covers 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. Sub-section (3) covers whoever harbours or conceals or attempts to harbour or conceal any member of an organised crime syndicate. Sub-section (4) covers any person who is a member of an organised crime syndicate. Sub-section (5) covers whoever holds any property derived or obtained from the commission of an organised crime or which has been acquired through the funds of an organised crime syndicate. Section 4 punishes the possession of unaccountable wealth on behalf of a member of an organised crime syndicate.

29. For charging a person of organised crime or being a member of organised crime syndicate, it would be necessary to prove that the persons concerned have indulged in:

(i) an activity,

(ii) which is prohibited by law,

(iii) which is a cognizable offence punishable with imprisonment for three years or more,

(iv) undertaken either singly or jointly,

(v) as a member of organised crime syndicate i.e. acting as a syndicate or a gang, or on behalf of such syndicate,

(vi)(a) in respect of similar activities (in the past) more than one charge-sheets have been filed in competent court within the preceding period of ten years,

(b) and the court has taken cognizance of such offence.

(vii) the activity is undertaken by:

(a) violence, or

(b) threat of violence, or intimidation or

(c) coercion or

(d) other unlawful means

(viii)(a) with the object of gaining pecuniary benefits or gaining undue or other advantage or himself or any other person, or

(b) with the object of promoting insurgency.

30. *A close analysis of the term, 'organised crime' would indicate that there has to be an activity prohibited by law for the time being in force which is a cognizable offence punishable with imprisonment of three years or more, undertaken as singly or jointly as a member of organised crime syndicate or on behalf of such syndicate, in respect of which activity more than one charge sheets have been filed before a competent court within the preceding period of ten years and the Court has taken cognizance of such offence.*

57. *If the decision of the coordinate Bench of this Court in the case of Shiva alias Shivaji Ramaji Sonawane (supra) is looked into closely along with other provisions of the Act, the same would*

indicate that the offence of 'organised crime' could be said to have been constituted by at least one instance of continuation, apart from continuing unlawful activity evidenced by more than one chargesheets in the preceding ten years. We say so keeping in mind the following:

(a) If 'organised crime' was synonymous with 'continuing unlawful activity', two separate definitions were not necessary.

(b) The definitions themselves indicate that the ingredients of use of violence in such activity with the objective of gaining pecuniary benefit are not included in the definition of 'continuing unlawful activity', but find place only in the definition of 'organised crime'.

(c) What is made punishable under Section 3 is 'organised crime' and not 'continuing unlawful activity'.

(d) If 'organised crime' were to refer to only more than one charge sheets filed, the classification of crime in Section 3(1)(i) and 3(1)(ii) reply on the basis of consequence of resulting in death or otherwise would have been phrased differently, namely, by providing that 'if any one of such offence has resulted in the death', since continuing unlawful activity requires more than one offence. Reference to 'such offence' in Section 3(1) implies a specific act or omission.

(e) As held by this Court in State of Maharashtra v. Bharat Shanti Lal Shah (supra) continuing unlawful activity evidenced by more than one charge sheets is one of the ingredients of the offence of organised crime and the purpose thereof is to see the antecedents and not to convict, without proof of other facts which constitute the ingredients of Section 2(1)(e) and Section 3, which respectively define commission of offence of organised crime and prescribe punishment.

(f) There would have to be some act or omission which amounts to organised crime after the Act came into force, in respect of which

the accused is sought to be tried for the first time, in the Special Court (i.e. has not been or is not being tried elsewhere).

(g) However, we need to clarify something important. Shiva alias Shivaji Ramaji Sonawane (supra) dealt with the situation, where a person commits no unlawful activity after the invocation of the MCOCA. In such circumstances, the person cannot be arrested under the said Act on account of the offences committed by him before coming into force of the said Act, even if, he is found guilty of the same. However, if the person continues with the unlawful activities and is arrested, after the promulgation of the said Act, then, such person can be tried for the offence under the said Act. If a person ceases to indulge in any unlawful act after the said Act, then, he is absolved of the prosecution under the said Act. But, if he continues with the unlawful activity, it cannot be said that the State has to wait till, he commits two acts of which cognizance is taken by the Court after coming into force. The same principle would apply, even in the case of the 2015 Act, with which we are concerned.

18. In ***Zakir Abdul Mirajkar's case supra, - 2022 SCC Online SC 1092,*** the Apex Court held as under:-

19. *The expression 'organised crime' is defined with reference to a continuing unlawful activity. The definition is exhaustive since it is prefaced by the word "means". The ingredients of an organized crime are:*

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.

