

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2021

(Against the final judgment and order dated 22.04.2021 passed by the Hon'ble
High Court of Karnataka at Bengaluru in W.P. No. 9717/2019 (GM-RES))

WITH

PRAYER FOR INTERIM RELIEF

IN THE MATTER OF:

Kavitha Lankesh

...PETITIONER

VERSUS

State of Karnataka & Ors.

...RESPONDENTS

WITH

**CRL. M.P. NO. _____ OF 2021: APPLICATION FOR PERMISSION TO FILE
SPECIAL LEAVE PETITION**

**CRL. M.P. NO. _____ OF 2021: APPLICATION SEEKING EXEMPTION FROM
FILING CERTIFIED COPY OF THE IMPUGNED ORDER**

WITH

**CRL. M.P. NO. _____ OF 2021: APPLICATION SEEKING EXEMPTION FROM
FILING DULY AFFIRMED AFFIDAVIT AND VAKALATNAMA**

PAPER-BOOK

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE PETITIONER: APARNA BHAT

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IN THE MATTER OF:

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VERSUS

State of Karnataka & Ors.

...RESPONDENTS

REPORT ON LIMITATION

1. The Petition/Appeal is/are within time.
2. The Petition/Appeal is barred by time and there is _____ days delay in filing the same against the final judgment and order dated 22.04.2021 and application for condonation of _____ days delay has been filed.
3. There is delay of _____ days in re-filing the Petition/Appeal and application for condonation of _____ days delay in re-filing has been filed.

Date: 09.06.21


(Section Officer)

A**Listing Proforma**

Section –PIL

The case pertains to (Please tick/check the correct box):

		Central Act: (Title)	NA
		Section:	NA
		Central Rule: (Title)	N.A.
		Rule No(s):	N.A.
		State Act: (Title)	N.A.
		Section:	N.A.
		State Rule: (Title)	N.A.
		Rule No(s):	N.A.
		Impugned Interim Order: (Date)	N.A.
		Impugned Final Order/Decree: (Date)	22.04.21
		High Court:(Name)	IN THE HIGH COURT OF KARNATAKA AT BENGALURU
		Name of Judges:	NTHE HON'BLE MRS. JUSTICE K.S.MUDAGALA
		Tribunal/ Authority: (Name)	N.A.
1		Name of matter:	CRL <input checked="" type="checkbox"/>
2	(a)	Petitioner	Kavitha Lankesh
	(b)	e-mail ID:	N.A.
	(c)	Mobile phone No.	N.A.
3	(a)	Respondent No. 1	State of Karnatak
	(b)	e-mail ID:	N.A.
	(c)	Mobile phone No.	N.A.
4	(a)	Main Category classification:	1400
	(b)	Sub Classification:	1407 Others
5		Not to be listed before:	N.A.
6A		Similar disposed of matter with citation, if any & case details	No similar disposed-off matter

6B	Similar pending matter with case details	A-1 No similar pending matter				
7	Criminal matters:	CRL				
	(a)	Whether accused/ convict has surrendered:		Yes	✓	NO
	(b)	FIR No.	NA	Date	NA	
	(c)	Police Station:	NA			
	(d)	Sentence Awarded:	NA			
	(e)	Sentence Undergone:	NA			
8	Land Acquisition Matters:	N.A.				
	(a)	Date of section 4 notification:	N.A.			
	(b)	Date of section 6 notification:	N.A.			
	(c)	Date of section 17 notification:	N.A.			
9		Tax matters: State the tax effect:	N.A.			
10		Special Category (first petitioner/ appellant only):				
		Senior Citizen >65 years	X	SC/ST	X	Woman/Child
		Disabled	X	Legal Aid Case	X	In custody
11		Vehicle Number (in case of Motor Accident Claim Matters):	N.A.			
Date:	09.06.2021	 Ms. Aparna Bhat AOR for the petitioner(s): Code No.1246				

B

SYNOPSIS

The present Special Leave Petition under Article 136 of the Constitution of India has been filed before the Hon'ble Supreme Court of India challenging the final judgement and order dated 22.04.2021 passed by the Hon'ble High Court of Karnataka at Bengaluru in W.P. No. 9717/2019 (GM-RES). The impugned order quashed order dated 14.08.2018 passed by Respondent No. 3 Commissioner of Police, Bengaluru and also quashed supplementary charge-sheet filed by Respondent No. 4 Special Investigation Team ("SIT") against Respondent No. 6 Mohan Nayak for the offences under Sections 3(1)(i), 3(2), 3(3) and 3(4) of the Karnataka Control of Organised Crime Act, 2000 ("KCOCA").

The SLP arises out of the murder of Gauri Lankesh, a leading journalist, on 05.09.2017 outside her house at Rajarajeshwari Nagar, Bengaluru. The present Petitioner is her sister and complainant in the case. The Petitioner was not a party to the proceedings before the Hon'ble High Court but stands greatly aggrieved by the impugned order and is therefore, approaching this Hon'ble Court since the State of Karnataka which is the prosecuting agency has not challenged the same.

Complaint in Crime No. 221/2017 came to the registered by Rajarajeshwari Nagar Police Station for the offence under Section 302 of the Indian Penal Code, 1860 ("IPC") and Section 25 of the Arms Act, 1959 against

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unknown persons with the Petitioner herein, victim's sister, as complainant. The investigation of the crime came to be entrusted to the SIT. The investigation by the SIT indicated clearly that the accused persons in Spl. CC No. 872/2018 were involved in organized crime as a syndicate and this attracted the provisions of Section 3 KCOCA.

A preliminary charge-sheet was filed against Respondent No. 6 (Accused No. 11) on 29.05.2018 and the matter came to be committed before the City Civil and Sessions Judge as CC. No. 14578/2018. The prosecution had also obtained permission from the Ld. Magistrate to file additional charge-sheet and material under Section 173(8) of the Code of Criminal Procedure, 1973 ("CrPC").

Investigation found that Respondent No. 6 has been actively involved in providing shelter to the killers prior to and after committing the offence and has participated in a series of conspiracies, abetting, planning, providing logistics. Therefore, he is involved in "continuous unlawful activity. With regard to Respondent No. 6's involvement in the murder of Gauri Lankesh, the investigating agency has collected sufficient material to connect him with the case and establish his intimate nexus with the master mind behind the entire event i.e. Accused No.1 Amol Kale and master arms trainer Accused No. 8 Rajesh D. Bangera who are part and parcel of an "organized crime syndicate" from its inception.

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After the investigation was concluded by the SIT and the report came to be submitted before the Chief Investigating Officer (Respondent No. 4), Respondent No. 4 had sought the approval of Respondent No. 3 Commissioner of Police, Bengaluru on 07.08.2018 to invoke Section 3 KCOCA which pertains to accused persons involved in organized crime. After due consideration of the material on record, Respondent No. 3 granted approval to Respondent No. 4 vide letter dated 14.08.2018 to conduct further investigation invoking Section 3 KCOCA.

After completion of the investigation, the ADGP and Commissioner of Police, Bengaluru accorded sanction under Section 24(2) KCOCA. Thereafter, the final report came to be filed on 23.11.2018 before the Special Court at Bengaluru on which cognizance of the offence was taken. Supplementary charge-sheet came to be filed against Respondent No. 6 before the 1st Addl. City Civil and Sessions Court in Spl. CC No. 872/2018 under Sections 302, 120(B), 114, 118, 109, 201, 203, 204, 35 IPC and Sections 25(1) 25(1B) 27(1) of the Arms Act and Sections 3 (1)(I), 3(2), 3(3), 3(4) KCOCA.

Respondent No. 6 had challenged the invocation of KCOCA provisions during the adjudication of his bail application CrI. P. No. 8325/2018 before the Hon'ble Karnataka High Court at Bengaluru. The Hon'ble High Court vide final order dated 11.02.2019 had held that Respondent No. 6 is a member of an organised crime syndicate and that the provisions of KCOCA are warranted.

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Subsequently, Respondent No. 6 filed W.P. No. 9717/2019 (GM-RES) before the Hon'ble Karnataka High Court at Bengaluru praying for quashing of sanction order dated 14.08.2018 passed by Respondent No. 3. This resulted in the impugned order dated 22.04.2021.

The Petitioner's case is that the Hon'ble High Court erred in not examining the scheme of Section 24 KCOCA which states that prior approval ought not to be granted by any officer below the rank of Additional Director General of Police which has been duly complied with in the present case. The Hon'ble High Court also failed to appreciate the fact that the sanction order under Section 24(2) KCOCA has neither been challenged nor assailed before the Hon'ble High Court. It is pertinent to point out herein that it is only the order under Section 24(1)(a) KCOCA which has been challenged.

The Hon'ble High Court ought to have appreciated that on a bare perusal of Section 2 (1)(d), (e), (f) KCOCA, it is made clear that if, in the preceding 10 years from the date of the 3rd continuing legal activity, more than one charge-sheet has been filed before a competent court which has taken cognizance of such offence which would result in imposition of punishment for 3 years or more, undertaken by a person individually or jointly, either as a member of an "organized crime syndicate" or on its behalf, such crime falls within the definition of "organized crime" and the invocation of KCOCA would be the warranted. Hence, in the present case, the preceding 10 years will have to be counted backwards from 05.09.2017 which was the date when Gauri Lankesh

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was shot dead. Significantly, when it comes to the question of fulfillment of the requirement of cognizance, what is prescribed in Section 2 (1)(d) KCOCA is the cognizance of such offence and not the offender.

That the investigation undertaken by Respondent No. 4 has revealed that Respondent No. 6 is part of the syndicate led by Amol Kale which has committed multiple organized crimes apart from the murder of Gauri Lankesh. Respective charge-sheets have been filed with respect to the murders of Dr. Narendra Dabolkar in 2013, Govinda Pansare in 2015, Dr. M.M. Kalburgi in 2015 and Conspiracy to murder Prof. Bhagavan in 2018. Accordingly, the condition of at least 2 charge-sheets having been filed against the syndicate in the last 10 years along with cognizance by competent court stands fulfilled and invocation of KCOCA against Respondent No. 6 stands justified.

The Hon'ble High Court has failed to appreciate that on a bare perusal of several judgments on the question of invoking provisions of KCOCA, it is revealed that the requirement of one or more charge-sheet relates to unlawful activity of an organized crime syndicate and does not pertain to a particular member of the crime syndicate.

The Hon'ble High Court failed to consider that the scope for interfering with the decision of an administrative authority under Article 226 and 227 of the Constitution of India is limited. A court exercising such writ jurisdiction may only examine whether the authority has considered the relevant material placed before it.

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It is against the final judgment and order dated 22.04.2021 passed by the Hon'ble High Court of Karnataka at Bengaluru that the Petitioner herein approaches this Hon'ble Court through the present SLP on the following facts and circumstances set out hereunder chronologically:

LIST OF DATES AND EVENTS

- 2013 Dr. Narendra Dabolkar was murdered in Pune, Maharashtra. In connection with this case, 2 persons were arrested belonging to the same syndicate to which Respondent No. 6 belongs. Crime No. RC BS1/2014/S/0004 under Section 302, 34 IPC and Section 3, 25 Arms Act had been registered, charge-sheet filed and the court has taken cognizance.
- 2015 Govinda Pansare was murdered at Kolhapur, Maharashtra. In connection with this case being Crime No. 39/2015, FIR and charge-sheet has been filed against Amol Kale (leader of the syndicate), Amith Degvekar, Vasudev Suryavanshi @ Mechanic, Bharath Kurne and Sharad Kalaskar under Section 302, 34 IPC and Section 3, 25 Arms Act.
- 30.08.2015 Dr. M.M. Kalburgi was shot dead and Crime No. 142/2015 under Section 302 IPC r/w Section 25 of the Arms Act has been registered at Vidyagiri Police Station, Dharwad. Charge-sheet has been filed against Amol Kale, Ganesh Miskin, Praveen Prakash Chatur, Vasudev Suryavanshi,

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Sharad Bahusaheb Kalaskar and Amith Baddi for the offence punishable under Section 120(b), 109, 449, 302, 201 and 35 IPC r/w Sections 25(1A), 25(1B) and 27(1) of Arms Act and it is registered as CC No. 2736/2019.

05.09.2017 At about 08:26 PM, Gauri Lankesh, a leading journalist, was shot dead by persons armed with pistols outside her house at Rajarajeshwari Nagar, Bengaluru.

Complaint in Crime No. 221/2017 came to the registered by Rajarajeshwari Nagar Police Station for the offence under Section 302 of the Indian Penal Code, 1860 ("IPC") and Section 25 of the Arms Act, 1959 against unknown persons with the Petitioner herein, victim's sister, as complainant.

06.09.2017 The investigation of the crime came to be entrusted to the Special Investigating Team ("SIT"). The investigation by the SIT indicated clearly that the accused persons in Spl. CC No. 872/2018 were involved in organized crime as a syndicate and this attracted the provisions of Section 3 KCOCA.

2018 Members of the syndicate had hatched a conspiracy to murder Prof. Bhagavan of Mysore. Crime No. 45/2018 was registered under Section 120(B), 34 IPC r/w Section 3, 25 of the Arms Act at Upparpet Police Station, Bangalore. Syndicate members K. T. Naveen Kumar, Sujith Kumar @

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Praveen, Amol Kale, Amih Degvekar, Manohar Dundappa Yadave and Vikas Patil @ Dada were found to be involved. In this regard, charge sheet has been filed under CC No. 19618/2018.

18.02.2018 SIT arrested Accused No. 17 Naveen Kumar while he was carrying ammunition.

19.05.2018 Accused No. 13 Praveen @ Sujit Kumar was arrested in Kolar based on input and interrogation.

Based on leads gathered from Accused No. 13, 3 persons being Accused No. 1 Amol Kale, Accused No. 5 Amit Degvekar and Accused No. 14 Manohar Edave were arrested in Davangere.

May 2018 22 mobile phones and red colour Indica car used for the commission of the offence were seized. Additionally, several documents, diaries and cash amounting to Rs. 1,90,000 were seized from Pune, Vikayapura, Davangere, Shivamogga and Manipal.

29.05.2018 Preliminary charge-sheet was filed against Respondent No. 6 (Accused No. 11) and the matter came to be committed before the City Civil and Sessions Judge as CC. No. 14578/2018. The prosecution had also obtained permission from the Ld. Magistrate to file additional charge-sheet and

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material under Section 173(8) of the Code of Criminal Procedure, 1973 ("CrPC").

Investigation revealed that Accused No. 1 was the master mind behind the murder of Gauri Lankesh and the other accused were members of the syndicate headed by Accused No. 1. Accused No. 5 was providing financial support to the syndicate and Accused Nos. 13 and 14 were recruiters for the syndicate since 2013. Accused No. 8 Rajesh Bangera @ Sir was the master trainer for the syndicate to provide shooting practice.

Accused No. 2 Parashuram Waghmare was the shooter as confirmed by forensic analysis of the video footage of the incident. Accused No. 3 Ganesh Miskin @ Mithun, also armed with a pistol, was the bike rider who took Accused No. 2 to the victim's house and brought him back to Kumbalagodu. Accused No. 2 and 3 located the victim's office and house and watched her movements. Accused No. 4 Amit Baddi @ Govinda waited at a spot near Nice Road in a Maruti Omni Van and collected the pistols, clothes, helmets, etc. Accused No. 7 H.L. Suresh @ Teacher provided logistical support to the syndicate and had hired a shop to hide the pistols used in the murder. Accused No. 6 Bharath Kurne @ Uncle dropped the shooters at the toll gate after the offence to take a bus to their native place.

Based on instructions given by Accused No. 1, Respondent

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No. 6 had taken a house on rent at Kumbalagodu, Ramanagar on the pretext of running an acupuncture clinic. This house was used to lodge the members of the assassination team and to park the bike used in the commission of the offence. A diary seized from Accused No. 1 had certain phone numbers written which was found to belong to Respondent No. 6 herein. A complaint being Crime No. 139/2018, 140/2018, 141/2018 & 144/2018 u/s 408, 420, 34 IPC had been previously lodged at Kushalnagar Police Station against misuse of the complainant's photo and address records to register a mobile number which was found to be used by Respondent No. 6.

11.06.2018 Accused No. 2 was arrested.

18.07.2018 Respondent No. 6 was arrested.

07.08.2018 After the investigation was concluded by the SIT and the report came to be submitted before the Chief Investigating Officer (Respondent No. 4), Respondent No. 4 had sought the approval of the Commissioner of Police, Bengaluru to invoke Section 3 KCOCA which pertains to accused persons involved in organized crime.

14.08.2018 After due consideration of the material on record, Respondent No. 3 granted approval to Respondent No. 4

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vide letter no. CRM(1)/KCOCA/ 01/2018 to conduct further investigation invoking Section 3 KCOCA. A true and correct copy of letter no. CRM(1)/KCOCA/ 01/2018 dated 14.08.2018 by Respondent No. 3 is marked and annexed hereto as **ANNEXURE P-1 (Page No. 63-68)**

05.11.2018 Respondent No. 6 had challenged the invocation of KCOCA provisions during the adjudication of his bail application Crl. P. No. 8325/2018 before the Hon'ble Karnataka High Court at Bengaluru.

23.11.2018 After completion of the investigation, the ADGP and Commissioner of Police, Bengaluru accorded sanction under Section 24(2) KCOCA. Thereafter, the final report came to be filed on 23.11.2018 before the Special Court at Bengaluru on which cognizance of the offence was taken.

Supplementary charge-sheet came to be filed before the 1st Addl. City Civil and Sessions Court in Spl. CC No. 872/2018 under Sections 302, 120(B), 114, 118, 109, 201, 203, 204, 35 IPC and Sections 25(1) 25(1B) 27(1) of the Arms Act and Sections 3 (1)(I), 3(2), 3(3), 3(4) KCOCA.

11.02.2019 The Hon'ble High Court vide final order dated 11.02.2019 in Crl. P. No. 8325/2018 had held that Respondent No. 6 is a member of an organised crime syndicate and that the provisions of KCOCA are warranted. A true and correct copy of final order dated 11.02.2019 passed by the Hon'ble

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Karnataka High Court at Bengaluru in Crl. P. No. 8325/2018 is marked and annexed hereto as **ANNEXURE P-2 (Page No. 69-106)**

25.02.2019 Respondent No. 6 filed W.P. No. 9717/2019 (GM-RES) before the Hon'ble Karnataka High Court at Bengaluru praying for quashing of sanction order dated 14.08.2018 passed by Respondent No. 3.

24.10.2019 Respondent Nos. 1 to 5 filed a combined statement of objections before the Hon'ble High Court in W.P. No. 9717/2019 (GM-RES). A true and correct copy of statement of objections filed by Respondent Nos. 1 to 5 before the Hon'ble High Court in W.P. No. 9717/2019 (GM-RES) is marked and annexed hereto as **ANNEXURE P-3 (Page No. 107-120)**

22.04.2021 The Hon'ble High Court passed the impugned order partly allowing W.P No. 9717/2019. The Hon'ble Court quashed order dated 14.08.2018 passed by Respondent No. 3 and also quashed supplementary charge-sheet filed by Respondent No. 4 against Respondent No. 6 for the offences under Sections 3(1)(i), 3(2), 3(3) and 3(4) KCOCA.