20. *The above definition of organized crime, as its elements indicate, incorporates two other concepts namely, a continuing unlawful activity and an organized crime syndicate. Hence, it becomes necessary to understand the ambit of both those expressions. The ingredients of a continuing unlawful activity are:*

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.

21. *The elements of the definition of "organized crime syndicate" are:*

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.

22. *Both Section 2(1)(d) while defining "continuing unlawful activity" and Section 2(1)(e) while defining "organized crime" contain the expression "as a member of an organized crime syndicate or on behalf of such syndicate". While defining an organized crime syndicate, Section 2(1)(f) refers to "activities of organized crime".*

23. *Section 3 provides for the punishment for organized crime. Sub Section (1) of Section 3 covers "whoever commits an offence of organized crime". Sub Section (2) covers whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organized crime or any act preparatory to organized crime. Sub Section (3) covers whoever harbours or conceals or attempts to harbour or conceal any member of an organized crime syndicate. Sub Section (4) covers any person who is a member of an organized crime syndicate. Sub Section (5) covers whoever holds any property derived or obtained from the commission of an organized crime or which has been acquired through the funds of an organized crime syndicate. Section 4 punishes the possession of unaccountable wealth on behalf of a member of an organized crime syndicate.*

75. *It is the appellants' case that the provisions of the MCOCA have not been validly invoked. Their arguments (which have been noted in the segment on submissions) are addressed below.*

a. <u>The approval order under Section 23(1)(a) MCOCA is with respect to the offence and not with respect to the offender.</u>

76. *The appellants rely on State of Maharashtra v. Lalit Somdatta Nagpal[38] to argue that the order of approval dated 10 April 2019 is vitiated by non-application of mind. This Court observed that the approval order under Section 23(1)(a) in that*

case did not mention the name of one of the accused persons. This omission was partly the reason for its decision to set aside the proceedings under the MCOCA with respect to said accused. However, this was not the only factor which had a bearing on the Court's decision. The Court was also persuaded to set aside the proceedings because the authorities had arraigned the concerned accused on charges under MCOCA in respect of violations of sales tax and excise laws. The Court found that violations of sales tax and excise laws were not intended to attract MCOCA and that some degree of coercion or violence was required to charge an accused under the provisions of the MCOCA.

77. *The order of approval under Section 23(1)(a) MCOCA need not name every accused person at the outset. Often, limited information is available to the investigating authorities at the time of recording information about the commission of an offence. The involvement of persons other than those named initially may come to light during the course of investigation by the police. In fact, the very purpose of an investigation is to determine whether a crime has been committed and if so, to shed light on the details of the crime including the identity of the perpetrators. This is true of every crime but especially true in the case of organized crime, where an organized crime syndicate may consist of scores of persons involved in unlawful activities in different capacities. Section 23(1)(a) MCOCA speaks of recording information about the commission of an* ***offence*** *of organized crime, and not of recording information about the* ***offender****. The competent authority may record information under Section 23(1)(a) once it is satisfied that an organized crime has been committed by an organized crime syndicate.*

78. *In Vinod G. Asrani v. State of Maharashtra*[39]*, this Court noticed the similarities of the scheme of MCOCA and of the CrPC*

in that persons could be charged with committing offences, following the completion of investigation:

> *"9. … The scheme of the Code of Criminal Procedure makes it clear that once the information of the commission of an offence is received under Section 154 of the Code of Criminal Procedure, the investigating authorities take up the investigation and file charge-sheet against whoever is found during the investigation to have been involved in the commission of such offence. There is no hard-and-fast rule that the first information report must always contain the names of all persons who were involved in the commission of an offence. Very often the names of the culprits are not even mentioned in the FIR and they surface only at the stage of the investigation. The scheme under Section 23 of MCOCA is similar and Section 23(1)(a) provides a safeguard that no investigation into an offence under MCOCA should be commenced without the approval of the authorities concerned. Once such approval is obtained, an investigation is commenced. Those who are subsequently found to be involved in the commission of the organised crime can very well be proceeded against once sanction is obtained against them under Section 23(2) of MCOCA.*
>
> *10. As to whether any offence has at all been made out against the petitioner for prosecution under MCOCA, the High Court has rightly pointed out that the accused will have sufficient opportunity to contest the same before the Special Court."*

79. *In Kavitha Lankesh v. State of Karnataka[40], a three-judge bench of this Court held that prior approval under the Karnataka Control of Organized Crime Act 2000 was concerned with the offence and not with the offender:*

> *"27. At the stage of granting prior approval under Section 24(1)(a) of the 2000 Act, therefore, the competent authority is not required to wade through the material placed by the Investigating Agency before him along with the proposal for grant of prior approval to ascertain the specific role of each accused. The competent authority has to focus essentially on the factum whether the information/material reveals the commission of a crime which is an organized crime committed by the organized crime syndicate. In that, the prior approval is qua offence and not the offender as such."*

80. *Section 24(1)(a) of the Karnataka Control of Organized Crime Act 2000 is pari materia to Section 23(1)(a) MCOCA. Whether the appellants were named in the approval order under Section 23(1)(a) is immaterial while determining its validity.*

81. *In Kavitha Lankesh (supra), the Court also held:*

"27. … As long as the incidents referred to in earlier crimes are committed by a group of persons and one common individual was involved in all the incidents, the offence under the 2000 Act can be invoked."

b. <u>The appellants may be charged with some offences punishable under MCOCA in relation to the charge of illegal gambling.</u>

82. *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 be accused of conspiring, attempting to commit, 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.

83. *From the analysis above, the appellants' submission that the allegation of engaging in illegal gambling would not sustain the invocation of the penal provisions of Section 3(2) MCOCA is simplistic. Although gambling may not, by itself, constitute an organized crime, it may be the route through which the accused are abetting the commission of organized crime. The question of whether the appellants are in fact abetting organized crime in this manner, is to be determined at the stage of trial. Similarly, the question of whether offences under the IPC would attract MCOCA in the present case is to be determined at the stage of trial and depends on the facts and circumstances of each case. The observation in Lalit Somdatta Nagpal (supra) that some degree of coercion or violence is required to charge an accused under provisions of MCOCA must be read together with Section 2(1)(e) which recognizes that "other unlawful means" may be used while committing organized crime, in addition to coercion and violence.*

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

84. *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.*

85. *In Govind Sakharam Ubhe v. State of Maharashtra[41], a two-judge Bench of the Bombay High Court, speaking through Justice Ranjana Desai (as the learned judge then was) held that:*

> *"37. … Section 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 … 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. 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. 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."*

19. Learned Senior counsel for the petitioners as well as the learned Advocate General relied upon the judgment of the Apex Court in ***Mahipal Singh's case supra, - (2014) 11 SCC 282;*** according to the petitioners, under identical / *pari materia* provisions of the Maharastra Control of Organized Crime Act, 1999, (MCOCA), the Apex Court has held that as on the date of commission of the offence, there has to exist two charge sheets and cognizance taken for two cases against the accused persons during the period of 10 years prior to and preceding the date of commission of the offence; learned Advocate General would however seek to contend that in the said judgment, the Apex Court has held that notwithstanding / irrespective of the date of commission of the offence under MCOCA, it is the date of detection of the offence, albeit subsequently which would be relevant and has to be reckoned for the purpose of invocation of MCOCA. In order to appreciate the rival contentions, it is necessary to extract the relevant portions of the said judgment as under:-

> ***4.*** *In Cases Nos. E0005 and E0006, charge-sheets were submitted on 1-9-2011 and the learned Judge in seisin of the case took cognizance of the offence on 13-9-2011 and 1-9-2011 respectively. Accused Mahipal Singh was charge-sheeted in Cases Nos. E0007 and E0008 and the Deputy Inspector General (for short "DIG") of CBI granted approval for invoking Section 3 of the Maharashtra Control of Organised Crime Act (hereinafter referred to as "MCOCA"), against him by order dated 18-10-2011. Accused Mahipal Singh was further charge-sheeted in Cases Nos.*

E0009 and E0010 and by order dated 14-1-2012, the DIG, CBI granted approval for invoking Section 3 of MCOCA against him.

10. *Mr Subramanium submits that in Cases Nos. E0007 and E0008, DIG gave approval for invoking Section 3 of MCOCA on 18-10-2011 and in Cases Nos. E0009 and E0010 on 14-1-2012 whereas the charge-sheets in Cases Nos. E0005 and E0006 were submitted on 1-9-2011 and the competent court took cognizance of the offence on 13-9-2011 and 1-9-2011 respectively. He points out that in all those four cases i.e. Cases Nos. E0007, E0008, E0009 and E0010, in which Section 3 of MCOCA has been invoked, first information reports were registered on 28-7-2011 and the examinations were held in January 2010, November 2010, June 2010 and January 2011, respectively. Therefore, according to Mr Subramanium, on the dates the crimes were committed or the cases registered or the crimes came to be known, more than one charge-sheets in respect of the offence of specified nature were not submitted within ten years nor had the competent court taken cognizance of the offence in more than one case of specified nature, against the accused.*