.06.2020 Hence, the present Special Leave Petition.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF APRIL 2021

BEFORE

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

WRIT PETITION No.9717/2019 (GM-RES)

BETWEEN:

SRI MOHAN NAYAK.N
S/O. SRI N.VASUDEVA NAYAK
AGED ABOUT 50 YEARS
R/AT "SREE" NIVASA
MUNDADKA, SAMPAJE
SULLIA TALUK
DAKSHINA KANNADA DISTRICT- 574 239 ...PETITIONER

(BY SRI GAUTHAM S.BHARADWAJ FOR
SRI SUYOG HERALE, ADVOCATES)

AND:

1. THE STATE OF KARNATAKA
REP. BY ITS SECRETARY
HOME DEPARTMENT, 2ND FLOOR
VIDHANA SOUDHA
BENGALURU- 560 001
2. DIRECTOR GENERAL & INSPECTOR
GENERAL OF POLICE, KARNATAKA
NRUPATHUNGA ROAD
BENGALURU- 560 001
3. THE COMMISSIONER OF POLICE
BENGALURU CITY
INFANTRY ROAD
BENGALURU- 560 001
4. THE CHIEF INVESTIGATING OFFICER
SPECIAL INVESTIGATION TEAM
CID, CID PREMISES, PALACE ROAD
BENGALURU- 560 001

5. THE STATION HOUSE OFFICER
RAJARAJESHWARINAGAR POLICE STATION
RAJARAJESHWARINAGAR
BENGALURU- 560 078 ...RESPONDENTS

(BY SRI H.S.CHANDRAMOULI, SPECIAL PUBLIC PROSECUTOR)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C. PRAYING TO QUASH THE ORDER DATED 14.08.2018 PASSED BY RESPONDENT NO.3 IN NO.CRM(1)/KCOCA/01/2018 GRANTING AN ORDER OF APPROVAL UNDER SECTION 24(1)(a) OF THE KARNATAKA CONTROL OF ORGANIZED CRIMES ACT, 2000 TO INVOKE SECTION 3 OF THE SAID ACT IN CRIME NO.221/2017 REGISTERED BY RESPONDENT NO.5 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302, 120B, 118, 114 READ WITH SECTION 35 OF IPC AND SECTIONS 3 AND 25 OF THE INDIAN ARMS ACT AND THE ADDITIONAL CHARGE SHEET FILED BY RESPONDENT NO.4 AGAINST THE PETITIONER INSOFAR AS SECTIONS 3(1)(i), 3(2), 3(3) AND 3(4) OF THE ACT AND ALL FURTHER PROCEEDINGS THERETO.

THIS WRIT PETITION COMING ON FOR FURTHER HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

"Whether the impugned order of respondent No.3 as per Annexure-A dated 14.08.2018 granting approval to invoke Section 3 of the Karnataka Control of Organized Crimes Act, 2000 ('the Act' for short) for investigation against the petitioner is in accordance with Section 24(1)(a) of the Act"? is the question involved in this case.

2. On 05.09.2017 at about 8.00 p.m. some unknown persons committed murder of Journalist Gowri

Lankesh by shooting her near her house 'Ideal Home Extension", Rajarajeshwarinagar. Regarding the incident her sister Kavitha Lankesh filed complaint before Rajarajeshwarinagar police as per Annexure-C against unknown persons. Based on that, respondent No.5 registered the first information report in Crime No.221/2017 as per Annexure-D for the offence punishable under Section 302 of IPC and Section 25 of the Arms Act, 1959.

3. The matter was entrusted to respondent No.4 for investigation. On investigation, respondent No.4 filed charge sheet on 20.05.2018 against one K.T.Naveen Kumar @ Naveen for the offences punishable under Sections 302, 114, 118, 120B, 35 of IPC read with Section 3 and 25 of the Arms Act. On conducting further investigation, under Annexure-E, respondent No.4 sought permission to file supplemental charge sheet. Thereafter on 18.07.2018, the petitioner was arrested by respondent No.5 police and he was remanded to judicial custody for investigation.

4. On 14.08.2018 as per Annexure-A, respondent No.3 purportedly acting under Section 24(1)(a) of the Act granted approval to respondent No.4 to conduct further investigation invoking Section 3 of the Act in Crime No.221/2017. On that basis, respondent No.4 proceeded with the investigation invoking the provisions of the Act.

5. It is alleged that the supplemental charge sheet was filed on 23.11.2018. There is again dispute about submission of the supplemental charge sheet on 23.11.2018. In the supplemental charge sheet, the petitioner and 16 others were charge sheeted for the offences punishable under Sections 302, 120B, 114, 118, 109, 201, 203, 204 and 35 of IPC, Sections 25(1), 25(1b) and 27(1) of the Indian Arms Act, 1959 and Sections 3(1)(i), 3(2), 3(3) & 3(4) of the Act. In that charge, petitioner is shown as accused No.11.

6. The trial Court took cognizance of the offence on 17.12.2018. It is submitted that now the matter is pending before the trial Court for framing charges.

7. Sri Gautham S.Bharadwaj, learned Counsel for the petitioner challenges the order Annexure-A granting permission under Section 24(1)(a) of the Act against the petitioner on the following grounds:

(i) The petitioner was not involved in continuing unlawful activity as contemplated in Section 2(1)(d) of the Act;

(ii) The charge sheet allegations do not attract organized crime as contemplated under Section 2(e) of the Act; &

(iii) By such unlawful invocation of Section 24(1)(a) of the Act, personal liberty of the petitioner is violated, thereby the order Annexure-A is violative of Article 21 of the Constitution of India, 1950.

8. In support of his contentions, he relies upon the following judgments:

(i) **State of Maharashtra v. Lalit Somdatta Nagpal**¹

(ii) **State (NCT of Delhi) v. Brijesh Singh**²

(iii) **Muniraju R. vs. State of Karnataka & Ors.**³

¹ (2007) 4 SCC 171

² (2017) 10 SCC 779

³ CrI.P.No.391/2019 DD 05.02.2019

9. Sri H.S.Chandramouli, learned Special Public Prosecutor opposes the petition on the following grounds:

(i) There is no dispute that accused Nos.7 and 10 were involved in two criminal cases each, accused Nos.9, 1 to 4 were involved in one criminal case each. The said offences were cognizable offences and the cognizance was taken in those cases;

(ii) If one of the members of the organized crime syndicate is involved in more than one case and the charge sheet was filed, Section 2(d) of the Act is attracted. Therefore even if the petitioner was not involved in other cases, respondent No.3 has rightly invoked Section 2(d) of the Act;

(iii) Annexure-A shows that the approval was granted for investigation on due application of mind;

(iv) After the charge sheet was filed, the trial Court has taken cognizance of the offences and the petitioner has not sought quashing of the charge sheet or the order taking cognizance, therefore challenge to Annexure-A is not maintainable;

(v) The petitioner filed Crl.P.No.8325/2018 seeking bail. In that petition, he raised the same contentions. This Court while passing the order rejected the said contention and that order has attained finality. Therefore it is not open to the petitioner to challenge Annexure-A on the same grounds;

(vi) The petitioner did not file any application for discharge on the same grounds, under such circumstances, Annexure-A is vexatious; &

(vii) The judgments relied upon by learned Counsel for the petitioner are not applicable.

10. In support of his contentions, he relies on the following judgments:

- (i) **Vinod G.Asrani v. State of Maharashtra**⁴
- (ii) **John D'Souza vs. Assistant Commissioner of Police**⁵
- (iii) **Prasad Shrikant Purohit vs. State of Maharashtra**⁶
- (iv) **Govind Sakharam Ubhe v. State of Maharashtra**⁷
- (v) **Digvijay Saroha v. State**⁸

⁴ (2007) 3 SCC 633

⁵ Manu/MH/0797/2007

⁶ (2015) 7 SCC 440

⁷ 2009 SCC Online Bom 770

⁸ 2019 SCC OnLine Del 10324

(vi) **K.T.Naveen Kumar @ Naveen vs. State of Karnataka**⁹

11. The impugned order Annexure-A is purportedly passed under Section 24(1)(a) of the Act. Section 24 of the Act deals with cognizance and investigation into an offence under the Act. There cannot be any dispute that the Act is a special enactment to make special provision for prevention and control, coping with criminal activity by organized crime syndicate or gang and for matters connected therewith or incident thereto.

12. The provisions of the Act are very stringent compared to the other general penal legislations that deal with criminal justice administration. When the general penal laws give several privileges to the accused in investigation of crime, the Act curtails much of the right of accused against whom the provision of Act are invoked. Under the Act even the confession statement made by the accused before the Investigating Officer is admissible. Therefore it is clear that while invoking the provisions of the Act, there should be strict compliance.

⁹ CrI.P.No.5507/2019 DD 10.01.2020

13. The submissions made by both side show that the pivotal point to be decided is "whether Section 3 of the Act applies to the petitioner?"

14. The case of the respondents is as follows:

(i) All the accused were members of the organized crime syndicate having certain religious ideologies and they were intolerant of the persons who were critical of Hindu Religion. Therefore they decided to eliminate such critics.

(ii) For that purpose accused No.1 Amol Kale, accused No.5 Amit Degvekar, accused No.9 Pandayji, accused No.10 Sharad Kalaskar, accused No.13 Sujith Kumar, accused No.14 Manohar Yedave were founders and initial members of the syndicate. They indoctrinated the other accused and drew them into the syndicate. The other accused were given training in arms.

(iii) To achieve the goal of their syndicate, they committed murder of Dr.Narendra Dabolkar, Govind Pansare, Dr.M.M.Kalburgi and attempted to commit murder of Professor Bhagavan.

(iv) Since Gowri Lankesh was indulging in antagonism of Hinduism, they decided to eliminate her. In execution of such conspiracy, they observed her activities and committed her murder by shooting her.

15. The role imputed to the petitioner is that on the basis of the instructions of Amol Kale, he took house on rent in Tagachukuppe, Kumbalgodu in the guise of running acupuncture clinic. But the house was meant to accommodate the members of the syndicate and accordingly he accommodated them. Even after commission of murder of Gowri Lankesh he harboured the actual assailants.

16. Initially the charge sheet was filed for the offence under Section 302, 114, 118, 120B read with Section 35 of IPC and Section 25 of the Arms Act. On further investigation, the Investigating Officer under Annexure-A sought prior approval of respondent No.3 an Officer of the rank of Additional Director General of Police for invoking the provisions of the Act. Under Annexure-A, respondent No.3 granted approval to invoke Section 3 of

the Act along with the offences under the Indian Penal Code and the Arms Act.

17. To find out whether Section 3 of the Act attracts, it is useful to reproduce the same which reads as follows:

"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."

18. Reading of Section 3 of the Act shows that the said provision comes into picture only when the organized crime is committed. What is organized crime is defined under Section 2(1)(e) of the Act which reads as follows:

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

(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;***"

19. Organized crime syndicate is defined in Section 2(1)(f) of the Act which reads as follows:

"(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;***"

20. To invoke Section 3 of the Act referring to Section 2(1)(e) of the Act, the following three aspects are essential:

- (i) Continuing unlawful activity;
- (ii) There should be organized crime syndicate;
- (iii) Unlawful activity shall be conducted by the accused person ***as a member of the organized crime syndicate or on behalf*** of such syndicate; &
- (iv) Such unlawful activity shall consist of violence or threat of violence or intimidation or coercion or other

unlawful activity with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or gaining undue economic or other advantage by any other person or for promoting insurgency.

21. Thus it is clear that to call it as organized crime, there should be continuing unlawful activities and there should be organized crime syndicate. What is continuing unlawful activity is defined in Section 2(1)(d) of the Act which reads as follows:

(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;**"

22. Reading of the above Section makes it clear that to call it continuing unlawful activity, **there should be more than one charge sheet** filed against the member of such organized crime syndicate as a member of organized

crime syndicate. In addition to that the Court should have taken cognizance of such offence within preceding period of ten years. In that context, this Court has to examine whether there were more than one charge sheet against the accused for cognizable offence and cognizance was taken in such matters.

23. As per the statement of objections filed by the respondents themselves, the following were the particulars of the cases pending against the accused which is set out in the tabular form below:

Accused	Charge sheet filed/offence	Brief allegations
Amol A Kale @ Amol @ Bhaisab (Accused No.1)	1. CC No.19618/2018 (Cr.45/18) for offence punishable U/s.120B, 34 IPC r/w 25(1B)(a) of Indian Arms Act.	Conspiracy to murder Prof.Bhagavan
	2. S.C.No.3/2016 (Cr.39/15 of Rajarampuri Police Station Kolhapur) for offences punishable U/s. 302, 307, 120B, 34 of IPC r/w 25(1)(a) & (b), 5 of Indian Arms Act	Govind Pansare was murdered at Kolhapur Maharashtra State
	3.C.C.No.2736/2019 (Cr.142/15 of Vidyagiri Police Station Dharwad) for offences punishable U/s. 302, 201, 120B, 109, 449, 34 of IPC r/w 25(1)(a) & (b), 27 of Indian Arms Act	Dr.M.M.Kalburgi was murdered at Dharwad
	4. S.C.No.151/2019 (Cr.11/18) for offence punishable U/s. 120B IPC r/w 16, 19, 20 of	Collecting, possessing and supplying firearms and explosives in

	Explosive Substances Act, 1908	order to create rebellion in the Country
Parashuram Ashok Waghmare @ Builder @ Kohli (Accused No.2)	1. S.C.No.116/12 (Cr.No.1/12 of Sindhagi Town Police Station) for offences punishable U/s.124A, 153A & B, 120B, 201 r/w Section 511 of IPC	Accused hoisted the Pakistan flag in Sindhagi Town Tahsildhar Office resulting in Communal Riots
	2. C.C.No.76/15 (Cr.No.2/12) of Sindhagi Town Police Station) for offences punishable U/s. 143, 147, 341, 324, 353, 427 r/w Section 149 of IPC	Attacked the bus with stones and assaulted driver
Amith Ramachandra Baddi @ Govinda (Accused No.4)	1.C.C.No.2736/2019 (Cr.142/15 of Vidyagiri Police Station Dharwad) for offences punishable U/s. 302, 201, 120B, 109, 449, 34 of IPC r/w 25(1)(a) & (b), 27 of Indian Arms Act	Dr.M.M.Kalburgi was murdered at Dharwad
	2. S.C.No.151/2019 (Cr.11/18) for offences punishable U/s. 120B IPC r/w 16, 19, 20 of Explosive Substances Act, 1908	Collecting, possessing and supplying firearms and explosives in order to create rebellion in the Country
	3. C.C.No.1387/15 (Cr.No.144/12 of Old Hubli Police Station) for offence punishable U/s. 323, 324, 341, 504, 506 r/w Section 34 of IPC	Assaulted the Muslim person to create Communal Riots
	4. C.C.No.2692/15 (Cr.No.111/13 Kasaba Police Station) for offence punishable U/s. 114, 143, 147, 148, 323, 324, 332, 353, 354, 336, 427, 504 r/w 144 of IPC and Section 3, 4, 7 of Prevention of Damages to Public Property Act	Pelted stones upon the procession of Shivaji Jayanthe and assaulted police
Bharath Kurane @ Uncle Kurane (Accused No.6)	1. S.C.No.3/2016 (Cr.39./15 of Rajarampuri Police Station Kolhapur) for	Govind Pansare was murdered at Kolhapur Maharashtra State

	offences punishable U/s. 302, 307, 120B, 34 of IPC r/w 25(1)(a) & (b), 5 of Indian Arms Act	
	2. S.C.No.151/2019 (Cr.11/18) for offences punishable U/s. 120B IPC r/w 16, 19, 20 of Explosive Substances Act, 1908	Collecting, possessing and supplying firearms and explosives in order to create rebellion in the Country
Sharad Bahusaheb Kalsalar @ Sharad @ Chote @ Shravan @ Vittal @ Sandeep Patil @ Sharad Patil @ Vishnu @ Sathpal (Accused No.10)	1. S.C.No.3/2016 (Cr.39/15 of Rajarampuri Police Station Kolhapur) for offences punishable U/s. 302, 307, 120B, 34 of IPC r/w 25(1)(a) & (b), 5 of Indian Arms Act	Govind Pansare was murdered at Kolhapur Maharashtra State
	2.C.C.No.2736/2019 (Cr.142/15 of Vidyagiri Police Station Dharwad) for offences punishable U/s. 302, 201, 120B, 109, 449, 34 of IPC r/w 25(1)(a) & (b), 27 of Indian Arms Act	Dr.M.M.Kalburgi was murdered at Dharwad
	3. S.C.No.151/2019 (Cr.11/18) for offences punishable U/s. 120B IPC r/w 16, 19, 20 of Explosive Substances Act, 1908	Collecting, possessing and supplying firearms and explosives in order to create rebellion in the Country
	4. S.C.No.706/2016 (Cr.154/13 Pune Deccan Police) for offence punishable U/s. 302, 34 of IPC r/w 3, 25 of Indian Arms Act	Dr.Narendra Dabholkar was murdered in Pune City
Vasudev Bhagwan Suryavamshi @ Vasu @ Mechanic (Accused No.12)	1. S.C.No.3/2016 (Cr.39/15 of Rajarampuri Police Station Kolhapur) for offences punishable U/s. 302, 307, 120B, 34 of IPC r/w 25(1)(a) & (b), 5 of Indian Arms Act	Govind Pansare was murdered at Kolhapur Maharashtra State
	2.C.C.No.2736/2019 (Cr.142/15 of Vidyagiri Police Station Dharwad) for offences punishable U/s. 302, 201, 120B,	Dr.M.M.Kalburgi was murdered at Dharwad

	109, 449, 34 of IPC r/w 25(1)(a) & (b), 27 of Indian Arms Act	
	3. S.C.No.151/2019 (Cr.11/18) for offences punishable U/s. 120B IPC r/w 16, 19, 20 of Explosive Substances Act, 1908	Collecting, possessing and supplying firearms and explosives in order to create rebellion in the Country

24. As per the above chart and as admitted in statement of objections of the respondents only against accused Nos.1, 2, 4, 6, 10, 12 there were one or more charge sheets in the preceding 10 years from the date of order of approval. Accused Nos.3, 5, 7 to 9, 11, 13 to 16 were not charge sheeted in any single case for cognizable offences, much less cognizance for such offences was taken by any competent Court as required under Section 2(1)(d) of the Act.

25. Section 24 of the Act deals with cognizance of and the investigation into the offence under the Act which reads as follows:

"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."**

26. The above said Section bars recording any information of organized crime without prior approval of an officer not below the rank of Deputy Inspector General of Police and investigation of such crime by an officer below the rank of Deputy Superintendent of Police and taking cognizance of such offences without previous sanction of the police officer not below the rank of Additional Director General of Police.

27. The challenge in this case is with regard to action taken under Section 24(1)(a) of the Act by respondent No.3. Reading of the above provision makes it clear that granting such approval shall indicate that there was organized crime. As already discussed, organized crime involves continuing unlawful activities and more

than one charge sheet filed against the accused in the preceding 10 years.

28. The petitioner's Counsel contends that since there was no charge sheet against the petitioner, the provisions of the Act are not attracted against him and respondent No.3 in granting approval acted contrary to Section 24(1)(a) of the Act. Whereas the learned Special Public Prosecutor contends that filing of such charge sheet against either member of the organized crime syndicate is sufficient to invoke Section 24(1)(a) of the Act. Therefore the question is whether Section 24(1)(a) of the Act contemplates filing of charge sheet *qua* individual accused or either of the members of the organized crime syndicate.

29. In **Lalit Somdatta Nagpal's** case referred to *supra* interpretation of similar provisions in Maharashtra Control of Organized Crimes Act, 1999 ('MCOCA Act' for short) was involved. Out of those cases three petitions were by State of Maharashtra and two were by accused Lalit Somdatta Nagpal and Kapil Nagpal. Out of those two accused, against Kapil Nagpal there was no charge sheet

or the order taking cognizance of the offences by any Court in the preceding 10 years.

30. In that context, in para 63 of the said judgment, the Hon'ble Supreme Court held as follows:

"63. As has been repeatedly emphasized on behalf of all the parties, the offence under MCOCA **must comprise continuing unlawful activity relating to organized crime** undertaken by an individual singly or jointly, either as a member of the organized crime syndicate or on behalf of such syndicate by use of coercive or other unlawful means with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. In the instant case, both Lalit Somdutt Nagpal and Anil Somdutt Nagpal have been shown to have been involved in several cases of a similar nature which are pending trial or are under investigation. **As far as Kapil Nagpal is concerned, his involvement has been shown only in respect of CR No.25/03 of Rasayani Police Station,** Raigad, under Sections 468, 420 and 34 Penal Code and Sections 3, 7, 9 & 10 of the Essential Commodities Act. In our view, the facts as disclosed justified the application of the provisions of the MCOCA to Lalit Nagpal and Anil Nagpal. However, **the said ingredients are not available as far as Kapil Nagpal is concerned, since he has not been shown to be involved in any**

continuing unlawful activity. Furthermore, in the approval that was given by the Special Inspector General of Police, Kolhapur Range, granting approval to the Deputy Commissioner of Police (Enforcement), Crime Branch, C.I.D., Mumbai to commence investigation under Section 23 (1) of MCOCA, Kapil Nagpal has not been mentioned. It is only at a later stage with the registering of CR No.25/2003 of Rasayani Police Station, Raigad, that Kapil Nagpal was roped in with Lalit Nagpal and Somdutt Nagpal and permission was granted to apply the provisions of the MCOCA to him as well by Order dated 22-8-2005.”

(Emphasis supplied)

31. The Hon'ble Supreme Court quashed the approval order given by the Special Inspector General of Police concerned for registering and investigation of the case under the MCOCA Act against Kapil Nagpal.

32. In para 25 of the judgment in **Brijesh Singh's** case referred to *supra* the Hon'ble Supreme Court held as follows:

“25. Organised crime which is an offence punishable under Section 3 of MCOCA means a continuing unlawful activity committed by the use of force or violence for economic gain. One relevant pre-condition which has to be satisfied before any activity can be considered as a continuing unlawful

activity is that ***there should be at least two charge sheets filed against the members of an organised crime syndicate within the previous 10 years and a "competent court" has taken cognizance of such charge sheets.*** In the instant case, there are eight charge sheets filed against the Respondents, six out of which are in the State of Uttar Pradesh. The submission of the Respondents, which was accepted by the Courts below, is that such charge sheets which are filed in the State of Uttar Pradesh are not relevant for the purpose of determining whether the Respondents have indulged in a continuing unlawful activity. The Courts below held that only charge sheets filed in competent Courts within Delhi have to be taken into account. We are not in agreement with the Courts below."

(Emphasis supplied)

33. In the above paragraph, the Hon'ble Supreme Court clearly held that to call any activity a continuing unlawful activity there should be at least two charge sheets filed against ***the members*** of the organized crime syndicate within the preceding ten years.

34. In ***Muniraju's*** case referred to *supra* this Court held that since only one charge sheet filed against the petitioner therein and cognizance taken for the cognizable

offences in the said case, invocation of Section 3(1) of the Act and granting approval was unsustainable.

35. In **Prasad Shrikant Purohit's** case referred to *supra* the points which fell for consideration of the Hon'ble Supreme Court were as follows:

(i) Whether the common order of the Division Bench dated 19.07.2010 setting aside the discharge order of the Special Judge in special Case No.1 of 2009 on the ground that MCOCA was not applicable to the said case and consequently the case was to be tried by the regular court under Section 11 of the MCOCA, calls for interference?

(ii) If answer to Question (i) is in the negative, whether for the purpose of grant of bail under Section 21(4)(b) of MCOCA, can it be held that the application of MCOCA is not made out against the appellants and consequently the rejection of bail by the trial Court and as confirmed by the High Court is justified?

36. In the context of the first point, the Hon'ble Supreme Court held that in order to attract the definition of continuing unlawful activities, there should have been more than one charge sheet in respect of such offences filed before the competent Court within preceding period of 10 years and that the said Court should have taken

cognizance of such offences. It was also held that said offences should be on behalf of the crime syndicate.

37. In the case on hand, there was no registration of any case or filing of any charge sheet or taking cognizance even in individual capacity of the petitioner, much less as member of the organized crime syndicate or the commission of crime for and on behalf of the crime syndicate. Therefore the judgment in **Prasad Shrikant Purohit's** case in no way advances the contentions of the respondents that it is enough if there were more than two cases against either member of the organized crime syndicate or against the crime syndicate.

38. The above said two judgments of the Hon'ble Supreme Court in **Lalit Somdatta Nagpal's** case and **Prasad Shrikant Purohit's** case make it clear that the requirement of the charge sheet shall be qua the individual accused and not against either member of the crime syndicate.

39. An attempt was made to say that in **Lalit Somdatta Nagpal's** case the specific question raised in this

case was not raised for consideration therefore the said judgment is not applicable. Reading of the judgment in **Lalit Somdatta Nagpal's** case shows that Kapil Nagpai had raised the contention that since there was no charge sheet against him in the preceding 10 years, he was not liable to be dealt with under the MCOCA. Therefore it is clear that said point was raised and decided by the Hon'ble Supreme Court.

40. Under the circumstances, this Court is not persuaded to accept the contention that no ratio was laid down in **Lalit Somdatta Nagpal's** case. Though several judgments of this Court, Maharashtra High Courts and Delhi High Courts were relied on by learned Counsel for the petitioner and learned Special Public Prosecutor, having regard to the judgments of the Hon'ble Supreme Court in **Lalit Somdatta Nagpal's** and **Prasad Shrikant Purohit's** case, no further reference to them is required.

41. Thus it is clear that the approval order Annexure-A was contrary to the language and requirement of Section 24 (1)(a), 2(1)(d) and 2(1)(e) of the Act.

42. Sri H.S.Chandramouli, learned Special Public Prosecutor tenaciously contends that the petitioner has not challenged the sanction order, the charge sheet or the order taking cognizance, therefore the petition challenging only the approval order is not maintainable.

43. All the subsequent acts namely sanction order, charge sheet and the order taking cognizance flow from the approval order. If the approval order itself is bad in law, the sanction order, the charge sheet and the approval order so far as the offences under the Act against the petitioner have no legs to stand.

44. The petitioner has not only sought quashing of the approval order under Annexure-A, but also has sought for quashing of the additional charge sheet filed invoking Section 3 of the Act and Section 302, 114, 118, 120B read with Section 35 of IPC and Sections 3 and 25 of the Arms Act. Since the substantial challenge is only against invocation of the provisions of the Act, the prayer of the petitioner can be considered only to that extent.

Therefore the petition is partly allowed. The impugned order bearing NO.CRM(1)KCOCA/01/2018

Annexure-A dated 14.08.2018 passed by respondent No.3 against the petitioner is hereby quashed.

The additional charge sheet filed by respondent No.4 against the petitioner for the offences under Sections 3(1)(i), 3(2), 3(3) and 3(4) of the Act is hereby quashed.



**Sd/-
JUDGE**

TRUE COPY

KSR

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2021

(Against the final judgment and order dated 22.04.2021 passed by the Hon'ble High Court of Karnataka at Bengaluru in W.P. No. 9717/2019 (GM-RES))

MEMO OF PARTIES

BETWEEN	POSITION OF THE PARTIES		
	Trial Court	Hon'ble High Court	Hon'ble Supreme Court
1. Kavitha Lankesh Aged about 56 years D/o Late P. Lankesh Resident	Complainant	Not a party	Petitioner

VERSUS

1. State of Karnataka Through its Secretary, Home Department, 2 nd Floor, Vidhana Soudha Bengaluru - 560001.	Prosecution	Respondent No. 1	Respondent No. 1
2. Director General & Inspector General of Police, Karnataka Nrupathunga Road Bengaluru - 560001	Prosecution	Respondent No. 2	Respondent No. 2
3. Commissioner of Police Bengaluru City	Prosecution	Respondent No. 3	Respondent No. 3

Infantry Road
Bengaluru - 560001

4. Chief Investigating Officer

Special Investigation Team
CID, CID Premises, Palace
Road
Bengaluru – 560001

Prosecution

Respondent
No. 4

Respondent
No. 4

5. Station House Officer

Rajarajeshwarinagar Police
Station
Rajarajeshwarinagar
Bengaluru - 560078

Prosecution

Respondent
No. 5

Respondent
No. 5

6. Mohan Nayak. N

S/o N. Vasudeva Nayak
Aged about 50 years
R/o “Sree” Nivasa
Mundadka, Sampaje
Sullia Taluk
Dakshina Kannada District
- 574239

Accused No.
11

Petitioner

Respondent
No. 6

PETITION UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS LORDSHIP'S COMPANION JUSTICES OF THE

HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION

OF THE ABOVE NAMED

PETITIONER

MOST RESPECTFULLY SHOWETH:

1. That the present Special Leave Petition has been filed under Article 136 of the Constitution of India praying for Special Leave to Appeal against the final judgment and order dated 22.04.2021 passed in W.P. No. 9717/2019 (GM-RES) by the Hon'ble High Court of Karnataka at Bengaluru. The Hon'ble Court quashed order dated 14.08.2018 passed by Respondent No. 3 and also quashed supplementary charge-sheet filed by Respondent No. 4 against Respondent No. 6 for the offences under Sections 3(1)(i), 3(2), 3(3) and 3(4) of the Karnataka Control of Organised Crime Act, 2000 ("KCOCA").

2. QUESTIONS OF LAW:

That the substantial questions of law which arise for consideration of this Hon'ble Court are as follows:

- I. Whether the Hon'ble High Court has erred in its examination of the scheme under Section 24 of the Karnataka Control of Organised Crime Act, 2000 ("KCOCA")?
- II. Whether the impugned order is tenable since the sanction order under Section 24(2) KCOCA was not be challenged before the Hon'ble High Court?
- III. Whether the Hon'ble High Court erred in holding that the sanction accorded under Section 24(2) KCOCA would be rendered invalid for

the reason that at the time of prior approval, the name of Respondent No. 6 was not forthcoming or Respondent No. 6 had not been involved in any other case?

IV. Whether the Hon'ble High Court failed to consider that under KCOCA, the requirement of one or more charge-sheet related to unlawful activity of an organized crime syndicate and does not pertain to a particular member of the crime syndicate?

3. DECLARATION IN TERMS OF RULE 3(2):

The Petitioner states that no other petition seeking leave to appeal has been filed by her against the impugned final judgment and order dated 22.04.2021 passed in W.P. No. 9717/2019 (GM-RES) by the Hon'ble High Court of Karnataka at Bengaluru.

4. DECLARATION IN TERMS OF RULE 5:

The **ANNEXURES P-1 to P-2** produced along with the Special Leave Petition are true copies of pleadings/documents which form part of the records of the case in the High Court against whose judgment and order Special Leave to Appeal is sought for in this Petition.

5. FOUNDATIONS:

The Petitioner is filing the instant Special Leave Petition on the following amongst other grounds:

A. That the Hon'ble High Court has failed to appreciate the facts and circumstances of the present case in its proper perspective.

B. That the Hon'ble High Court has erred in not examining the scheme of Section 24 of the Karnataka Control of Organised Crime Act, 2000 ("KCOCA") which states that prior approval ought not to be granted by any officer below the rank of Additional Director General of Police which has been duly complied with in the present case. The matter was investigated by the Chief Investigating Officer (Respondent No. 4) who was not below the rank of Assistant Commissioner of Police which has also been complied with in the present case. It is also pertinent to note that Respondent No. 6 is the only accused in the present case for whom such approval had been accorded.

C. That the Hon'ble High Court failed to appreciate the fact that the sanction order under Section 24(2) KCOCA has neither been challenged nor assailed before the Hon'ble High Court. It is pertinent to

point out herein that it is only the order under Section 24(1)(a) KCOCA which has been challenged. It is the Petitioner's submission that approval and sanction are two different schemes under Section 24 KCOCA. Moreover, it is relevant to point out that the Sanction Order dated 23.11.2018 had not been challenged at all by Respondent No. 6.

D. That the Hon'ble High Court ought to have appreciated that on a bare perusal of Section 2 (1)(d), (e), (f) KCOCA, it is made clear that if, in the preceding 10 years from the date of the 3rd continuing legal activity, more than one charge-sheet has been filed before a competent court which has taken cognizance of such offence which would result in imposition of punishment for 3 years or more, undertaken by a person individually or jointly, either as a member of an "organized crime syndicate" or on its behalf, such crime falls within the definition of "organized crime" and the invocation of KCOCA would be the warranted. Hence, in the present case, the preceding 10 years will have to be counted backwards from 05.09.2017 which was the date when Gauri Lankesh was shot dead. Significantly, when it comes to the question of fulfillment of the requirement of cognizance, what is prescribed in Section 2 (1)(d) KCOCA is the cognizance of such offence and not the offender.

E. That the investigation undertaken by Respondent No. 4 has revealed that Respondent No. 6 is part of the syndicate led by Amol Kale which has committed multiple organized crimes apart from the murder of Gauri Lankesh:

- a. Murder of Dr. Narendra Dabolkar was in Pune, Maharashtra in 2013.
- b. Murder of Govinda Pansare at Kolhapur, Maharashtra in 2015.
- c. Murder of Dr. M.M. Kalburgi by shooting him dead on 30.08.2015.
- d. Conspiracy to murder Prof. Bhagavan of Mysore in 2018.

F. That respective charge-sheets have been filed with respect to the murders of Dr. Narendra Dabolkar in 2013, Govinda Pansare in 2015, Dr. M.M. Kalburgi in 2015 and Conspiracy to murder Prof. Bhagavan in 2018. Accordingly, the condition of at least 2 charge-sheets having been filed against the syndicate in the last 10 years along with cognizance by competent court stands fulfilled.

G. That the Hon'ble High Court has erred in not appreciating that Respondent No. 6 has been actively involved in providing shelter to the killers prior to and after committing the offence and has participated in a series of conspiracies, abetting, planning, providing logistics. Therefore, he is involved in "continuous unlawful activity. With regard to Respondent No. 6's involvement in the murder of Gauri Lankesh, the

investigating agency has collected sufficient material to connect him with the case and establish his intimate nexus with the master mind behind the entire event i.e. Accused No.1 Amol Kale and master arms trainer Accused No. 8 Rajesh D. Bangera who are part and parcel of an “organized crime syndicate” from its inception.

H. That the Hon’ble High Court has erred in not appreciating the material placed before it which clearly establishes the involvement of Respondent No. 6 as part of an organized crime syndicate.

I. That the Hon’ble High Court has erred in not appreciating the various judgments passed by this Hon’ble Court as well the Hon’ble High Court of Karnataka itself which clearly hold that if a person commits an offence individually or jointly, either as a member of an organized crime syndicate or on its behalf, such crime falls within the definition of organized crime.

J. That the Hon’ble High Court has erred in finding that the sanction accorded under Section 24(2) KCOCA would be rendered invalid for the reason that at the time of prior approval, the name of Respondent No. 6 was not forthcoming or Respondent No. 6 had not been involved in any other case. It is relevant to point out herein that granting “prior

arrival” is an act which the competent officer under Section 23(1)(a) KCOCA has to perform, whereas carrying out an investigation is an act which the competent officer under Section 24(1)(b) KCOCA has to perform. Without prior approval, further acts contemplated under Section 24(2) KCOCA cannot be performed. Similarly, sanction contemplated in sub-section (2) of Section 24 KCOCA is a condition precedent for prosecuting a particular person for the offence under KCOCA. The sanction is not granted to the Special Court to take cognizance of the offence, but it is granted to the prosecuting agency to approach the Special Court for enabling it to take cognizance of the offence and to proceed to trial.

K. That the Hon'ble High Court has erred in not appreciating that even if the name of a person was not included in the approval granted under Section 24(1)(a) KCOCA and that his name was subsequently included in the sanction granted under Section 24(2) KCOCA, such sanction is valid. In the present case, approval was granted under Section 24(1)(a) KCOCA against the 12 accused persons including Respondent No. 6 and the charge-sheet was filed against 18 accused persons after due sanction contemplated under Section 24(2) KCOCA.

L. That in the context of the Maharashtra Control of Organised Crime Act, 1999 (“MCOCA”) this Hon’ble Court in ***Prasad Shrikant Purohit v. State Of Maharashtra*** (2015) 7 SCC 440 has held that:

“85. A reading of para 31 in *Ranjitsing Brahmajeetsing Sharma* case [(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 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. ...”

M. That the Hon’ble High Court has placed heavy reliance on ***State of Maharashtra v. Lalit Somdatta Nagpal*** (2007) 4 SCC 171. However, the Hon’ble High Court has erred in not appreciating that the judgment nowhere says that the

registration of FIR for offences other than MCOCA and more particularly for the offences under the Indian Penal Code also should have been by a police officer not below the rank of Deputy Inspector General of Police for attracting the provisions of MCOCA was at a subsequent date.

N. That the Hon'ble High Court has failed to appreciate that on a bare perusal of several judgments on the question of invoking provisions of KCOCA, it is revealed that the requirement of one or more charge-sheet relates to unlawful activity of an organized crime syndicate and does not pertain to a particular member of the crime syndicate.

O. That the Hon'ble High Court has erred with regards to interpretation of "insurgency". It is to be noted that "insurgency" has not been defined under KCOCA, MCOCA or any other statute. The word "insurgency" is not found in the Unlawful Activities (Prevention) Act, 1967 ("UAPA") even after the 2004, 2008 and 2019 amendments. It is relevant to mention that the UAPA punishes the acts of *insurgency per se*, whereas in KCOCA it is not the act of *insurgency per se* that is punishable. Under KCOCA, "insurgency" is the motive for the act and not the act per se. Furthermore, it is not necessary that promoting insurgency should always be linked to pecuniary advantage. Whenever an organized gang indulges in a violent act, such indulgence in

violence or threat of violence or intimidation or coercion or other unlawful means can be for promoting insurgency.

P. That this Hon'ble Court in **Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra** (2010) 5 SCC 246 has clearly held that:

“45. Now that we have examined under what circumstances a State law can be said to be encroaching upon the law-making powers of the Central Government, we may proceed to evaluate the current issue on merits. Let us once again examine the provision at the core of this matter:

“2. (1)(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 other person or promoting insurgency;”

After examining this provision at length, we have come to the conclusion that the definition of “organised crime” contained in Section 2(1)(e) of MCOCA makes it clear that the phrase “promoting insurgency” is used to denote a possible driving force for “organised crime”. It is evident that MCOCA does not punish “insurgency” per se, but punishes those who are guilty of running a crime organisation, one of the motives of which may be the promotion of insurgency.”

“47. ... However, even if it be assumed that “insurgency” has a larger role to play than pointed out by us above in MCOCA, we are of the considered view that the term “promoting insurgency” as contemplated under Section 2(1)(e) of MCOCA comes within the concept of public order.”

“48. From the ratio of the judgments on the point of public order referred to by us earlier, it is clear that anything that affects public peace or tranquillity within the State or the Province would also affect public order and the State Legislature is empowered to enact laws aimed at containing or preventing acts which tend to or actually affect public order. Even if the said part of MCOCA incidentally encroaches upon a field under Entry 1 of the Union List, the same cannot be held to be ultra vires in view of the doctrine of pith and substance as in essence the said part relates to maintenance of public order which is essentially a State subject and only incidentally trenches upon a matter falling under the Union List. ...”

Q. That the Hon’ble High Court has erred in not appreciating that it is well settled by this Hon’ble Court that while examining orders passed by administrative authorities, the power of judicial review is limited. The courts generally only look into the aspect of whether the authority concerned had relied upon irrelevant material. did not have any material or did not rely on available material.

R. That the Hon’ble High Court has erred in not considering that the scope for interfering with the decision of an administrative authority under

Article 226 and 227 of the Constitution of India is limited. A court exercising such writ jurisdiction may only examine whether the authority has considered the relevant material placed before it.

S. That the circumstances in which the provisions of KCOCA may be invoked have been discussed by this Hon'ble Court in ***State (NCT of Delhi) v. Brijesh Singh*** (2017) 10 SCC 779. The relevant portion of the judgment is quoted hereunder:

“25. Organised crime which is an offence punishable under Section 3 of MCOCA means a continuing unlawful activity committed by the use of force or violence for economic gain. One relevant precondition which has to be satisfied before any activity can be considered as a continuing unlawful activity is that there should be at least two charge-sheets filed against the members of an organised crime syndicate within the previous 10 years and a “competent court” has taken cognizance of such charge-sheets. In the instant case, there are eight charge-sheets filed against the respondents, six out of which are in the State of Uttar Pradesh. The submission of the respondents, which was accepted by the courts below, is that such charge-sheets which are filed in the State of Uttar Pradesh are not relevant for the purpose of determining whether the respondents have indulged in a continuing unlawful activity. The courts below held that only charge-sheets filed in competent courts within Delhi have to be taken into account. We are not in agreement with the courts below.”

T. That Respondent No. 6 had previously made similar contentions with regard to KCOCA during the adjudication of his bail application CrI. P. No. 8325/2018 before the Hon'ble High Court. The Hon'ble High Court vide final order dated 11.02.2019 had held that Respondent No. 6 is a member of an organised crime syndicate and that the provisions of KCOCA are warranted.

6. GROUND FOR INTERIM RELIEF:

The Petitioner seeks interim relief from this Hon'ble Court on the following amongst other grounds:

- A. That the Petitioner has a good case on merits and is likely to succeed before this Hon'ble Court.
- B. That the Petitioner has a very strong prima facie case and if the interim relief as prayed for is not granted, it will result in a grave miscarriage of justice.