11. *Ms Jaising, however, contends that the ingredients constituting the offence under Section 3 of MCOCA have to be satisfied on the date MCOCAwas invoked. She points out that there is no dispute that the date on which MCOCA was invoked, more than two charge-sheets for the commission of the offence of specified nature were filed and the competent court had taken cognizance of the same. According to her, the ingredients of the offence have to be satisfied with reference to the date the DIG gave approval for invoking Section 3 of MCOCA and not on the date the offence was committed or came to be known.*

12. *Section 3 of MCOCA is the penal provision which provides for punishment for organised crime. "Organised crime" has been defined under Section 2(1)(e) of MCOCA and the same reads as follows:*

*"**2.Definitions**.—(1) In this Act, unless the context otherwise requires—*

*(e) '**organised crime**' means any continuing unlawful activity 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, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any person or promoting insurgency;"*

The definition aforesaid, inter alia, makes it clear that to come within the mischief of organised crime, continuing unlawful activity with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person or promoting insurgency are essential.

13. *"Continuing unlawful activity" has been defined under Section 2(1)(d) of MCOCA. It reads as follows:*

*"**2.Definitions**.—(1) In this Act, unless the context otherwise requires—*

*(d) '**continuing unlawful activity**' means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment 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;"

From a plain reading of the aforesaid provision, it is evident that to come within the mischief of continuing unlawful activity, it is required to be established that the accused is involved in activities prohibited by law which are cognizable offence punishable with imprisonment of three years or more and in respect thereof, more than one charge-sheets have been filed against such person before a competent court within the preceding period of ten years and that court has taken cognizance of such offence.

14. *We have given our most anxious consideration to the rival submissions and in the light of what we have observed above, the submissions advanced by Mr Subramanium commend us. It is trite that to bring an accused within the mischief of the penal provision, ingredients of the offence have to be satisfied on the date the offence was committed. Article 20(1) of the Constitution of India permits conviction of a person for an offence for violation of law in force at the time of commission of the act charged as an offence. In the case in hand, examinations alleged to have been rigged had taken place in January 2010, June 2010, November 2010 and January 2011 and the date on which the first information reports were registered, more than one charge-sheets were not filed against the accused for the offence of specified nature within the preceding period of ten years and further, the court had not taken cognizance in such number of cases. As observed earlier, for punishment for the offence of organised crime under Section 3 of MCOCA, the accused is required to be involved in continuing unlawful activity which inter alia provides that more than one charge-sheets have been filed before a competent court within the preceding period of ten years and the court had taken cognizance of such offence. Therefore, in the case in hand, on the*

date of commission of the offence, all the ingredients to bring the act within Section 3 of MCOCA have not been satisfied. We are conscious of the fact that there may be a case in which on the date of registration of the case, one may not be aware of the fact of charge-sheet and cognizance being taken in more than one case in respect of the offence of specified nature within the preceding period of ten years, but during the course of investigation, if it transpires that such charge-sheets and cognizance have been taken, Section 3 of MCOCA can be invoked. There may be a case in which the investigating agency does not know exactly the date on which the crime was committed; in our opinion, in such a case the date on which the offence comes to the notice of the investigating agency, the ingredients constituting the offence have to be satisfied. In our opinion, an act which is not an offence on the date of its commission or the date on which it came to be known, cannot be treated as an offence because of certain events taking place later on. We may hasten to add here that there may not be any impediment in complying with the procedural requirement later on in case the ingredients of the offence are satisfied, but satisfying the requirement later on to bring the act within the mischief of penal provision is not permissible. In other words, procedural requirement for prosecution of a person for an offence can later on be satisfied but ingredients constituting the offence must exist on the date the crime is committed or detected. Submission of charge-sheets in more than one case and taking cognizance in such number of cases are ingredients of the offence and have to be satisfied on the date the crime was committed or came to be known.