7. MAIN PRAYER:

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- A. Grant Special Leave to Appeal against the final judgment and order dated 22.04.2021 passed in W.P. No. 9717/2019 (GM-RES) by the Hon'ble High Court of Karnataka at Bengaluru;

B. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

8. **PRAYER FOR INTERIM RELIEF:**

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- A. Stay on the operation of the final judgment and order dated 22.04.2021 passed in W.P. No. 9717/2019 (GM-RES) by the Hon'ble High Court of Karnataka at Bengaluru;
- B. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:

APARNA BHAT
Advocate-on-Record for the Petitioner
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Phone: (+91)9811113979

Place: New Delhi

Filed on: .06.2021

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2021

IN THE MATTER OF:

Kavitha Lankesh

...PETITIONER

VERSUS

State of Karnataka & Ors.

...RESPONDENTS

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court/Tribunal whose order is challenged and the other documents relied upon in those proceedings. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the questions of law raised in the Petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of instructions given by the Appellants/Persons authorized by the Petitioner whose affidavit is filed in support of the Special Leave Petition.

Filed by:

APARNA BHAT

Advocate-on-Record for the Petitioner

Place: New Delhi

Filed on: .06.2021

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2021

IN THE MATTER OF:

Kavitha Lankesh

...PETITIONER

VERSUS

State of Karnataka &Ors.

...RESPONDENTS

AFFIDAVIT

I, Kavitha Lankesh, aged about 56 years, D/o Late. P.Lankesh, Resident of No. 208, 4th Cross, 7th Main, Bharat Housing Cooperative Society, Chikkalasandra, Bangalore – 560061 do hereby solemnly affirm and state as under:

- A. That I am the Petitioner in the present SLP and I am conversant with the facts and circumstance of the case and am competent to swear to this affidavit.
- B. That I have read and understood the contents of the synopsis and list of dates at pages B to N and SLP at para 1 to 8 at pages 29 to 44 and I.A.s and I say that the contents of the same are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.
- C. That the annexures are true copies of their respective originals.


DEPONENT

VERIFICATION

Verified that the contents of paragraph 1 to 3 of my above affidavit are true to my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified on 9 June, 2021 at Bangalore


DEPONENT

APPENDIX

THE KARNATAKA CONTROL OF ORGANISED CRIME ACT ,2000
ARRANGEMENT OF SECTIONS**Sections:**

1. [Short title and commencement.](#)
2. [Definitions](#)
3. [Punishment for Organised Crimes.](#)
4. [Punishment for possessing unaccountable wealth on behalf of a member of organised crime syndicate.](#)
5. [Special Courts.](#)
6. [Jurisdiction of Special Court.](#)
7. [Power of Special Courts with respect to other offences.](#)
8. [Public Prosecutor.](#)
9. [Procedure and powers of special court.](#)
10. [Trial by special court to have precedence.](#)
11. [Power to transfer cases to regular courts.](#)
12. [Appeal.](#)
13. [Appointment of Competent Authority.](#)
14. [Authorisation of interception of wire, electronic or oral communication.](#)
15. [Special provisions regarding cellular phones.](#)
16. [Constitution of Review Committee for review of authorisation orders.](#)
17. [Interception and disclosure of wire electronic or oral communications prohibited.](#)
18. [Special rules of evidence.](#)
19. [Certain confessions made to Police Officer to be taken into consideration.](#)
20. [Protection of witness.](#)
21. [Forfeiture and attachment of property.](#)
22. [Modified application of certain provisions of the Code.](#)
23. [Presumption as to offences under section 3.](#)
24. [Cognizance of and investigation in to an offence.](#)
25. [Punishment for public servants failing in the discharge of their duties.](#)
26. [Overriding effects.](#)
27. [Protection of action taken in good faith.](#)
28. [Annual Report of Interceptions.](#)
29. [Power of High Court to make rules.](#)
30. [Powers of State Government to make rules.](#)

KARNATAKA ACT 1 OF 2002

(First published in the Karnataka Gazette Extra-ordinary on the second day of January, 2002)

THE KARNATAKA CONTROL OF ORGANIZED CRIMES ACTS, 2000.

(Received the assent of the President on the twenty second day of December, 2001)

An Act to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang, and for matters connected therewith or incidental thereto;

Whereas it is expedient to make special provisions for prevention and control of, and coping with, criminal activity by organized crime syndicate or gang and for matters connected therewith or incidental thereto;

Be it enacted by the Karnataka State Legislature in the fifty first year of the Republic of India as follows: -

1. Short title, extent and commencement. - (1) This Act may be called the Karnataka Control of Organized Crimes Act, 2000.

(2) It extends to the whole of the State of Karnataka.

(3) It shall come into force at once.

2. Definitions. - (1) In this Act, unless the context otherwise requires, -

(a) "Abet", with its grammatical variations and cognate expressions, includes, -

(i) communication or association with any person with the knowledge or having reason to believe that such person is engaged in assisting in any manner, an organized crime syndicate;

(ii) Passing on or publication of, without any lawful authority, any information likely to assist an organized crime syndicate and the passing on or publication of or distribution of any document or matter obtained from an organized crime syndicate; and

(iii) Rendering of any assistance, whether financial or otherwise, to an organized crime syndicate;

(b) "Code" means the Code of Criminal Procedure, 1973 (Central Act 2 of 1974),

(c) "Competent Authority" means the Competent Authority appointed under section 13;

(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;

(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;

(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;

(g) "Review Committee" means a Review Committee constituted under section 16;

(h) "Special court" means the Special Court constituted under section 5.

(2) Words and expressions used but not defined in the Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

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.

4. Punishment for possessing unaccountable wealth on behalf of a member of organized crime syndicate. - If any person on behalf of a member of an organized crime syndicate is, or, at any time has been in possession of movable or immovable property which he cannot satisfactorily account for, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for a term of ten years and shall also be liable to a fine, which shall not be less than one lakh rupees and such property shall also be liable for attachment and forfeiture, as provided by section 21.

5. Special Courts. - (1) The State Government may, by notification, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

(2) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the State Government, whose decision thereon shall be final.

(3) A Special court shall be presided over by a judge to be appointed by the State Government, with the concurrence of the Chief Justice of the High Court of Karnataka. The State Government may also appoint with the concurrence of the Chief Justice of the High Court of Karnataka additional judges to exercise jurisdiction in a Special court.

(4) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court, unless he immediately before such appointment is a session's judge or an additional sessions judge.

(5) Where any additional judge is or additional judges are appointed in a Special Court, the judge of the Special court may, from time to time, by general or special order in writing, provide for the distribution of the business of the Special court among himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

6. Jurisdiction of Special Court. - Notwithstanding anything contained in the Code, every offence punishable under this Act shall be triable only by the Special court within whose local jurisdiction it was committed, or as the case may be, by the Special court constituted for trying such offence under sub-section (1) of Section 5.

7. Power of Special Courts with respect to other offences. - (1) When trying any offence punishable under this Act, a Special court may also try any other offence with which the accused may, under the Code, be charged at the same trial, if the offence is connected with such other offence.

(2) If, in the course of any trial of any offence under this Act, it is found that the accused persons have committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and may pass any sentence authorized by the Act, or as the case may be, such other law, for the punishment thereof.

8. Public Prosecutor.- (1) For every Special court, the State Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the State Government may also appoint for any case or group of cases, a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor, an Additional Public Prosecutor or a Special Public Prosecutor unless he has been in practice as an Advocate for not less than ten years.

(3) Every person appointed as a Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

9. Procedure and powers of Special Court. - (1) A Special Court may take cognizance of any offence without the accused being committed to it for trial, upon receiving a complaint of facts, which constitute such offence, or upon a police report of such facts.

(2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special court may notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure specified in the Code and the provisions of sections 263 to 265 of the Code shall, as far as may be, apply to such trial:

Provided that, where in the course of a summary trial under this sub-section, it appears to the Special court that the nature of the case is such that it is undesirable to try in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation, to a Special Court as they apply to and in relation, to a Magistrate:

Provided further that, in case of any conviction in summary trial under this section, it shall be lawful for a Special court to pass a sentence of imprisonment for a term not exceeding two years.

(3) A Special court may, with a view to obtaining the evidence of any person, supposed to have been directly concerned in or privy to an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Subject to other provisions of the Act, a Special court shall, for the purpose of trial of any offence, have all the powers of a court of Session and shall try such offence as if it were a Court of Session, so far as may be, in accordance with the procedure specified in the Code for the trial before a Court of Session.

10. Trial by Special courts to have precedence. - The trial of any offence under this Act by special court shall have precedence over the trial of any other case against the accused in any other court (not being a special court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.

11. Power to transfer cases to regular Courts. - Where after taking cognizance of an offence, a Special court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any court having jurisdiction under the Code and Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

12. Appeal. - (1) Notwithstanding anything contained in the code, an appeal shall lie from any judgement, sentence or order, not being an interlocutory order, of a Special court to the High Court.

(2) Every appeal under this section shall be preferred within thirty days from the date of the judgment, sentence or order.

13. Appointment of Competent Authority. - The State Government may appoint any of its officers, in Home Department, not below the rank of a Secretary to Government, to be the Competent Authority for the purposes of section 14.

14. Authorization of interception of wire, electronic or oral communication. -

(1) A police officer not below the rank of a Superintendent of Police supervising the investigation of an organized crime under this Act may submit an application in writing to the competent authority for an order authorizing or approving the interception of wire, electronic or oral communication by the investigating officer when such interception may provide or has provided evidence of any offence involving an organized crime.

(2) Each application shall include the following information:

(a) The identity of the investigating or law enforcement officer making the application and the head of the department authorizing the application;

(b) A statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued including-

(i) Details as to the offence of organized crime that has been, is being or is about to be committed;

(ii) A particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(iii) A particular description of the type of communications sought to be intercepted; and

(iv) The identity of the person, if known, committing the offence of organized crime and whose communications is to be intercepted;

(c) A statement as to whether or not other modes of enquiry or intelligence gathering have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous or is likely to expose the identity of those connected with the operation of interception;

(d) A statement of the period of time for which the interception is required to be maintained, if the nature of the enquiry is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) A statement of the facts concerning all previous applications (known to the individual making the application) made to the Competent authority for authorization to intercept or for approval of interceptions of, wire, electronic or oral communications involving any of the same persons, facilities or places specified in the application and the action taken by the Competent Authority on each such application; and

(f) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(3) The Competent Authority may require the applicant to furnish additional oral or documentary evidence in support of the application.

(4) Upon such application, the competent Authority may after recording the reasons in writing reject the application, or issue an order, as requested or as modified, authorizing or approving interception of wire, electronic or oral communications, if the Competent authority determines on the basis of the facts submitted by the applicant that-

(a) There is a probable cause for belief that an individual is committing, has committed or is about to commit a particular offence described and made punishable under sections 3 and 4;

(b) There is a probable cause for belief that particular communications concerning that offence will be obtained through such interception;

(c) Normal modes of enquiry and intelligence gathering have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous or is likely to expose the identity of those connected with the operation of interception;

(d) There is probable cause for belief that the facilities from which, or the place where the wire, electronic or oral communications are to be intercepted or be used or are about to be used, in connection with the commission of such offence, are leased to, or are listed in the name of or commonly used by such person.

(5) Each order by the Competent authority authorizing or approving the interception of any wire, electronic or oral communication under this section shall specify:-

(a) The identity of the person, if known, whose communications are to be intercepted;

(b) The nature and location of the communication facilities as to which, or the place where, authority to intercept is granted;

(c) A particular description of the type of communication sought to be intercepted, and a statement of the particular offence to which it relates;

(d) The identity of the agency authorized to intercept the communication, and of the person authorizing the applications; and

(e) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(6) The competent authority shall immediately after passing the order under subsection (4) but in any case not later than seven days from the passing of the order submit a copy of the same to the Review Committee constituted under section 16 along with all the relevant underlying papers, record and his own findings, etc., in respect of the said order, for consideration and approval of the order by the Review Committee.

(7) An order authorizing the interception of a wire, electronic or oral communication under this section shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish to the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian or person is providing to the person whose communications are to be intercepted.

(8) No order issued under this section may authorize or approve the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorization, or in any event for a longer than sixty days.

Such period of sixty days shall begin on the day immediately preceding the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is issued, whichever is earlier. Extension of an order may be granted, but only upon an application for an extension is made in accordance with sub-section (1) and the Competent Authority recording the reasons required by sub-section (4). The period of extension shall not be longer than the Competent Authority deems necessary to achieve the purposes for which it was granted and in no event for longer than sixty days at a time. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as far as practicable and shall be conducted in such a manner as to minimize the interception of communications not otherwise subject to interception under this section and must terminate upon attainment of the authorized objective or in any event on expiry of the period of order. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this section may be conducted in whole or in part by a Government servant, or by an individual operating under a contract with the State Government, acting under the supervision of the investigating or law enforcement officer authorized to conduct the interception.

(9) Whenever an order authorizing interception is issued pursuant to this section, the order may require reports to be made to the Competent Authority who issued the order showing that progress has been made towards achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the Competent Authority may require.

(10) Notwithstanding anything contained in any other provision of this section an Officer not below the rank of an Additional Director General of Police who reasonably determines that, -

(a) An emergency situation exists that involves, -

(i) Immediate danger of death or serious physical injury to any person;

(ii) Conspiratorial activities threatening the security or interest of the State; or

(iii) Conspiratorial activities, characteristic of organized crime, that requires a wire, electronic or oral communication to be intercepted before an order from the Competent Authority authorizing such interception can, with due diligence, be obtained, and

(b) There are grounds upon which an order could be issued under this section to authorize such interception;

May authorize, in writing the investigating Officer to intercept such wire, electronic or oral communication, if an application for an order approving the interception is made in accordance with the provisions of sub-sections (1) and (2) within forty-eight hours after the interception has occurred, or begins to occur.

(11) In the absence of an order approving the interception made under sub-section (10), such interception shall immediately terminate when the communication sought is obtained or when the application for the order is rejected, whichever is earlier. In the event of an application under sub-section (4) for permitting to intercept or an application under sub-section (10) for approval is rejected or in any other case where the

interception terminated without an order having been issued, the contents of any wire, electronic or oral communication intercepted shall be treated as having been obtained in violation of this section.

(12) (a) The contents of any wire, electronic or oral communication intercepted by any means authorized by this section shall, if possible be recorded on tape or wire or other comparable device. Recording of the contents of any wire, electronic or oral communication under this sub-section shall be done in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of order, or extension thereof, such recordings shall be made available to the Competent Authority issuing such order and shall be sealed under his directions. Custody of the recording shall be whenever the Competent Authority orders. They shall not be destroyed except upon an order of the Competent Authority and in any event shall be kept for ten years.

(b) Applications made and orders issued under this section shall be sealed by the Competent Authority. Custody of the applications and orders shall be wherever the Competent Authority directs, and shall not be destroyed except on an order of the Competent Authority and in any event shall be kept for ten years. The Competent Authority upon the filing of a motion, may in its discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the Competent Authority determines to be in the interest of justice.

(13) Notwithstanding anything in the Code or in any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under this section shall be admissible in evidence against the accused before the Special Court during the trial of a case:

Provided that the contents of any wire, electronic or oral communication intercepted pursuant to this section or evidence derived there from shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each party, as been not less than ten days before trial, hearing or proceeding furnished with a copy or the order of the Competent Authority and accompanying application, under which the interception was authorized or approved:

Provided further that the said ten days period may be waived by the judge trying the matter, if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving such information.

Explanation. - For the purpose of this section,-

(a) 'Wire communication' means any aural transfer made in whole or part through the use of facilities for the transmission of communication by the aid of wire, cable or other like connection, between the point of origin and the point of reception including the use of such connection in switching station and such term includes any electronic storage of such communication.

(b) 'Oral communication' means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but such term does not include any electronic communication.

(c) 'Electronic communication' means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system that affects inland or foreign commerce but does not include, -

(i) The radio portion of a cordless telephone communication that is transmitted between the wireless telephone handset and the base unit;

(ii) Any wire or oral communication;

(iii) Any communication made through a tone only paging device; or

(iv) Any communication from a tracking device;

(d) 'Intercept' means the aural or other acquisition of the contents by wire, electronic or oral communication through the use of any electronic, mechanical or other device.

15. Special provisions regarding Cellular Phones. - (1) A police officer not below the rank of a Superintendent of Police supervising the investigation of an organized crime under this Act may submit an application in writing to the Competent Authority for an order directing a cellular phone operator to de-activate any mobile phone and delink the calls from or to any mobile phone reasonably suspected of being used for any criminal act or conspiracy. Such competent authority may also direct the cellular phone operators operating in its jurisdiction, by a general or specific order, to provide the details of simcard purchasers and the simcards provided by them to a particular person or persons during a particular period. It shall be mandatory for such cellular phone operator to provide the required information to the person specified in the above said direction immediately.

(2) Any person violating any directions given under the sub-section (1) shall be punishable with imprisonment for a term, which may extend to two years and with a fine, which may extend to rupees five lakhs.

16. Constitution of Review Committee for review of authorization orders. - (1) There shall be a Review Committee to review every order passed by the Competent Authority under section 14 or an order passed by the Officer referred to in sub-section (10) of that section.

(2) The Review Committee shall consist of the following ex-officio members, namely: -

- | | |
|---|----------|
| (i) The Chief Secretary, Government of Karnataka | Chairman |
| (ii) The Principal Secretary, Home Department,
Government of Karnataka. | Member |
| (iii) The Secretary to Government Law Department,
Government of Karnataka. | Member |

(3) Every order passed by the Competent Authority under section 14 or by the officer referred to in sub-section (10) of that section shall be placed before the Review Committee and be considered by the Review Committee within ten days after its receipt, to decide whether the order, authorizing or approving the application under sub-section (4) of section 14 or for interception or disapproving the interception made under sub-section (10) of that section in emergency situation, passed by the Officer concerned was necessary, reasonable and justified.

(4) The review committee after examining the entire record and holding such enquiry, if any, deemed necessary may, by order in writing, either approve the order passed by the Competent Authority or by the officer under sub-section (10) of section 14 or may issue order disapproving the same. On issue of an order of disapproval by the review committee, the interception, if any, already commenced shall be forthwith discontinued. The intercepted communication, if any, in the form of tape, wire or other device shall, thereupon, not be admissible as evidence in any case and shall be directed to be destroyed.

17. Interception and disclosure of wire, electronic or oral communications prohibited. - Except as otherwise specifically provided in section 14, any police officer who-

(a) Intentionally intercepts, endeavors to intercept or procures any other person to intercept or endeavor to intercept any wire, electronic or oral communication;

(b) Intentionally uses, endeavors to use, or procures any other person to use or endeavors to use any electronic, mechanical or other device to intercept any oral communication when-

(i) Such device is affixed to or otherwise transmits a signal through a wire, cable or other like connection used in wire communication; or

(ii) Such device transmits communications by radio, or interferes with the transmission of such communications;

(c) Intentionally discloses or endeavors to disclose, to any other person the contents of any wire, electronic or oral communication knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this sub-section;

(d) Intentionally uses or endeavors to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this sub-section; or

(e) (i) intentionally disclose or endeavor to disclose, to any other person the contents of any wire, electronic or oral communication, intercepted by means authorized by section 14;

(ii) Knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation under this Act;

(iii) Having obtained or recorded any information in connection with a criminal investigation; and

(iv) With intent to improperly obstruct, impede or interfere with a duly authorized criminal investigation; or

(v) Intentionally continues the interception of wire, electronic or oral communication after the specific order of disapproval by the Review Committee under sub-section (4) of section 16;

Shall for such violation be punished with imprisonment for a term, which may extend to one year and fine which may extend to rupees fifty thousand.

18. Special rules of evidence.- (1) Notwithstanding anything to the contrary contained in the Code or the Evidence Act, 1872 for the purpose of trial and punishment for offences under this Act or connected offences the Court may take into consideration as having probative value, the fact that the accused was, -

(a) On any previous occasion bound under section 107 or section 110 of the Code.

(b) Detained under any law relating to preventive detention, or

(c) On any previous occasion was prosecuted in the Special court under this Act.

(2) Where it is proved that any person involved in an organized crime or any person on his behalf is or has at any time been in possession of movable or immovable property which he cannot satisfactorily account for, the Special Court shall unless contrary is proved presume that such property or pecuniary resources have been acquired or derived by his illegal activities.

(3) Where it is proved that the accused has kidnapped or abducted any person, the Special Court shall presume that it was for ransom.

19. Certain confessions made to police officer to be taken into consideration.- Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced shall be admissible in the trial of such person or co-accused, abettor or conspirator:

Provided that the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The confession shall be recorded in free atmosphere in the same language in which the person is examined and as narrated by him.

(3) The police officer shall before recording any confession under sub-section (1) explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is being made voluntarily. The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and time of the same.

(4) Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.

(5) The person from whom a confession has been recorded under sub-section (1) shall also be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under sub-section (3) along with the original statement of confession written or recorded on mechanical device without unreasonable delay.

(6) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement if any made by the accused so produced, and get the signature. In case of any complaint of torture the accused shall be directed to be produced for medical examination before a Medical Officer not below the rank of an Assistant Civil surgeon.

20. Protection of witness, - (1) Notwithstanding anything contained in the Code the proceedings under this Act may be held in camera, if the Special Court so desires.

(2) A Special Court may on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of any witness secret.

(3) In particular and without prejudice to the generality of the provisions of sub-section (2), the measures, which a Special Court may take under that sub-section, may include;

(a) The holding of the proceedings at a place to be decided by the Special Court;

(b) The avoiding of the mention of the names and address of the witness in its orders or Judgements or in any records of the case accessible to public;

(c) The issuing of any directions for securing the identity and addresses of the witnesses are not disclosed.

(d) That it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.

(4) Any person who contravenes any direction issued under sub-section (3) shall be punishable with imprisonment for a term, which may extend to one year and with fine, which may extend to one thousand rupees.

21. Forfeiture and attachment of property. - Where a person has been convicted of any offence punishable under this Act, 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.

(a) If upon a report in writing made by an investigating police officer with the approval of the supervisory officer referred to in sub-section (1) of section 14, any Special Court has reason to believe that any person, who has committed an offence punishable under this Act has absconded or is concealing himself so that he may not be apprehended, such Court may, notwithstanding anything contained in section 82 of the Code, publish a written proclamation requiring him to appear at a specified place and at a specified time not less than fifteen days but not more than thirty days from the publication of such proclamation:

Provided that if the investigating officer concerned fails to arrest the accused, who has absconded or is concealing himself, within a period of three months from the date of registering the offence against such person, the officer shall, on the expiry of the said period make a report to the Special Court for issuing the proclamation.

(b) The Special court issuing a proclamation under clause (a) may, at any time, order the attachment of any property, movable or immovable or both, belonging to the

proclaimed person, and thereupon the provisions of sections 83 to 85 of the Code shall apply to such attachment as if such attachment were made under that Code.

(c) If, within six months from the date of attachment, any person whose property is or has been, at the disposal of the State Government under sub-section (2) of section 85 of the Code, appears voluntarily or is apprehended and brought before the Special Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding apprehension and that he had not received such notice of the proclamation as to enable him to attend within the specified time therein, such property or if the same has been sold, the net proceeds of the same and the residue of the property, shall, after satisfying there from all costs incurred in consequence of the attachment, be delivered to him.

22. Modified application of certain provisions of the Code. - (1) Notwithstanding anything contained in the Code or in any other law, every offence punishable under this Act, shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and "Cognizable case" as defined in that clause shall be constructed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that, in sub-section (2), -

(a) The references to "fifteen days" and "Sixty days" wherever they occur, shall be constructed as references to "Thirty days" and "ninety days" respectively;

(b) After the proviso, the following proviso shall be inserted namely:-

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period up to one hundred and eighty days on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days."

(3) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act.

(4) Notwithstanding anything contained in the code no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on own bond, unless-

(a) The Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) Where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act or under any other Act on the date of the offence in question.

(6) The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code or any other law for the time being in force on the granting of bail.

(7) The police officer seeking the custody of any person for pre-indictment or pretrial interrogation from the judicial custody shall file a written statement explaining the reason for seeking such custody and also for the delay if any, seeking the police custody.

23. Presumption as to offences under section 3. -(1) In a prosecution for an offence of organized crime punishable under section 3, if it is proved. -

(a) That unlawful arms and other material including documents or papers were recovered from possession of the accused and there is reason to believe that such unlawful arms and other material including documents or papers were used in the commission of such offence; or

(b) That the evidence of an expert, the finger prints of the accused were found at the site of the offence or on anything including unlawful arms and other material including documents or papers and vehicle used in connection with the commission of such offence, the Special Court shall presume, unless the contrary is proved, that the accused had committed such offence.

(2) In a prosecution for an offence of organized crime punishable under sub-section (2) of section 3, if it is proved that the accused provided any financial assistance to a person accused of, or reasonably suspected of, an offence of organized crime, the Special Court shall presume, unless the contrary is proved, that such person has committed the offence under the said sub-section (2).

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.

25. Punishment for public servants failing in the discharge of their duties. - Whoever being a public servant renders any help or support in any manner in the commission of organized crime as defined in clause (c) of section 2, whether before or after the commission of any offence by a member of an organized crime syndicate or abstains from taking lawful measures under this Act or intentionally avoids to carry out the directions of any Court or of the superior police officers in this respect shall be punished with imprisonment of either description for a term which may extend to three years and also with fine.

26. Overriding effects. - The provisions of the Act or any rule made there under or any order made under any such rule shall, have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force having the force of law.

27. Protection of action taken in good faith. - No suit, prosecution or other legal proceeding shall lie against the State Government or any officer or authority of the

State Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made there under or any order issued under any such rule.

28. Annual Report of Interceptions. - (1) The State Government shall cause an annual report to be prepared giving a full account of. -

(i) The number of applications for authorization of interceptions received by the Competent Authority from the Police Department in which prosecutions have been launched.

(ii) The number of such applications permitted or rejected;

(iii) The number of interceptions carried out in emergency situations and the number of ex-post-facto authorizations or approvals granted or rejected in such matters;

(iv) The number of prosecutions launched based on such interceptions and convictions resulting from such interceptions along with an explanatory memorandum giving general assessment of the utility and importance of the interceptions authorized.

(2) Such annual report shall be laid by the State Government before each House of the State Legislature within three months of the completion of every calendar year:

Provided that if the State Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the State or to the prevention or detection of any organized crime, the State Government may exclude such matter from being included in such annual report.

29. Power of High Court to make rules. - The High Court may by notification in the Official Gazette, make such rules as it may deem necessary for carrying out the provisions of this Act relating to the Special Courts.

30. Powers of State Government to make rules. - (1) Without prejudice to the powers of the High Court to make rules under section 29, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall from the date of publication of such notification, have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

No CRM (1)/KCOCA/01/2018

Office of the
Commissioner of Police,
#1, Infantry Road, Bengaluru.
Date 14.08.2018.

ORDER

**PRIOR APPROVAL UNDER SECTION 24 (1) (a) OF THE KARNATAKA
CONTROL OF ORGANIZED CRIMES ACT 2000**

- Reference:**
- 1 Bengaluru City Rajarajeshwari Nagar Police Station Crime No. 221/217 u/s 302, 120(B), 118, 114 r/w 35 of Indian Penal Code and 3, 25 of Indian Arms Act.
 - 2 Vijayapura district Sindhagi Police Station Crime No. 1/12 u/s 124, 153(A)(B), 201 r/w 511 IPC.
 - 3 Vijayapura district Sindhagi Police Station Crime No. 2/12 u/s 143, 147, 341, 324, 353, 427 r/w 149 IPC.
 - 4 Hubballi Kasaba Police Station Crime No. 111/13 u/s 114, 143, 147, 148, 323, 324, 354, 332, 336, 427, 504 r/w 149 IPC and 3, 4, 7 Prevention of Damage to Public Property Act 1984.
 - 5 Hubballi Old Police Station Crime No. 144/12 u/s 323, 324, 341, 506 r/w 34 IPC
 - 6 Bengaluru City Upparpete Police Station Crime No 45/18 u/s 120(B) and 3, 25 Indian Arms Act

- Read:**
- 1 Report No. 01/KCOCA/SIT/2017-18 dated 07/08/2018 submitted by Sri M.N. Anucheth, IPS, DCP (Administration), Bengaluru City and Chief Investigating Officer (Special Investigation Team) of the aforementioned case.
 - 2 Note No 5/IGP/SIT/2017-18 dated 09/08/2018 of Sri B. K. Singh, IPS, Inspector General of Police and Chief of Special Investigation Team.

WHEREAS, Sri M.N. Anucheth, IPS, DCP (Administration), Bengaluru City and Chief Investigating Officer (Special Investigation Team) has submitted a report dated 07th August 2018 along with the papers of the investigation and record of evidence in Bengaluru City Rajarajeshwari Nagar Police Station Crime No 221/217

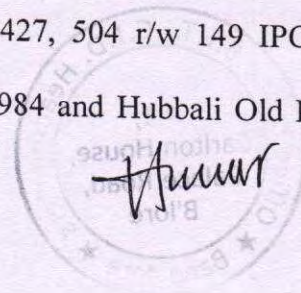


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u/s 302, 120(B), 118, 114 r/w 35 of Indian Penal Code and 3, 25 of Indian Arms Act, through Sri B. K. Singh, IPS, Inspector General of Police and Chief of Special Investigation Team before me for prior approval for invoking provisions of The Karnataka Control of Organized Crimes Act, 2000 to the said case.

AND WHEREAS, from the facts of this case, after going through the entire investigation papers, and record of evidence collected so far and the report of the Chief Investigating Officer, I am satisfied that the accused **Parshuram Wagmore** s/o Ashok Wagmore (A-7) has committed two offences viz. Vijayapura district Sindhagi Police Station Crime No. 1/12 u/s 124, 153(A)(B), 201 r/w 511 IPC and Vijayapura district Sindhagi Police Station Crime No. 2/12 u/s 143, 147, 341, 324, 353, 427 r/w 149 IPC; both having punishment of three years or more within the preceding period of ten years and the charge sheets have been filed against him before the JMFC (Senior Division) Court, Sindhagi vide SC.No 116/12 and before the JMFC Court, Sindhagi vide CC No. 76/15, respectively, cognizance of which has been taken by the respective Courts. I have perused the entire investigation papers of the said two cases and they clearly bring forth the facts that he and co-accused through their illegal actions committed sedition, promoted enmity between two groups of people, incited communal violence, assaulted public servants and did acts prejudicial to maintenance of harmony and thereby caused grave disturbance to public order.

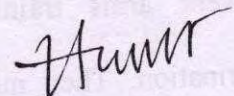
I am satisfied that the accused **Amith Baddi** s/o Late Ramchandra (A-10) has committed two offences namely; Hubballi Kasaba Police Station Crime No. 111/13 u/s 114, 143, 147, 148, 323, 324, 354, 332, 336, 427, 504 r/w 149 IPC and 3, 4, 7 Prevention of Damage to Public Property Act 1984 and Hubballi Old Police Station



Crime No. 144/12 u/s 323, 324, 341, 506 r/w 34 IPC; both having punishment of three years or more within the preceding period of ten years and the charge sheets have been filed against him before the 3rd JMFC Court, Hubli vide C C No 2692/15 and before the 2nd JMFC Court, Hubli vide CC No. 1387/15, respectively, cognizance of which has been taken by the respective Courts. I have perused the entire investigation papers of the said two cases and they clearly bring forth the fact that he and co-accused incited communal violence, assaulted and injured public servants, damaged public property and caused grave disturbance to public order.

I am satisfied that the accused Ganesh Miskin s/o Dasharath (A-9), has committed one offence i.e. Hubballi Kasaba Police Station Crime No. 111/13 u/s 114, 143, 147, 148, 323, 324, 354, 332, 336, 427, 504 r/w 149 IPC and 3, 4, 7 Prevention of Damage to Public Property Act 1984 having the punishment of three years or more within the preceding period of ten years and the charge sheet has been filed against him before the 3rd JMFC Court, Hubli vide CC.No 2692/15, cognizance of which has been taken by the Court. I have perused the entire investigation papers of the said case and they clearly bring forth the fact he along with A-10 Amith Baddi and several others incited communal violence, assaulted and injured public servants, damaged public property and cause grave disturbance to public order.

I am satisfied that the accused 1) K.T. Naveen Kumar s/o Thimmegowda (A-1), 2) Sujith Kumar s/o Rangaswamy S.B (A-2), 3) Amol Kale s/o Aravind Ramachandra Kale (A-3), 4) Amit Degvekar s/o Ramachandra Bhikaji Degvekar (A-4), have jointly committed an offence having punishment of three years or more within the preceding period of ten years and the charge sheet has been filed against



them before the V ACMM Court vide CC No 19618/18, cognizance of which has been taken by the Court. They jointly conspired to assassinate one Prof. K.S. Bhagawan, for expressing his views which were inimical to that of their ideology. They intended to instill fear in the hearts and minds of those whose views were an antithesis to their own views and stifle the fundamental right of speech and expression.

I am convinced that the arrested accused in this case viz. 1) K.T. Naveen Kumar s/o Thimmegowda (A-1), 2) Sujith Kumar s/o Rangaswamy S.B (A-2), 3) Amol Kale s/o Aravind Ramachandra Kale (A-3), 4) Amit Degvekar s/o Ramachandra Bhikaji Degvekar (A-4), 5) Manohar Yedave s/o Late Dundappa (A-6), 6) Parashuram Wagmare s/o Ashok Wagmare (A-7), 7) Mohan Nayak s/o Vasudev Nayak (A-8), 8) Ganesh Miskin s/o Dasharath (A-9), 9) Amith Baddi s/o Late Ramchandra (A-10), 10) Rajesh D. Bangera s/o Late Deranna B.P. (A-11), 11) H.L. Suresh s/o Laxman H.C. (A-12) and absconding accused Dada @ Nihal (A-5) are active members of an Organized Crime Syndicate and have committed this offence in furtherance of their organized crime activity in order to promote insurgency.

Investigation findings have clearly revealed that Rajesh D. Bangera s/o Late Deranna B.P. (A-11) gave training in arms to various members of the syndicate since 2012 at various places in and around Karnataka and Maharashtra.

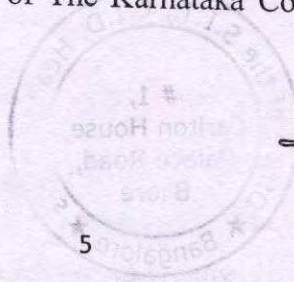
Investigation findings have clearly revealed that these members of the organized crime syndicate were in constant touch with one another and actively underwent arms training, arms shooting practice, crude bomb making and indoctrination. They met, conspired and trained at various places in and around

Karnataka and Maharashtra with the intention of promoting insurgency. Documents seized during the investigation clearly reveal the intention of the accused to assassinate 8 writers / thinkers of Karnataka and 26 other writers / thinkers from the rest of the country.

Documents seized in the course of investigation conducted reveal the plans of how the organized crime syndicate intended to cause grave disturbance to public order during the release of a movie titled 'Padmaavat' by attacking films theatres where the said movie would have been exhibited by the use of deadly substances like petrol bombs, acid etc. and cause bodily harm to the viewers and economically hurt the film distributors. These documents further reveal the intention of the syndicate to procure and use RDX, petrol bombs, acids, poisons and other incendiary and chemical materials.

Investigation findings have prima facie revealed that these members of the organized crime syndicate conspired and murdered Ms. Gauri Lankesh to further their cause and to promote insurgency.

Thus, on perusal and evaluation of the entire material brought on record and also taking into consideration the factual circumstances of the case including the proximity and time gap in committing the crimes and having applied my mind, I am satisfied and convinced that the arrested and wanted accused have committed the offence as defined in section 2 (1) of The Karnataka Control of Organized Crimes Act, 2000.



NOW, THEREFORE, in exercise of the powers conferred upon me by Section 24 (1) (a) of the said Act, I, T. Suneel Kumar, IPS, Additional Director General of Police and Commissioner of Police, Bengaluru City hereby grant/accord my prior approval to invoke Section 3 of The Karnataka Control of Organized Crimes Act 2000, to Sri M. N. Anucheth, IPS, DCP (Administration), Bengaluru City and Chief Investigating Officer (Special Investigation Team) in the Bengaluru City Rajarajeshwari Nagar Police Station Crime No 221/217 u/s 302, 120(B), 118, 114 r/w 35 of Indian Penal Code and 3, 25 of Indian Arms Act.

Sri M.N. Anucheth, Chief Investigating Officer, shall scrupulously follow and comply with the provisions of The Karnataka Control of Organized Crimes Act, 2000.

This order given under my signature and seal today i.e. 14th August, 2018.



T. Suneel Kumar
(T Suneel Kumar)
Commissioner of Police
Bengaluru City

✓ To,
Sri M N Anucheth, IPS
Chief Investigating officer, SIT
Bengaluru City

Copy to
Sri B K Singh, IPS,
IGP & SIT, Chief,



True copy
M.N. Anucheth
M.N. Anucheth IPS,
Chief Investigation Officer,
Special Investigation Team,
CID Office, Bengaluru.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF FEBRUARY, 2019

BEFORE

THE HON'BLE MR.JUSTICE B.A.PATIL

CRIMINAL PETITION NO.8325/2018

BETWEEN :

Sri Mohan Nayak N.,
S/o N. Vasudeva Nayak
Aged about 50 years
R/at "Shree" Nivasa
Mundadka, Sampaje,
Sullia Taluk, D.K. District-574 234.

... Petitioner

(By Sri Aruna Shyam M., Advocate)

AND :

The State of Karnataka
through Special Investigating Team
and Rajarajeshwari Nagar P.S.
Represented by its State Public Prosecutor
High Court Building, High Court of Karnataka
Bangalore-560 001.

... Respondent

(By Sri H.S. Chandramouli, SPP-I)

This Criminal Petition is filed under Section 439 of Cr.P.C praying to enlarge the petitioner on bail in Crime No.221/2017 of Rajarajeshwari Nagar P.S., Bangalore for the offences punishable under Sections 302, 120B, 114, 118 r/w Section 35 of Indian Penal Code and Sections 3 and 25 of ARMS Act.

This Criminal Petition having been heard and reserved on 24.01.2019 coming on for pronouncement of orders this day, the Court made the following:-

ORDER

In this case, accused No.8 has approached this Court for grant of regular bail under Section 439 of Cr.P.C. in Crime No.221/2017 of SIT Police and Rajarajeshwari Nagar Police Station for the offences punishable under Sections 302, 120B, 114, 118 r/w. Section 35 of IPC; Section 3 of the Karnataka Control of Organized Crimes Act,2000 ('KCOCA' for short); and Sections 3 and 25 of Indian Arms Act.

2. It is relevant to note here itself that initially the petitioner was arrayed as accused No.8 and now he is ranked as accused No.11.

3. I have heard the learned counsel Sri Aruna Shyam for the petitioner and Sri H.S.Chandramouli, learned SPP-I for the respondent-State.

4. Before adverting to the arguments of the learned counsel for the petitioner and the learned SPP-I, it is just and necessary to have the brief factual matrix of the case which is as under:-

5. One Mrs.Kavitha Lankesh, sister of the deceased Mrs.Gowri Lankesh filed the complaint alleging that deceased was working as a Journalist and also a progressive thinker. She used to reside alone at Rajarajeshwarinagar. It is alleged that on 5.9.2017 at about 8.26 p.m., the mother of the complainant received a phone call stating that something had happened to Mrs.Gowri Lankesh at her residence. Immediately thereafter, they rushed to the house of the deceased at Rajarajeshwarinagar, where the complainant saw that a car was parked in front of the gate and near the main door her sister was lying in a pool of blood. The complainant also noticed that near the body of the deceased, there were some cartridge pieces and by

suspecting that some miscreants have committed the murder of her sister, she filed the complaint accordingly. On the basis of the complaint, a case was registered in Crime No.221/2017 for the above said offences.

6. During the course of investigation, Special Investigation Team arrested one K.T.Navinkumar on 2.3.2018 thereafter accused No.2-Praveen was also implicated. After investigation, by showing K.T.Navinkumar as accused No.1 and Praveen as accused No.2 charge sheet came to be filed. In the charge sheet accused No.2 was shown as absconding. While filing the charge sheet, the Investigating Officer sought permission of the learned Magistrate for further investigation so as to produce additional documents. The learned Magistrate by the order dated 30.5.2018 took cognizance. Thereafter, during the course of investigation, accused Nos.2, 3, 4 and 6 were apprehended and subsequently, accused No.7 was also apprehended. After lapse of some

time, petitioner-accused No.8 was apprehended alleging that he is also the member of syndicate of the alleged crime and now he is in custody.