15. *Now we proceed to apply the principle aforesaid to the facts of the present case. We find that on the date the offence was committed or came to be known, one of the ingredients of the offence i.e. submission of charge-sheet and cognizance of offence*

> *of specified nature in more than one case within the preceding period of ten years, has not been satisfied. Therefore, we have no other option than to hold that the accused cannot be prosecuted for the offence under Section 3 of MCOCA.*

20. A perusal of the ratio laid down by the Apex Court is sufficient to come to the conclusion that it has been categorically held that the period of 10 years has to be reckoned / considered prior to the date of commission of the offence and not from the date of detection of the offence; the reliance placed on the words “detection, detected” in the said judgment at paragraph-14 cannot be construed or treated as reckoning or considering the period of 10 years as to precede the date of detection of the offence as contended by the learned Advocate General. In fact, the Apex Court has clearly held that for the purpose of invocation of Section 3 of MCOCA, it is absolutely essential that as on the date of commission of the offence, all the ingredients had to be mandatorily satisfied / fulfilled by the respondents; to put it differently, filing of two charge sheets and taking of cognizance of two offences within a period of 10 years prior to and preceding the date of commission of the offence under KCOCA is a *sine qua non* for invocation of the offence and in the absence of the same, the very invocation of KCOCA would be without jurisdiction or authority of law and deserves to be quashed.

21. Under these circumstances, it cannot be said that ***Mahipal Singh's case supra*****,** lays down any proposition / legal principle to the effect that notwithstanding and irrespective of the date of commission of the offence, the period of 10 years has to be calculated and reckoned from the date of detection of the offence and not from the date of commission of the offence and the said contention of the respondents is clearly based on misreading / misconstruction of the ratio in the said judgment and consequently, the said contention cannot be accepted.

22. A perusal of the provisions of KCOCA will also indicate that detection of the offence, albeit subsequent to the date of commission of the offence will relate back to the date of commission of the offence; to illustrate, if the offence is committed on 01.01.2024 but not detected immediately but subsequently, after a period of six months i.e., on 01.07.2024, by virtue of the doctrine of relation back, the date of detection would relate back to the date of commission of the offence i.e., to 01.01.2024 and the period of 10 years would necessarily have to be computed, calculated, reckoned and considered prior to 01.01.2024 and not from 01.07.2024; in this context, it is also significant to note that none of the provisions of KCOCA contemplate the date of detection of an offence to be reckoned or considered for any purpose whatsoever and consequently, it is impermissible in law to read or insert the expression

"detection of the offence" into Section 3 of KCOCA which clearly speaks about the commission of the offence.

23. Under these circumstances, in the light of the undisputed fact that the date of commission of the offence was 17.07.2017, in the absence of two charge sheets and cognizance being taken for two offences for a period of 10 years preceding and prior to 17.07.2017, the date of commission of the offence, merely because the same was allegedly detected in December, 2023, the said circumstance of detection of the offence cannot be relied upon by the respondents to contend that the period of 10 years has to be calculated and reckoned from 2023 and as such, the impugned order is clearly without jurisdiction or authority of law and the same deserves to be quashed.

24. Learned Advocate General invited my attention to the Karnataka Police Manual – Chapter XXXVIII relating to completion of investigation and final disposal at Rule No.1567, which reads as under:-

> *1567(1) If, after the completion of an investigation, the investigating officer considers that in spite of all steps taken, there is no prospect of obtaining any further clue and that nothing more can be done in the case, he will submit a final report treating the case as* ***undetectable.*** *xxxxxxxxxxxx*

25. It was submitted that since the expression "detection" is contained in the aforesaid Rule in the Karnataka Police Manual, the offence / crime is detected only after completion of investigation and it is

only the date of detection upon completion of investigation which has to be reckoned for the purpose of invocation of Section 3 of the KCOCA; the said submission is misconceived and cannot be accepted especially when none of the provisions of KCOCA contemplate the date of detection of the offence as the date to be reckoned for the purpose of Sections 3, 2(d) 2(e) and 2(f) of the KCOCA; further, there is absolutely no nexus or connection between the police authorities filing a final report by treating the case as "undetectable" and the date of commission of the offence to be reckoned for the purpose of invocation of KCOCA; under these circumstances, even this contention of the respondents cannot be accepted.

26. The respondents have placed reliance upon certain judgments to contend that it is sufficient that an order of approval under Section 24(1)(a) contains *prima - facie* satisfaction by the 2nd respondent for the purpose of invocation of KCOCA and detailed reasons are not required in this regard; as stated hereinbefore, I have already come to the conclusion that the impugned order seeking to invoke KCOCA in a pending Crime No.85/2017 in relation to an offence committed on 17.07.2017 and to insert the said offence of KCOCA into the said proceedings is without jurisdiction or authority of law, since as on 17.07.2017 i.e., the date of commission of the offence, no charge sheet had been filed in two cases and cognizance had not been taken in two

cases within a period of 10 years preceding 17.07.2017 as mandatorily required to invoke KCOCA; under these circumstances, there is no necessity to scrutinize / examine the legality, validity or correctness of the impugned order on the anvil of non-application of mind and consequently, for the purpose of the instant case, the said issue does not require further examination or consideration.