7. It is submitted by the learned counsel for the petitioner-accused No.8 that the name of the petitioner is not mentioned in the complaint. First charge sheet has been filed without showing the name of the petitioner-accused No.8. During the course of investigation he has also co-operated with the Investigating Officer. Thereafter, he has been apprehended and second charge sheet has been filed. He further submitted that the entire case rests on circumstantial evidence and there are no eye witnesses. The petitioner has been apprehended only on suspicion without there being any basis. He further submitted that in order to attract the provisions of KCOCA, the prosecution has to satisfy relevant two pre-conditions i.e., at least there should be two charge sheets filed against the members of an

organized crime syndicate within 10 years and the second one is the competent Court has taken cognizance of the said offences. In the instant case, those two conditions have not been satisfied and as such the provisions of KCOCA are not attracted. In order to substantiate the said contention, he has relied upon the decision in the case of ***State (NCT of Delhi) Vs. Brijesh Singh & others***, reported in ***AIR 2017 SC 4888***. He further submitted that there is no evidence one worth believable against the petitioner-accused No.8. Under such circumstances, he can invoke the provisions of Cr.P.C. for grant of bail. He further submitted that though the provisions of KCOCA are made applicable and a special provision has been made for dealing with such offences, in view of the facts and circumstances of the case, the provisions of Cr.P.C. are attracted and they get modified. In order to substantiate his case, he has relied upon the decision in the case of ***State of Gujarat Vs. Salimbhai Abdulgaffar Shaikh & others***, reported in

AIR 2003 SC 3224. It is further submitted that how the KCOCA has to be interpreted, has been interpreted by this Court in the case of ***M.V.Rudrappa & others Vs. State of Karnataka in Criminal Petition No.4251/2016 & connected matters***, disposed of on **22.7.2016.** He further submitted that as there is no conspiracy in respect of the petitioner-accused No.8, no inference can be drawn in this behalf to connect him to the crime. He further submitted that the only allegation made against the petitioner-accused No.8 is that he was sitting with accused No.1 and provided SIM card, which is a matter that has to be considered at the time of trial. This aspect clearly goes to show that no direct role has been played by the petitioner as regards commission of organized crime and there is no nexus. Under such circumstances, he is entitled to be released on bail. He further submitted that the petitioner is not having any criminal antecedents. In order to substantiate his submission, he has relied upon the decision in the case of

Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra & another, reported in ***(2005)5 SCC 294***. He further submitted that the petitioner is ready to abide by any conditions imposed by this Court and ready to offer sureties. On these grounds, he requests to allow the petition and release the petitioner-accused No.8 on bail.

8. *Per contra*, the learned SPP-I vehemently argued and submitted that the statement of the witnesses and the other material collected during the course of investigation reveal that the petitioner-accused No.8 is a member of organized crime syndicate. He further submitted that the main accused have taken the shelter with the petitioner and it is the petitioner who has taken the house on rental basis and handed over the key to the accused persons. Though the said premises was taken for the purpose of opening the clinic, no such clinic was opened and immediately after the assassination and the

criminal work, the key was handed over back to the owner by vacating the premises. The accused persons have paid the amount to the present petitioner and there was full connivance of accused No.8 along with other accused persons. He further submitted that on the basis of the voluntary statement of the petitioner and the voluntary statements of other accused persons motorcycle used for the purpose of commission of the offence has been recovered. Even the accused persons have shown the house which was taken on rent and the place of incident. All these materials clearly go to show that the petitioner as a part of an organized crime syndicate actively participated and all these circumstances also clearly establish the conspiracy between the petitioner and other accused persons. He further submitted that invoking of KCOCA against the accused persons has not been challenged and the conspiracy has also been established by the material produced along with the charge sheet. Under such

circumstances, the petitioner-accused No.8 is not entitled to be released on bail. He further submitted that after complicity of the petitioner in the activities of other accused persons as a part of an organized crime syndicate if it is proved, then the sanction is inconsequential. In order to substantiate the said contention, he has relied upon the decision in the case of ***Vinod G. Asrani Vs. State of Maharashtra***, reported in ***2007(3) SCC 633***. He further submitted that the Court while granting the bail, has to keep in mind Section 22(4)(b) of the KCOCA and it is expected to exercise its discretion in a judicious manner and not as a matter of course and the Court has to indicate in its order the reasons for *prima facie* conclude why bail was being granted or refused. He further submitted that the Court is duty bound to see if there exists a reasonable ground for believing that the accused is guilty or not guilty, then only it can exercise its power to release the accused on bail. In order to substantiate his contention, he has

relied upon the decision of the Bombay High Court in the case of **Ranjitsing Brahmajeetsing Sharma Vs. Union of India**, reported in **LAWS (BOM)2004 7 25**. He further submitted that a probative value of the case cannot be gone at this stage. The intention of the Legislature is to curtail such type of activities on examination of the material, if the Court is satisfied that a *prima facie* case has been made out under Section 3 of the KCOCA. Though the accused is not directly connected in the said crime and if he is associated with as an abettor or conspirator for facilitating the commission of the offence, then under such circumstances, he is not entitled to be released on bail. In order to substantiate the said contention, he has relied upon the decision in the case of **Manoj Ramesh Mehta Vs. State of Maharashtra**, reported in **AIR 2009 SC 622**. He further submitted that if the petitioner is a member of organized crime syndicate, then every act of the accused persons amounts to an offence. It can be

proved by direct evidence or circumstantial evidence. He further submitted that in order to attract the provisions of the KCOCA, minimum two charge sheets have to be filed against the accused persons within a period of 10 years and the Court has to take cognizance of such offences. But if he is a member of organized crime syndicate and if a charge sheet has been filed against one of them, then under such circumstances, the provisions of Section 21 of the KCOCA are attracted. In order to substantiate his said contention he has relied upon the decision of the Bombay High Court in the case of **Govind Sakharam Ubhe vs. The State of Maharashtra, in Criminal Appeal No.18/2009** disposed of on **11.6.2009**. If the material creates a strong and grave suspicion leading to presume that the appellant is a member of an organized crime syndicate and has been involved in continuing unlawful assemblies, then under such circumstances, *prima facie* there is said to be a material as against the accused and therefore he

is not entitled to be released on bail. He further submitted that the member of the crime syndicate operates singly or jointly in the commission of the crime. They operate in different modules, under such circumstances, the entire evidence and material have to be seen to link the person with the organized crime syndicate. In this behalf, by referring to the statement of the witnesses, he submitted that there is ample material as against the petitioner to show that he is the member of such organized crime syndicate. The conspiracy can be proved either by direct evidence or by circumstantial evidence or by both. He further submitted that the circumstances proved before, during and after occurrence of the crime have to be proved to decide about complicity of the accused. In order to substantiate the said contention, he has relied upon the decisions in the case of ***Pratapbhai Hamirbhai Solanki Vs. State of Gujarat & another***, reported in ***(2013)1 SCC 613*** and in the case of ***Devender Pal Singh Vs. State of***

NCT of Delhi & another, reported in **(2002)5 SCC 234**. He further submitted that when once already the bail application filed by the accused has been rejected, as per Section 12 of the KCOCA, an appeal lies and no criminal petition is maintainable before this court. He further submitted that the application under Section 167 of Cr.P.C. for grant of statutory bail is pending before the Court below. Under such circumstances, the present second petition by the same accused is not maintainable. On these grounds, he prayed to dismiss the petition.

9. I have carefully and cautiously gone through the submissions made by the learned SPP-I and perused the records. Even he made available the statements of the witnesses recorded during the course of investigation. I have also gone through the said statements. The first and foremost contention taken up by the learned SPP-I is that the present petition is not maintainable in view of Section 12 of the KCOCA. It is his further submission

that as per Section 12 of the KCOCA, against an order, an appeal lies and already an application has been filed before the Court below and the same has been rejected. As such he submits that the appeal ought to have been filed instead of the present petition. For the purpose of brevity I quote Section 12 of the KCOCA, which reads as under:-

"12. Appeal. - (1) Notwithstanding anything contained in the code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special court to the High Court.

(2) Every appeal under this section shall be preferred within thirty days from the date of the judgment, sentence or order."

10. As could be seen from the said provision of law, an appeal lies against any judgment, sentence or order, but if it is an interlocutory order, then under such circumstances, no appeal lies. Even as could be seen

from Section 22(4)(b) of the KCOCA, provisions of Cr.P.C. are also made applicable, but the Court which exercises the power has to exercise its discretion in a judicious manner and not as a matter of course. The only reservation is that the prosecutor must be given an opportunity to oppose the application of such reliefs and if he opposes the application, the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail. In the light of the said discussion the contention taken up by the learned SPP-I is not acceptable and the same is rejected.

11. It is the contention of the learned counsel for the petitioner that provisions of the KCOCA is not applicable to the facts of the case on hand and as such the present petition may be considered with reference to the bail provision. He further submitted that earlier, the name of the petitioner was not found and it was included

subsequently. On going through the records made available it would indicate that as against the accused persons the KCOCA has been applied and even the sanction has also been granted in this behalf by the concerned authority and thereafter the initial charge sheet was filed on 29.5.2018 and the supplementary charge sheet came to be filed on 23.11.2018. The fact of invoking the provisions of KCOCA has not been challenged anywhere by any of the accused persons. When the said fact has not been challenged and after satisfaction, the competent authority has issued sanction to prosecute the accused persons, at this juncture this Court cannot go in detail with regard to the said aspect since the scope under the present petition is very limited. Though the learned counsel for the petitioner has relied upon the decision of this Court in the case of ***M.V.Rudrappa & others Vs. State of Karnataka*** (quoted *supra*), wherein it was an admitted fact that all the accused approached this Court by way of writ petition

challenging invoking the provisions of the KCOCA and after hearing the matter, stay was granted with regard to invocation of the provisions of the KCOCA. Under the said circumstances, this Court by taking into consideration the general provisions of Cr.P.C. released the accused on bail. The said facts and circumstances are not applicable to the present case and as such it will not help the case of the petitioner in this behalf.

12. Now let me consider whether the petitioner has made out any reasonable grounds to entertain his application for release on bail. I have carefully and cautiously gone through the charge sheet material and the statements of the witnesses. In the first instance, K.T.Naveenkumar was arrested on 18.2.2018 while he was carrying ammunition for delivery and a case has been registered in Crime No.45/2018 and when he was interrogated, it revealed his involvement in Gowri Lankesh's murder case and on the basis of the voluntary

statement by him, another accused by name Praveen @ Sujith Kumar was apprehended on 19.5.2018 and in his voluntary statement he stated his involvement in conspiracy of murder of Prof.Bhagwan and subsequently on the basis of the information given by him, Amol Kale, Amith Degvekar and Manohar Edave were apprehended and some recovery has also been made and on the basis of their voluntary statements the present petitioner was also apprehended. In the voluntary statement of the petitioner, the diary has been seized and in the said diary it indicated that petitioner at the instance of Amol Kale and in furtherance of conspiracy he took the house on rental basis and remitted a sum of Rs.3,800/- and the said amount has been paid by Amol Kale and other accused persons. Even the call details collected would also reveal that there was contact between the petitioner and other accused persons and they have conspired to commit the alleged offence. All the materials which have been produced clearly go to show the complicity of

the petitioner in the activities of the other accused persons as a member of an organized crime syndicate. At this juncture, this Court has to see whether there is *prima facie* material as against the petitioner and whether the petitioner is entitled to be granted bail or not. On examination of the material, the involvement of the petitioner is not only peripheral but there is an active participation by him in commission of the crime.

13. I have carefully and cautiously gone through the decisions quoted by the learned counsel for the petitioner and the learned SPP-I. On close scrutiny of the said decisions it emerges that provisions of KCOCA are departure from the normal penal laws of the country and unless the acts committed by the accused squarely fall within the provisions of the said special Statute, he should not be roped in by stretching the language of such enactment. But at the same time, if otherwise the material placed attract the provisions of the special Act

no lenient view should be taken. If lenient view is taken, the purpose of the very special enactment and its objects fail. With that background, as discussed above, on careful consideration of the records, it indicates that the present petitioner took the house on rent, he paid the rent before the alleged incident and even without starting the clinic after taking the said house on rental basis immediately after the incident, he surrendered the said house. Even the movement of the other accused and the petitioner near the said house and the call details go to show that he is a member of an organized crime syndicate and was associate with the main accused. Even the records go to show that he has facilitated the commission of the organized crime by aiding and assisting in some of the activities relating to the alleged incident. Being the member of the organized crime syndicate, the members operate either singly or jointly or some times he may be a member of the said group or a single member, but undertakes to do the act of the

organized crime, then under such circumstances, the provisions of the KCOCA are attracted and the petitioner is held liable in this behalf.

14. Though during the course of arguments, it was argued that at the time of obtaining sanction to prosecute the accused under the KCOCA, the petitioner's name was not found and as such he is not a member of the organized crime syndicate and as such he is not liable. Similar issue came up before this Court in the case of ***Raju & others Vs. State of Karnataka by Yelahanka Police Station, Bengaluru, in Criminal Petition No..4795/2017***, which came to be disposed of on 3.8.2017, wherein it has been observed at paragraphs-11, 12, 13 as under:-

"11. A reading of Section 2(1)(d), 2(1)(e) and 2(1)(f) of KCOCA would clearly indicate that "Continuing Unlawful Activity" would mean an activity prohibited by law for the time being in force, which is a cognizable offence punishable

with imprisonment for three (3) 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. The expression "Organized crime" would also disclose that it is a continuing unlawful activity by an individual, singly or jointly, either as a member of the organized crime syndicate or on behalf of such syndicate, etc. The "Organized crime syndicate" as defined under Section 2(f) means a group of two or more persons who singly or collectively, as a syndicate or gang indulge in activities of organized crime. Thus, emphasis under these definition clauses is not only to the organized crime but also to continuing of such activity by an individual either singly or jointly by group of two or more persons and in such circumstances it would attract these provisions. In this background when the permission accorded by the competent authority under Section 24(1)(a) of KCOCA dated 07.03.2017 - Annexure-C when perused it would disclose that Assistant Commissioner of Police, Yelahanka Sub-Division,

Bengaluru has submitted an application to the competent authority for grant of prior approval under Section 24(1)(a) of KCOCA disclosing the names of five accused persons who had formed a crime syndicate and are continuously involved in unlawful activity by use of violence and with an object of gaining pecuniary benefit as indicated under Section 2(1)(d), 2(1)(e) and 2(1)(f) by also bringing to the notice of the sanctioning authority criminal cases registered against such persons including crime number in question namely, Cr.No.58/2017 registered by Yelahanka Police Station and for the purposes of proceeding to investigate the said crime by invoking Section 24(1)(a) of KCOCA prior approval was sought for. The competent authority namely, Additional Commissioner of Police, East, Bengaluru City in exercise of his power vested under Section 24(1)(a) of KCOCA has granted approval to apply the provisions of KCOCA and to invoke Section 3 of the said Act in Crime No.58/2017 registered under Sections 399, 402, 120(b) of IPC read with Sections 27 and 30 of Indian Arms Act, 1959 and accordingly directed Sri. B.M.Narayanaswamy,

Assistant Commissioner of Police to carry out further investigation under Section 24(1)(b) of the KCOCA.

12. A conjoint reading of Section 24(1) and 24(2) would clearly disclose that sanction is accorded under sub-section (1) of Section 24 of KCOCA for the purposes of carrying out investigation and during such investigation the Investigating Officer may very well proceed to investigate to find out as to who are all involved and on investigation being completed, the Investigating Officer may place all such material before the sanctioning authority and such authority would examine the same to grant sanction against all such persons, who may be involved and if in the opinion of said authority all such persons are involved in the commission of organized crime they can be proceeded once sanction is obtained. It does not restrict power of the sanctioning authority to restrict himself to accord sanction only to the persons whose names are indicated in the application submitted by the applicant for prior approval, inasmuch as, on such approval being granted to

the Investigating Officer, material so collected may also result in names of other accused persons also being disclosed as having involved in such organized crime or being part of organized crime syndicate. There may be instances where an approval is granted under Sections 24(1)(a) of KCOCA and name of a person may not have found in the application so submitted for grant of approval and during investigation it may be found other person/s are also involved in the commission of organized crime and as such sanctioning authority on the basis of material so collected during the course of investigation would examine the said material, satisfy himself about there being necessity to grant sanction under Section 24(2) of KCOCA and accord sanction for prosecuting all such accused persons who may be involved in commission of organized crime, by granting sanction under Section 24(2) KCOCA.

13. Hon'ble Apex Court in the case of VINOD G. ASRANI vs. STATE OF MAHARASHTRA reported in (2007) 3 SCC 633 was examining as to whether non inclusion of petitioner's name in

the approval under Section 23(1)(a) of MCOCA (analogous provision to Section 23(1)(a) of KCOCA was fatal to the investigation or not? and found that in the facts obtained in the said case though petitioner's name was not included in the approval granted under Section 23(1)(a) MCOCA, while granting sanction, his name had been included under Section 23(2) after the stage of investigation into the complaint, since his complicity was established during the course of such investigation. It has been held:

"8. We have carefully considered the submissions made on behalf of the respective parties and the relevant provisions of MCOCA and we are of the view that the High Court did not commit any error in dismissing the petitioner's writ application. We are inclined to accept Mr. Altaf Ahmed's submissions that non-inclusion of the petitioner's name in the approval under Section 23(1)(a) of MCOCA was not fatal to the investigation as far as the petitioner is concerned. On the other hand, his name was included in

the sanction granted under Section 23(2) after the stage of investigation into the complaint where his complicity was established. The offences alleged to have been committed by the petitioner have a direct bearing and/or link with the activities of the other accused as part of the Chhota Rajan gang which was an organized crime syndicate.

9. As pointed out by Mr. Ahmed, this Court in Kari Choudhary v. Sita Devi had while considering a similar question observed that the ultimate object of every investigation is to find out whether the offences alleged to have been committed and, if so, who had committed it. 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 investigation 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 organized crime can very well be proceeded against once sanction is obtained against them under Section 23(2) of MCOCA."

15. A reading of the Sections 2(1)(d), 2(1)(e) and 2(1)(f) of the KCOCA and the aforesaid decision, it clearly goes to show that sometimes the names of the culprits are not mentioned at the stage of investigation and after obtaining the sanction, if the investigation is continued, those who are subsequently found in the commission of the organized crime can very well be proceeded against when once the sanction is obtained against the remaining accused persons. In the instant case, as per the law, sanction has been obtained is not in dispute and even it has not been seriously challenged during the course of arguments. When that being the case, the contention of the learned counsel for the petitioner is not acceptable and the same is rejected.

16. It is the further submission of the learned counsel for the petitioner that the conspiracy is going to take place within the four corners, but there is no material to show that the petitioner is a member of

conspiracy and as such there is no material to connect him. But what is criminal conspiracy and how it is to be proved has been elaborately discussed by the Hon'ble Apex Court in the case of **Pratapbhai Hamirbhai Solanki Vs. State of Gujarat & another** (quoted *supra*), wherein at paragraphs-21 to 23, it has been held as under:-

"21. At this stage, it is useful to recapitulate the view this Court has expressed pertaining to criminal conspiracy. In Damodar v. State of Rajasthan, a two-Judge Bench after referring to the decision in Kehar Singh v. State (Delhi Admn.) State of Maharashtra v. Som Nath Thapa, has stated thus: (Damodar case, SCC p.344, para 15)

"15. ... The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful

object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120-B of the Penal Code, 1860."

22. In Ram Narayan Popli v. CBI while dealing with the conspiracy the majority opinion laid down that: (SCC p.778, para 342)

"342. ... The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons

whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act."

It has been further opined that: (Ram Narayan Popli case, SCC p. 778 para 342)

"342. ... The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. ... no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual

effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design."

The two-Judge Bench proceeded to state that: (Ram Narayan Popli case, SCC p. 778, para 342)

"342. ... For an offence punishable under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means."

23. *In the said case it has been highlighted that in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused."*

17. The Hon'ble Apex Court in the case of ***Devender Pal Singh Vs. State of NCT of Delhi & another***, (cited *supra*), at paragraph-48 has also observed as under:-

"48. As noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to Sub-section (2) of Section 120-A, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit

the crime and if these requirements and ingredients are established, the act would fall within the trappings of the provisions contained in Section 120-B [See Suresh Chandra Bahri v. State of Bihar].”