27. Insofar as the judgments relied upon by the respondents in relation to confessional statements for the purpose of Section 24(1)(a) of the KCOCA are concerned, having regard to the discussion made above, the said judgments are neither relevant nor germane for the purpose of disposal of the present petitions.

28. The respondents have also relied upon the judgments of this Court in the case of ***Raju vs. State of Karnataka – 2017 SCC Online KAR 6969;*** the fact that the said judgment is inapplicable to the facts of the instant case can clearly be discerned from the point formulated / framed for consideration in the said judgment by this Court to the effect which was only as to whether an order under Section 24(1)(a) of KCOCA was to be read as applicable only to the accused persons whose names are indicate therein or whether it would be relatable to the crime number / FIR; the said question was answered by this Court by holding that the approval would relate to the crime number and not to the accused persons, thereby leading to the inescapable conclusion that it is the date

of commission of the offence which was relevant and not the date of passing an order under Section 24(1)(a) of KCOCA; at paragraph-13, this Court held as under:-

> ***13.*** *In the light of aforestated authoritative pronouncement of law by Hon'ble Apex Court when the facts on hand are examined at the cost of repetition, it would clearly disclose that approval which has been granted under Section 24(l)(a) of KCOCA is in respect of Crime No. 58 of 2017 and as such, petitioners cannot be heard to contend that it has to be read or considered or construed as an approval granted only in respect of accused 1, 2, 11, 12 and 18. If this contention were to be accepted then the provision itself would become otiose and render it nugatory, for the simple reason that Investigating Officer only after having obtained approval would be empowered to carryout investigation under the KCOCA and during the course of said investigation he would be able to investigate to find out as to whether there is complicity of other persons and as to who are all involved in the commission of organised crime and there may be instances that once such approval is obtained and investigation is commenced, those who are subsequently found to be involved in commission of organised crime can very well be proceeded once sanction is obtained against them under Section 24(2) of KCOCA. It may also turn out that initially names of all the persons involved in the commission of organised crime may not be available at the stage of investigation and only after prior approval for investigation is obtained under Section 24(l)(a) of KCOCA and investigation being carried out, complicity of others may also surface and such persons whose complicity is revealed during the course of investigation would not be entitled to take umbrage that there was no prior approval issued under Section 24(1)(a) of KCOCA, on the premise their names was/were not found in the order of prior*

> *approval and thereby they may stave off the prosecution initiated against them. To stave off said contention, it is necessary to hold that contention of learned Counsel for petitioners does not appeal to logic. For myriad reasons aforestated, this Court is of the considered view that contention of Sri Younous Ali Khan, learned Counsel appearing for petitioners cannot be accepted and as such petitioners would not be entitled to claim benefit of Section 167(2) of Cr. P.C. namely, for grant of statutory bail on the ground of charge-sheet having not been filed within a period of 60 days.*

29. In my considered opinion, the ratio laid down in the said judgment would support the claim of the petitioners rather than the respondents whose contentions in this regard cannot be accepted.

30. A similar view was taken by this Court in ***Manjunath N.Nanjundaiah vs. State of Karnataka – 2016 SCC Online KAR 9054*** and as such, even this judgment does not come to the aid of the respondents.

31. The aforesaid discussion made above, clearly establishes that the impugned order passed by the 2nd respondent granting approval / permission under Section 24(1)(a) to the 3rd respondent is illegal, arbitrary and without jurisdiction or authority of law and contrary to the provisions contained in KCOCA and consequently, the impugned order deserves to be quashed.

32. In the result, I pass the following:-

ORDER

(i) Both the petitions are hereby allowed.

(ii) The impugned approval / permission at Annexure-A dated 20.05.2024 passed by the 2nd respondent - Deputy Inspector General of Police (EO), CID, Bangalore, are hereby quashed and all further proceedings pursuant thereto are also hereby quashed.

(iii) The jurisdictional Special Court is hereby directed to transmit the records to the jurisdictional Magistrate to consider and dispose of the bail applications filed by the accused persons as expeditiously as possible.

(iv) Liberty is however reserved in favour of the respondents to initiate such legal proceedings against the petitioners as available in law and in accordance with law, subject to all just exceptions and defences available to the accused persons.

Sd/-
JUDGE

Srl.