18. From the above proposition of law, on close scrutiny of papers made available, present factual matrix as discussed above is tested with the touch stone of the principle laid down by the Hon'ble Apex Court. *Prima facie* it satisfies the above said test and thereby it can safely be held that the petitioner is a member of the conspiracy, no doubt that is a matter which has to be considered and appreciated at the time of trial. But at this juncture, to consider the bail application, *prima facie*, there is sufficient material as against the petitioner. In that light, the said contention is also not acceptable and the same is rejected.

For myriad reasons aforestated, this Court is of the considered view that the contentions raised by the

learned counsel for the petitioner are not acceptable so as to release the petitioner on bail and as such the petition is liable to be dismissed.

Accordingly, the petition stands ***dismissed***.

Since the petitioner is in custody for long time, the trial Court is directed to expedite the trial.

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Sd/-
JUDGE

*ck/-

ANNEXURE -P-3**IN THE HIGH COURT OF KARNATAKA AT BANGALORE****W.P.No.9717/2019(GM-Res)****Petitioner:****Respondent:****Vs.****Mohan Nayak N.****State of Karnataka &Ors****STATEMENT OF OBJECTIONS TO THE WRIT PETITION**

The respondents respectfully submit as follows:

1. The writ petition filed by the petitioner is not maintainable either in facts or in law and is liable to be dismissed in limine. The averments in the writ petition are baseless and untenable.
2. This writ petition is misconceived and premature. There is no error or illegality committed by the respondents particularly the respondent no.3 in issuing the order dated 14/08/2018 and the same is accordance with law particularly Section 24(1)(a) of the Karnataka Control of Organized Crimes Act, 2000 (hereinafter referred to as KCOCA for brevity).

Brief facts:

3. On 5/09/2017 at about 8:26 PM, Smt. Gowri Lankesh who was a leading journalist was found dead, who was shot dead by persons armed with pistols, in her house at Rajarajeshwari Nagar which was informed her mother and her sister Smt. Kavitha Lankesh, who rushed to the spot and saw the dead body of Smt. Gowri Lankesh lying in the pool of blood and also found bullet cartridges and hence lodged the information against unknown persons, based on which information, the FIR in **Crime No.221/2017** came to be registered by the police of Rajarajeshwari Nagar Police Station for the offence u/s 302IPC and 25 of Indian Arms Act.
4. The initial charge-sheet in CC.No.14578/2018 was filed on 29/05/2018 before the Learned Magistrate. The prosecution had obtained permission of the Learned Magistrate to file additional charge-sheet and material. The supplementary charge-sheet came to be filed on 23/11/2018 before the Hon'ble 1st Addl. City Civil and Sessions Court on 23-11-2018 under **Sections 302, 120(B), 114, 118, 109, 201, 203, 204, 35 IPC and 25(1) 25(1B) 27(1) of Indian Arms Act and section 3 (1)(I), 3(2), 3(3), 3(4) of KCOCA Act 2000, and the Spl. CC No. 872/2018**. Certified copy of the FIR, complaint, charge-sheet and statements of witnesses are produced herewith as **Annexure-R.1, R.2, R.3** and **R.4** respectively.
5. The investigation of the said crime was **entrusted to the Special Investigating Team (SIT) on 6/09/2017**, headed by

Mr.BijayKumar Singh, IPS, IGP and Mr.M.N.Anucheth, IPS apart from other officers.

6. Accused have committed organized crime as a syndicate which attracts Section 3 of the Karnataka Control of Organized Crime Act, 2000, and accordingly the Police Commissioner, Bangalore City, vide **letter No. CRM(1)/KCOCA/ 01/2018, dated: 14.08.2018** has rightly invoke section 3 of Karnataka Control of Organised Crime Act 2000 (KCOCA in short).

Investigation done so far

7. The investigation done so far by the respondents which clearly reflects the complicity of the petitioner in the crime.
8. During Investigation, the SIT arrested the Naveen Kumar (**A-17**) on 18/02/2018 when he was carrying ammunitions. Based on the inputs and interrogation, the Praveen @ SujitKumar (**A-13**) was arrested in Kolar on 19/05/2018.
9. Based on the leads gathered from Sujit Kumar, 3 other persons viz. Amol Kale (**A-1**), Amit Degvekar(**A-5**) and Manohar Edave (**A-14**) were arrested in Davangere (all of the above accused were arrested in connection with Crime No.45/2018 of Upparpet Police Station now CC No.19618/2018).
10. During the investigation the accused were interrogated, seizures of 22 mobile phones, red colour indica car used for the commission of offence were effected, apart from seizures of several papers, diaries and cash of Rs.1,90,000/-, during May 2018 from Pune, Vijayapura, Davangere, Shivamogga and Manipal.
11. During the course of investigation it was revealed that Amol Kale was the master mind behind the murder of Smt. Gowri Lankesh and the other accused were members of syndicate headed by Amol Kale. Further that Amit Degvekar(**A-5**) was providing Financial support to this syndicate and Sujit Kumar (**A-13**) and Manohar Edave (**A-14**) were recruiters to this syndicate since the year 2013
12. During investigation it was found that Parashuram Waghmare (**A-2**) who was arrested on 11/6/2018 was the shooter, which was confirmed by the video footage through Forensic lab, Gujarat.
13. Ganesh Miskin @ Mithun (**A-3**) was tasked by Amol Kale as a member of assassination of team, he was the bike rider who took Parashuram Waghmare to Gowri Lankesh's house and brought him back to Kumbalagodu. He was armed with pistol to back up the shooter. They located the office and house of Gowri Lankesh, and watched her movements.
14. Amit Baddi @ Govinda (**A-4**) waited at a spot near Nice Road in Maruthi Omni Van and collected pistols, clothes, helmets etc.

Rajesh Bangera @ Sir **(A-8)** was master trainer for the syndicate to provide shooting practice.

- 15.** H.L.Suresh @ Teacher **(A-7)** was providing logistical support to the syndicate including Amol Kale and Vikas Patil and he hired a shop to hide pistols of murder. BharathKurne @ Uncle **(A-6)** was dropping the shooters to toll gate to take bus to their native places after the offence.

Complicity of the Petitioner in the crime

- 16.** Based on instructions of Amol Kale, the petitioner had taken a house on rent at Kumbalagodu, Ramanagar on the pretext of running Acupuncture clinic, which house was used to lodge the members of the assassination team and to park the bike.
- 17.** At the time of verification of the documents seized from A-1 in a diary titled as LOMER phone numbers of Madi Sir 9980016126/08272 245046, 08272 228822 and M.N. Sampa (Sir Frnd) 8762029638 were mentioned. Investigation revealed that these numbers belong to one person named **N. Mohan Nayak** i.e., the petitioner herein.
- 18.** The Associate Investigation officer(technical) of SIT in his detailed technical report has mentioned that the accused Mohan Nayak was using **mobile No.8762029638** and the said number had call connections with one Mr. Sardar Pasha, RPC Layout, Vijayanagar Bangalore and also contacts with one Mr. Salman Pasha of Tagachaguppe and the accused had called these numbers from his number 9448548638.
- 19.** On the basis of technical report, investigation was conducted and the suspected persons Sardar Pasha and Salman Pasha revealed that the **petitioner had taken the house of Sardar Pasha on rent saying that he will be giving acupressure treatment** in that house. Assuring that house is required on rental basis for few months, without giving any documents the petitioner had occupied the house. Sardar Pasha has produced documents to this effect and the same is seized and recorded in PF No.32/2018.
- 20.** Among the documents seized, one diary named as Gokulam consists of 420 pages. At page No. 34 to 49 there are writings out of which at page No. 44 it is written as **January Saturday 7 and Mohan Nayak advance 25,000/-, 12/08/2017, Rent 3700 Mobile 8762029638 (mobile number)** it is written thrice.
- 21.** **Petitioner was arrested on 18/7/2018 at 20.00 hours** and one black color Nokia mobile phone, driving license, one small album were seized from his custody and mahazar procedure was also conducted and the same has been recorded in PF No. 34/2018.

- 22.** In the year 1996 the petitioner was at Puttur and he came in contact with Dr. Hemanth Kumar (heart Specialist) Karvar, who introduced the petitioner to Sanathana Samsthe. The petitioner had participated in the “Prathimk Vyakhyan” a discourse conducted at Puttur and then he came in contact with Veerendra Tavade and others. Likewise Rajesh D Bangera was a close friend of Mohan Nayak for years and he stated that Rajesh Bangera is staying at Palur. Veerendra Tavade is arrested in relation to the murder cases of Dr. Govinda Pansare, Maharashtra, and writer Narendra Dabholkar. Further in his voluntary statement the petitioner herein has stated that he was in contact with the other accused in the case since 2013 and he has also confessed that he had involvement in the murder case.
- 23.** The petitioner herein also showed the places where he met other accused Amol Kale @ Bhaisab, Rajesh Bangera and others to conspire the murder of Gauri Lankesh and also the place where accused Amol Kale @ Bhaisab handed over SIM Card to him and also the house where he has kept mobile, laptop and other items related to the crime the petitioner was also taken to the location shown by him at KSRTC bus-stand Kushalnagar, Kodagu District where he revealed that he was sitting in a TATA NanoCar No. KA-12 Z4785 and the accused Rajesh Bangera, Amol Kale @ Bhaisab and one more person came there and sat inside the car, and they discussed about Gauri Lankesh’s murder.
- 24.** The petitioner herein has admitted that during September/October 2016 he went to a house located at Madikeri Taluk Primary Coop Agricultural and Rural Development Bank building, 2nd floor, Kohinoor Road, near KSRTC Bus-stand where he met Amith and Dada and they conspired to murder of Gauri Lankesh.
- 25.** Sri Madetira Thimmaiah revealed that he was introduced to the petitioner through Rajesh Bangera in the year 2013. Thereafter he met the petitioner several times in his office. During February 2014, Rajesh Bangera called Madetira Thimmaiah and informed him that next day the petitioner and two of his friends are coming to Madikeri for a discussion relating to an important issue and he requested to provide the office for their discussion and stay. He agreed for the same and on next day at around 11 AM Rajesh Bangera along with the petitioner, Amith Degvekar and Veerendra Thavade @ Sabji came to his office. Madetira Thimmaiah left office room for his personal work and went out.
- 26.** Thereafter the respondent police along with the petitioner visited residence wherein his mobile, laptop, diary comprising of some mobile numbers and other items kept in the bed room were seized and mahazar was conducted and it was recorded in PF No. 36/2018.

- 27.** The petitioner herein was coming to the rented house every Saturday **pretending to be a Doctor** to give treatment to patients. One person by name Archana who was known to the petitioner had taken treatment and when enquired about that she told that during August 2017 the petitioner called and informed her that he had started Acupressure clinic in rented accommodation at Kumbalagodu and gave address with a request to come over, if she had any ailments. Accordingly she had visited that place and took acupressure treatment 5-6 times. During enquiry, it was revealed by Archana that there were no other persons at the time when she visited the clinic. There was no furniture in that house and only a mat was on the floor wherein the petitioner was sitting and giving treatment to the patients.
- 28.** During the course of investigation one Shivaraj who was residing in the adjacent rented accommodation at Kumbalagodu revealed that the said house was vacant and during August 2017 one person came and occupied the house on rental basis.
- 29.** With an intention to join persons as members to the said syndicate the petitioner had made friendship with Mr. Mohan, Mr. Kumudaksha, Mr. Yatheen and Mr. Yatheesh and tried to inspire them saying that their help is needed for continuing Dharma Karya and he was persuading them to undergo meditation, yoga, Pooja and other rituals. Also he had introduced Rajesh Bangera to those youngsters and through him shooting practice, karate etc., was provided. The witness persons have given 164 Cr.P.C. statement before the Hon'ble Court, and also they have identified the accused person in test identification parade.
- 30.** The investigation continued and witnesses Mr. Mohan, Kumudaksha, Yathish and Yateenmogra and Dharmapal were inquired and statements were taken. Through Dharmapal, Mohan Nayak and Rajesh Bangera were introduced to them in the year 2013 the said two accused persons were conducting karate, meditation and shooting practices in various places near Madikeri and Kodagu. In addition to this the petitioner was telling them that if they do meditation, pooja etc., god will take them all in the right path and he was persuading them by saying that Hindu religion is attacked by persons from other religions against which we need to fight.
- 31.** Witness Mr. Mohan in his statement has revealed that during last week of August 2017, the petitioner came in his nano car and said that he has opened a clinic near Kumbalagodu on Bangalore-Mysore Road, and he took him in his car via Madikeri to Kumbalagodu through Mandya. He dropped them from his car in a far off place and told them that they have to come to his clinic after sometime in the pretext as patients/customers. After half an hour Mohan and Rajesh Bangera went to the clinic as if they are customers. In the said room except a mat nothing was there, it was

not looking like a clinic in any manner. The petitioner had his laptop and told that he is telling astrology and giving acupressure treatment to general public.

- 32.** The mobile number used by the petitioner i.e., 8762029638 was in the name of Latha N. Channakavalu, Niluvadi Post, Periyapatna, but she was not traced. The mobile No. 9980016126 stands in the name of Leelavathi, Vellagari, Madapatna, Somwarpet, Kodagu and at the time of investigation she admitted that the photo and address pertains to here. She has lodged a complaint at Kushalnagar PS in **Crime No. 139/2018, 140/2018, 141/2018 & 144/2018 u/s 408, 420, 34 IPC stating that somebody has misused her photo and address records.**
- 33.** Based on the above investigation, charge-sheet was filed against the petitioner and others under Sections 302, 120(B), 114, 118, 109, 201, 203, 204, 35 IPC and 25(1) 25(1B) 27(1) of Indian Arms Act and Section 3 (1)(i), 3(2), 3(3), 3(4) of KCOCA Act 2000, and the Spl. CC No. 872/2018.

Involvement of the syndicate in other crimes

- 34.** In the year 2013, Dr.Narendra Dabolkar was murdered at Poona Maharashtra State, and in this case the CBI Investigation Agency officers have arrested Sharad Bahusaheb Kalaskar @ Chote along with Dr.Veerendra Thavade which is registered in **Crime No.RC BS1/2014/S/0004 u/s 302, 34 IPC and 3, 25 Arms Act** and against them charge sheet is filed in the Hon'ble Court and court has taken cognizance.
- 35.** In the year 2015, Govinda Pansare was murdered at Kolhapur Maharashtra State, and the Kolhapur SIT officers have arrested accused Amol Kale, Amith Degvekar, Vasudev Suryavanshi @ Mechanic and Bharath Kurne and Sharad Kalaskar in case No. **Crime No. 39/2015 u/s 302, 120(B) IPC & 3, 25 Arms Act 1959** and charge sheet is filed before the Hon'ble Court.
- 36.** On 30th August 2015, Dr.M.M.Kalburgi of Dharwad was shot dead and in this regard Crime No. 142/2015 u/s 302 IPC r/w 25 of Arms Act is registered at Vidyagiri Police Station, Dharwad. The special investigation team which probed this crime has filed charge sheet against accused Amol Kale @ Bhaisab, Ganesh Miskin, Praveen Prakash Chatur, Vasudev Suryavanshi @ Mechanic, Sharad Bahusaheb Kalaskar and Amith Baddi, for the offence punishable under Section 120(b), 109, 449, 302, 201 and 35 of IPC, 1860 r/w sections 25(1A), 25(1B) and 27(1) of Indian Arms Act, 1959 and it is registered as **CC No. 2736/2019.**
- 37.** In the year 2018, the members of the syndicate had planned to murder Prof.Bhagavan of Mysore, and conspiracy was hatched against which in Crime No. 45/2018 u/s 120(B), 34 IPC & 3 & 25

Arms Act 1959 of Upparpet Police Station, Bangalore, during the course of investigation, it is revealed that syndicate members accused K.T.Naveen Kumar, Sujith Kumar @ Praveen, Amol Kale, Amih Degvekar, Manohar Dundappa Yadave, Vikas Patil @ Dada had their hands. In this regard, charge sheet is filed before the Hon'ble Court under **CC No.19618/2018**. Certified copy of the charge-sheets are produced herewith as **Annexure-R.5, R.6, R.7** and **R.8** respectively.

Modus operandi of the syndicate:

- 38.** With an intention of committing similar criminal activities, the members of the unnamed syndicate were active in joining youngsters into their group, collecting, possessing and supplying fire arms and explosives, and in order to create rebellion atmosphere in the country the syndicate members were preparing country pistols, bombs with the help of gelatine sticks, electronic detonators, circuits and other equipment, and stock of such explosive items was seized by AGTS Mumbai, Kala Chowki Police Station, under Cr.No.11/2018 section 4,5 of Explosives Act,1908 and 9(b) Explosives Act and 120(b) of IPC and section 16,18,20 of Prevention of unlawful activities Act. Further, member of that unnamed unlawful syndicate i.e., accused Mohan Nayak's companions, A-1 Amol Kale, @ Bhaisab A-3 Ganesh Miskin, A-4 Amith Baddi, A-6 Bharath Kurne, A-9 Sudhanva Gondhalekar, A-10 Sharad Kalaskar @ Chote, A-13 Sujith Kumar @ Praveen A-12 Vasudev Bhagavan Suryavanshi @ Mechanic and A-16 Srikanth Jagannath Pangarkar @ Praji were arrested, against whom charge sheet is filed before the Hon'ble Court.
- 39.** At the time of investigation the crime weapons i.e., the empty cartridge, firing bullet were sent to FSL for examination by experts and the experts after examination have given their report which reveals that the accused persons have used 7.65 mm calibre fire arms in the crime which is also used in Dr.M.M.Kalburgi murder case as well. Also in the murder of Dr.Govinda Pansare of Maharashtra (two fire arms were used and one was this) it is reported that bullets were shot from the same fire arm. Further FSL experts have given report that the fire arm used in Writer Narendra Dabolkar's murder was also the very same. As such it is clear that the members of the unnamed syndicate have targeted writers, intellectuals and progressive thinkers and with that perspective they have murdered Dr.Narendra Dabolkar in 2013, Govbinda Pansare in 2015, Dr.M.M.Kalburgi of Dharwad Karnataka in August 2015, and Journalist Gouri Lankesh of Bangalore in 2017.
- 40.** All the members of the organized syndicate are accused and they are indulged in unlawful and criminal activities and it is evident that they have indulged in organized criminal activities. In continuation, A-1 Amol Kale, A-13 Sujith Kumar and A-14

Manohar Dundappa Yadave had travelled across Karnataka State with an intention to recruit youngsters into this syndicate. In order to improve the strength of this syndicate accused A-13 Sujith Kumar, A-2 Parashuram Vagmore, and A-17 Naveen Kumar, A-14 Manohar Dundappa Yadave were introduced and joined into the syndicate by accused A-3 Ganesh Miskin and A-4 Amith Baddi. Accordingly all the members of the syndicate collectively have committed organized criminal activities.

41. **Secret meetings** of the members of this syndicate was conducted periodically in various locations. And the venue of the meeting was also fixed through secret codes wherein the current affairs of the country were discussed in detail and in particular discussion about persons demeaning and insulting Hindu Dharma was the main agenda.
42. The petitioner and other accused persons A-1 Amol Kale, A-4 Amith Baddi, A-6 Bharath Kurne, A-17 Naveen Kumar, A-13 Sujith Kumar, A-14 Manohar Yadave, for the sake of syndicate members **were collecting SIM cards in the names of strangers**, and they were distributing the mobiles and SIM cards to the syndicate members secretly, so as to have one-to-one contact with each other. In this regard 19 cases are booked in various districts of Karnataka State.
43. From the above narrated facts, it is established that it was intention of the syndicate members to murder the bad personalities marked by them, secretly, so that it will not be publicised anywhere. For this purpose, **evading their real names, place of domicile and personal mobile number, in order to maintain secrecy, and without using smart phones, they were using basic mobile sets, and coin booths for one-to-one talks. They were not using internet, face book or other social media platforms. They used to switch off their mobiles and keep it at their homes, while going to public functions, and they were not sharing those mobiles used for one-to-one conversations. They were purchasing SIM Card in some other's names, they were avoiding the places where CC cameras were installed. They were not giving their personal identity even within the circle of syndicate members, and also they were managing the things, so that family members will not suspect them.** All these precautions were followed by each and every member of the syndicate.
44. The petitioner in the year 2011 was in close contact with Veerendra Tavade and other members of the unnamed syndicate Dada @ Murali, Amol Kale, Amith Degvekar, Rajesh Bangera, and he was active in mobilizing youngsters into the cluster of the syndicate, and also he was imparting Pooja, meditation and other rituals to the youngsters. He was also persuading them that God will take them in the right path if they do all these. Also he was perverting

the minds of the youngsters by showing video clippings wherein people of Hindu religion were harassed and he was making youngsters to revolt and participate in unlawful activities, and also he was **imparting training to youngsters**. For running organized criminal forum including Amol Kale, Rajesh Bangera and other accused were not wandering wherever CCTV is installed, and they were not using any ATMs nearby the place where they stay, and they were searching houses for stayin remote places where there is no ATM, shopping mall.

- 45.** With that intention accused Mohan Nayak had taken the house of Sardar located in a remote place, in the periphery of city, for his ayurvedic acupressure clinic, for few months without any rental agreements and without producing any documents. This has helped them to stock the items required for conducting unlawful activities. They were conducting secret meetings at places such as Madikeri, Belgaum etc., and they had mobile phones with SIM cards standing in the names of strangers, which were used for one-to-one conversations. All the members of the syndicate have active participation in all the criminal proceedings. Investigation in this regard is still in process.
- 46.** As per the evidences gathered in the investigation, including the petitioner all the other accused have committed organized crime as a syndicate which attracts Section 3 of the Karnataka Control of Organized Crime Act, 2000, and accordingly the Police Commissioner, Bangalore City, vide letter No. CRM(1)/KCOCA/01/2018, dated: 14.08.2018 has rightly invoke section 3 of Karnataka Control of Organised Crime Act 2000", additionally and as such the case is transferred to a special court.

Grounds urged by petitioner are untenable

The grounds urged by the petitioner in the petition are untenable and not sustainable.

- 47.** The order under challenge is a well reasoned and speaking order and reflects application of judicious mind and therefore cannot be found fault with.
- 48.** As could be seen from the above facts of the case, investigation conducted and materials collected by the Investigating Agency, the petitioner is part of the syndicate in committing an organized crime. There are several materials against him which unerringly point out to the complicity of the petitioner in the crime.
- 49.** Even as per the requirement of the law i.e., **Section 2(d) and (e) of KCOCA**, defining continuing unlawful activity and organized crime, which is also considered by the Apex Court in the case of **State (NCT of Delhi) vs Brijesh Singh (AIR 2017 SC 4888)** that to attract provisions of KCOCA, the prosecution must establish that

there should be two charge-sheets filed against the syndicate within 10 years and the competent court has taken cognizance of the offences. As could be seen, the syndicate has been involved in other offences at various places i.e. Dr.Narendra Dabolkar in 2013, Govinda Pansare in 2015,Dr.M.M.Kalburgi of Dharwad Karnataka in August 2015, and Journalist Gauri Lankesh of Bangalore in 2017.

Accused	Charge sheet filed / offence	Brief allegations
Amol A Kale @ Amol @ Bhaisab	1. CC No.19618/2018 (Cr. 45/18) for offence punishable u/s 120(B), 34 IPC r/w 25(1)(a), 25(1)(b), Indian Arms Act.	Conspiracy to murder Prof. Bhagavan
	2. SC No.3/2016 (Cr. 39/15 of Rajarampuri PS, Kolhapur) for offence punishable u/s 302, 307, 120(B), 34 IPC r/w 25(1)(a) & (b), 5 Indian Arms Act.	GovindaPansare was murdered at Kolhapur Maharashtra State
	3. CC No.2736/2019 (Cr. 142/15Vidyagiri PS, Dharwad) for offence punishable u/s 302, 201, 120(B), 109, 449, 34 IPC r/w 25(1)(a) & (b), 27 Indian Arms Act.	Dr.M.M.Kalburgi was murdered at Dharwad
	4. CC No. XXXXXXXX/2019 (Cr. 11/18) for offence punishable u/s 120(B) IPC r/w 16, 19, 20 Explosive Substances Act 1908.	XXXXXX
Amith Rama- chandra Baddi @ Govinda	1. CC No.2736/2019 (Cr. 142/15Vidyagiri PS, Dharwad) for offence punishable u/s 302, 201, 120(B), 109, 449, 34 IPC r/w 25(1)(a) & (b), 27 Indian Arms Act.	Dr.M.M.Kalburgi was murdered at Dharwad
	2. CC No. XXXXXXXX/2019 (Cr. 11/18) for offence punishable u/s 120(B) IPC r/w 16, 19, 20 Explosive Substances Act 1908.	XXXXXX
	3. CC No. 1387/15 (Cr No. 144/12 Hubli Old PS) for offence punishable u/s 323, 324, 341, 504, 506 r/w section 34 of IPC	Assaulted the Muslim person to create Communal Riots
	4. CC No. 2692/15 (Cr No. 111/13 Kasaba PS) for offence punishable u/s 114, 143, 147, 148, 323, 324, 332, 353, 354, 336, 427, 504r/w 144 of IPC and section 3, 4, 7 of Prevention of Damages to Public Property Act.	Pelted stones upon the procession of Shivaji Jayathi and Assaulted police
Vasudev Bhagwan Suryavamshi @ Vasu @ Mechanic	1. SC No.3/2016 (Cr. 39/15 of Rajarampuri PS, Kolhapur) for offence punishable u/s 302, 307, 120(B), 34 IPC r/w 25(1)(a) & (b), 5 Indian Arms Act.	Govinda Pansare was murdered at Kolhapur Maharashtra State

	2. CC No.2736/2019 (Cr. 142/15 Vidyagiri PS, Dharwad) for offence punishable u/s 302, 201, 120(B), 109, 449, 34 IPC r/w 25(1)(a) & (b), 27 Indian Arms Act.	Dr.M.M.Kalburgi was murdered at Dharwad
	3. Cr No.11/2018 u/s 120(B) IPC, 16,19, 20 Explosive Substances Act, 1908	
Sharad BahuSaheb Kalsalar @ Sharad @ Chote @ Shravan @ Vittal @ Sandeep Patil @ SharadPatil @ Vishnu @ Sathpal	1. SC No.3/2016 (Cr. 39/15 of Rajarampuri PS, Kolhapur) for offence punishable u/s 302, 307, 120(B), 34 IPC r/w 25(1)(a) & (b), 5 Indian Arms Act.	Govinda Pansare was murdered at Kolhapur Maharashtra State
	2. CC No.2736/2019 (Cr. 142/15Vidyagiri PS, Dharwad) for offence punishable u/s 302, 201, 120(B), 109, 449, 34 IPC r/w 25(1)(a) & (b), 27 Indian Arms Act.	Dr.M.M.Kalburgi was murdered at Dharwad
	3. CC No. XXXXXXXX/2019 (Cr. 11/18) for offence punishable u/s 120(B) IPC r/w 16, 19, 20 Explosive Substances Act 1908.	XXXXXX
	4. SC No.706/2016 (Cr. 154/13Pune Deccan Police) for offence punishable u/s 302, 34 IPC r/w 3, 25 Indian Arms Act.	
Bharath Kurane @ Uncle	1. SC No.3/2016 (Cr. 39/15 of Rajarampuri PS, Kolhapur) for offence punishable u/s 302, 307, 120(B), 34 IPC r/w 25(1)(a) & (b), 5 Indian Arms Act.	Govinda Pansare was murdered at Kolhapur Maharashtra State
	2. CC No. XXXXXXXX/2019 (Cr. 11/18) for offence punishable u/s 120(B) IPC r/w 16, 19, 20 Explosive Substances Act 1908.	XXXXXX
Parashuram Ashok Waghmore	1. SC No.116/12 (Cr No.1/12 of Sindhagi Town PS) for offence punishable u/s 124A, 153A & B, 120(B), 201 r/w section 511 of IPC	Accused hoisted the Pakistan flag in Sindhagi Town Tahashildhar Office resulting in Communal Riots
	2. CC No.76/15(Cr No.2/12 of Sindhagi Town PS)for offence punishable u/s 143, 147, 341, 324, 353, 427, r/w section 149 of IPC	Attacked the bus with stones and assaulted driver

50. The Hon'ble Apex Court in the case of **Prasad Shrikant Purohit vs State of Maharashtra** reported in **2015 (7) SCC 440** at para no. 89 as follows:

"89: A reading of paragraph 31 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 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."

From the facts narrated above, the role and complicity of the present petitioner is clearly established by the prosecution, in the commission of the organized crime.

51. The Hon'ble Bombay High Court while interpreting continuing unlawful activity in the case of **Govind Sakharam Ubhe vs The State of Maharashtra** reported in **2009 SCC Online Bom 770** as held as under:

"39. What is contemplated under Section 2(1)(d) of the MCOCA is that activities prohibited by law for the time being in force which are punishable as AJN described therein have been undertaken either singly or jointly as a member of organised crime syndicate and in respect of which more than one charge-sheets have been filed. Stress is on the unlawful activities committed by the organised crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organised crime syndicate.

40. In our opinion, in this connection, reliance placed by Mr. Desai on Lalit Nagpal's case is misplaced. The ratio of the said judgment is misconstrued by the appellant. In that case, the issue whether the words 'more than one charge-sheet' refer to the unlawful activities of an organised crime syndicate or to the individual members was neither raised nor canvassed. Consequently, the said issue did not fall for consideration and was not decided."

"44. In the light of this, we are of the opinion that the words 'more than one charge-sheet contained in Section 2(1)(d) refer to unlawful activities of the organised crime syndicate.

Requirement of more than one charge-sheet is qua the unlawful activities of the organised crime syndicate and not qua individual member thereof."

52. The Hon'ble Delhi High Court in the case of **Digvijay Saroha vs State** reported in **2019 SCC Online Del10324** as follows:

“Para 14 Perusal of the above judgements revealed that the requirement of one or more charge-sheet relates to unlawful activities of the organised crime syndicates and does not pertain to a particular member of the crime syndicate accused.”

53. The petitioner had already canvassed the same argument that provisions of KCOCA Act, ought not to have been invoked in this case, while addressing the arguments on his bail application. This Hon'ble Court after elaborate discussion in **Crl.P.No.8325/2018(reported in 2019(2) Kar L.J. 757)** has considered the said contention by relying upon various judgements and interpretations of section 2 of KCOCA, has held that the petitioner is a member of an organized crime syndicate and hence the provisions of KCOCA are attracted. In such circumstances, raising the same contention in the present proceedings, is unsustainable and cannot be entertained.
54. The contention of the petitioner that he never involved in any criminal case and that neither any charge-sheet was filed against him nor any criminal proceedings are pending against him and hence KCOCA could not be applied, is baseless contention for the reason that both Section 2(d) and 2(e) of the Act provides for organised crime syndicate or **on behalf of such syndicate** in respect of which more than one charge-sheet have been filed. From the facts narrated above, it is amply clear that, the present petitioner has worked 'on behalf of' and committed the crime for the syndicate of Amol Kale, Bharath Kurane, Amit Degwaker, Sharad B Kalaskar, Vasudev Bhagwan Suryavamshi, Ganesh Miskin, and others and hence the petitioner cannot be aggrieved of the invocation of provisions of KCOCA.
55. The petitioners and all the members of the syndicate have indulged in criminal activities of heinous nature to cause alarm and shock the Society and general public and also they had tried to hide their identity for which they have made sufficient prior practice and they had taken precautions in that regard.
56. Colluding with each other, having nexus with each other, with common cause the accused have made conspiracy and they had the intention of killing prominent personalities who have achieved success in different walks of life, and they were using fire arms to break the law and indulge in illegal and unlawful activities, to create insurgency in the society and also to create a sense of fear and intimidation in the society, which has caused threat to the general public, at State and National level. They have involved in various criminal activities in an organized manner, by providing shooting

trainings, supplying equipment, providing accommodation and facilitating the offences, which has come to knowledge, at the time of investigation.

- 57.** The accused had created an unnamed illegal criminal organization and they were persuading innocent youngsters from the society to join their unnamed syndicate and were imposing them with meditation, Pooja and other practices. They were telling that everyone has to do something for his dharma, otherwise it will be in perils and if anybody is found to be against to Dharma, if anybody speaks against to dharma and if he demeans the rituals and practices, names and details of such persons were listed out and youngsters were instructed to collect such details and thereafter they were making action plans to kill such persons.
- 58.** Hence the petition is devoid of merits and the order impugned, is just and proper, without there being any illegality or error.

Wherefore, the respondents, humbly pray that the writ petition may kindly be dismissed, in the interest of justice.

Place: Bangalore
Date: 24/10/2019

True Copy

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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRL. M.P. NO. _____ OF 2021

IN

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2021

IN THE MATTER OF:

Kavitha Lankesh

...PETITIONER

VERSUS

State of Karnataka & Ors.

...RESPONDENTS

APPLICATION FOR PERMISSION TO FILE SPECIAL LEAVE PETITION

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS LORDSHIP'S COMPANION JUSTICES OF THE

HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION

OF THE ABOVE NAMED

PETITIONER / APPLICANT

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner / Applicant is filing the accompanying SLP against the impugned final judgment and order dated 22.04.2021 passed by the Hon'ble High Court of Karnataka at Bengaluru in W.P. No. 9717/2019 (GM-RES).

2. That the Petitioner is the complainant and sister of the victim Gauri Lankesh in the crime which is the subject matter of the impugned order.
3. That the Petitioner is greatly aggrieved by the impugned order's quashing of the order dated 14.08.2018 passed by Respondent No. 3 as well as the quashing of the supplementary charge-sheet filed by Respondent No. 4 against Respondent No. 6 for the offences under Sections 3(1)(i), 3(2), 3(3) and 3(4) of the Karnataka Control of Organised Crime Act, 2000.
4. That the Petitioner seeks to challenge the impugned order before this Hon'ble Court in her capacity as complainant and sister of the victim Gauri Lankesh since the State of Karnataka which the prosecuting agency in the present case has not challenged the same till date to the knowledge of the Petitioner.
5. That it is prayed that this Hon'ble Court may be pleased to permit the Petitioner to challenge the impugned order through the accompanying SLP.
6. That the present Application is bona fide and made in the interest of justice.

PRAYER

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- A. Allow the application and permit the Petitioner to challenge the impugned final judgment and order dated 22.04.2021 passed by the Hon'ble High Court of Karnataka at Bengaluru in W.P. No. 9717/2019 (GM-RES) through the accompanying SLP;

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B. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER / APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:

APARNA BHAT

Advocate-on-Record for the Petitioner / Applicant

Place: New Delhi

Filed on: 09.06.2021

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRL. M.P. NO. _____ OF 2021

IN
SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2021

IN THE MATTER OF:

Kavitha Lankesh

...PETITIONER

VERSUS

State of Karnataka & Ors.

...RESPONDENTS

**APPLICATION SEEKING EXEMPTION FROM FILING CERTIFIED COPY
OF THE IMPUGNED ORDER**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS LORDSHIP'S COMPANION JUSTICES OF THE

HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION
OF THE ABOVE NAMED
PETITIONER / APPLICANT

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner / Applicant is filing the accompanying SLP against the impugned final judgment and order dated 22.04.2021 passed by the Hon'ble High Court of Karnataka at Bengaluru in W.P. No. 9717/2019 (GM-RES).
2. That the facts and circumstances leading to the filing of the present SLP are not repeated herein for the sake of brevity and the Petitioner / Applicant

craves leave of this Hon'ble Court to refer to and rely upon the same at the time of hearing of the present Petition.

3. That in view of the prevailing circumstances of the COVID-19 pandemic, the Petitioner / Applicant is unable to obtain the certified copy of the impugned order. The Petitioner / Applicant undertakes to file the same as and when made available.
4. That the present Application is bona fide and made in the interest of justice.

PRAYER

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- A. Allow the application and exempt the Petitioner / Applicant from filing the certified copy of the final judgement and order dated 22.04.2021 passed by the Hon'ble High Court of Karnataka at Bengaluru in W.P. No. 9717/2019 (GM-RES);
- B. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER / APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:

APARNA BHAT

Advocate-on-Record for the Petitioner / Applicant

Place: New Delhi

Filed on: 09.06.2021

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRL. M.P. NO. _____ OF 2021

IN
SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2021

IN THE MATTER OF:

Kavitha Lankesh

...PETITIONER

VERSUS

State of Karnataka & Ors.

...RESPONDENTS

**APPLICATION SEEKING EXEMPTION FROM FILING DULY AFFIRMED
AFFIDAVIT AND VAKALATNAMA**

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS LORDSHIP'S COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION
OF THE ABOVE NAMED
PETITIONER / APPLICANT

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner / Applicant is filing the accompanying SLP against the impugned final judgment and order dated 22.04.2021 passed by the Hon'ble High Court of Karnataka at Bengaluru in W.P. No. 9717/2019 (GM-RES).
2. That it is prayed that in the prevailing circumstances of the COVID-19 pandemic, exemption from filing duly affirmed and notarized affidavit be granted for the time being.

3. That it is prayed that in the prevailing circumstances of the COVID-19 pandemic, exemption from filing duly signed vakalatnama be granted for the time being.
4. That the present Application is bona fide and made in the interest of justice.

PRAYER

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- A. Grant exemption from filing duly affirmed and notarized affidavit in the prevailing circumstances;
- B. Grant exemption from filing duly signed vakalatnama in the prevailing circumstances;
- C. Take on record the scanned affidavit and vakalatnama;
- D. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER / APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:

APARNA BHAT

Advocate-on-Record for the Petitioner / Applicant

Place: New Delhi

Filed on: 09.06.2021

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRL. M.P. NO. _____ OF 2021

IN
SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2021

IN THE MATTER OF :
Kavitha Lankesh
VERSUS

PETITIONER

...

UNION OF INDIA AND OTHER
INDEX OF FILING

RESPONDENTS

S. No.	Descriptions	Copies	Court Fees
1.	Office Report on Limitation	1+3	
2.	Listing Performa	1+3	
3.	Check List	NA	
4.	Synopses & List of Dates	1+3	
5.	Final Order & Judgment	1+3	
6.	SLP WITH Affidavit	1+3	1000
7.	Annexure-P-1 to P-2		
8.	An Application for Condonation/Delay		
9.	An Applications		-
10.	Process Fee with Complete Set SLP	1+3	
11.	Vakalatnama & Appearance	1+3	10/-
12.	Counter Affidavit		
13.	Rejoinder Affidavit		
14.	Caveat with Vakalatnama		

MS. APARNA BHAT

Advocate-on-Record for the Petitioners

AOR Code: 1246

Email: aparna.bhat@gmail.com

Phone: (+91) 9711589363

Filed on:
07.04.21

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2021

IN THE MATTER OF:

Kavitha Lankesh

...PETITIONER

VERSUS

State of Karnataka &Ors.

...RESPONDENTS

VAKALATNAMA

I, Kavitha Lankesh, Petitioner in the above noted petition do hereby appoint and retain Aparna Bhat, Advocate, Supreme Court to act and appear for us in the above petition and on our behalf, to conduct and prosecute/defend the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and application for Review, and to file and obtain, return to documents, and deposit and receive any money on our behalf in the above petition and in application of review, and to represent us, and to take all necessary steps on our behalf in the above matter. We agree to pay her fees and our pocket expenses, agree to ratify all acts done by the aforesaid Advocate in pursuance of her authority.

Dated this the 9 day of June, 2021.

ACCEPTED

Petitioner(s)

(APARNA BHAT)

ADVOCATE FOR THE PETITIONER



MEMO OF APPEARANCE

To


The Registrar
Supreme Court of India,
New Delhi-110 001.

Sir,

Kindly enter my appearance in the above mentioned Petition made on behalf of the
Petitioner.

Yours faithfully,

Filed by:


MS. APARNA BHAT

ADVOCATE FOR THE PETITIONER

Place: New Delhi
9.06.2021
Filed on: .

June 16, 2021

The Registrar,
Supreme Court of India,
New Delhi-110 001.

Re.: SLP (Cri.) No. _____ of 2021
[Diary No. _____ of 2021]
Kavitha Lankesh
Versus
State of Karnataka & Ors.

Sir,

I write with reference to the abovementioned matter.

It is humbly submitted that, as marked in defects by the Registry, copy of order dated 14.08.2018 has been included in the Petition as Annexure P-1.

With regard to chargesheet filed in the matter, it is submitted that the present Petition has been filed by the Petitioner in her capacity as complainant in the criminal case. Due to this, the copy of the chargesheet or any other case-related papers are not available with the Petitioner. The Petitioner undertakes to procure the relevant documents as and when directed by this Hon'ble Court .List the matter at my risk as it is .

Sincerely,

Aparna Bhat