IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2651 OF 2023

Lata Ratan Rokade]
Age: 43 years,]
Residing at : Rokade Vasti,]
Chikhali, Pune.] …. Petitioner

Vs.

1) The State Of Maharashtra]
(Through Chikhali Police]
Station, Pune)]

2) Additional Commissioner of Police,]
Police Department,]
Premlok Park, Chinchwad,]
Pimpri-Chinchwad,]
Maharashtra-411033.] …. Respondents

WITH

INTERIM APPLICATION NO.3062 OF 2023
IN
CRIMINAL WRIT PETITION NO. 2651 OF 2023

Rajendra Kailash Karle,]
Age 38, Occ. Employed,]
R/a-Post- Chandus, Taluka Khed,]
Pune.] … Applicant/
Original Complainant.

IN THE MATTER BETWEEN-

Lata Ratan Rokade]
Age: 51 years, Occ. Business,]
R/a- Flat No.1602, Bhumiflora]
Housing Society, Raheja Estate,]
Kulupwadi, Borivali (E), Mumbai.] …. Petitioner

Vs.

1) The State Of Maharashtra]
Through Chikhali Police Station,]
Pune]

2) Additional Commissioner of Police,]
Police Department, Premlok Park,]
Chinchwad, Pimpri-Chinchwad,]
Maharashtra-411033.] …. Respondents

Mr. Satyavrat Joshi a/w Ms. Shivani Kondekar, Mr. Amit Thorve for Petitioner.

Mr. Ajay Bhise a/w Mr. Mahesh Mule, Mr. Akash Kavde & Ms. Nidhi Narwekar for Applicant-Intervenor in Interim Application No.3062 of 2023.

Mr. Ajay Patil, A.P.P. for Respondents-State.

Mr. Raja Thakare, Senior Advocate, *amicus-curiae* a/w Mr. Siddharth Jagushte.

CORAM : A. S. GADKARI AND
SHARMILA U. DESHMUKH, JJ.

RESERVED ON : 10th OCTOBER, 2023.
PRONOUNCED ON : 28th JUNE, 2024.

JUDGMENT (Per A.S. Gadkari, J.) :-

1) Petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India read with Section 482 of Criminal Procedure Code *(for short, "Cr.P.C."),* challenging the 'Prior Approval' dated 5th July 2023, issued by Respondent No.2, under Section 23(1)(a) of the Maharashtra Control of Organised Crime Act, 1999 *(for short, "M.C.O.C.*

Act") and for anticipatory bail under Section 438 of Cr.P.C., in C.R. No.346 of 2023, dated 22nd May 2023, registered with Chikhali Police Station, Pimpri-Chinchwad Police Commissionerate, District Pune, under Sections 302, 120-B, 34 of the Indian Penal Code and under Section 3, 25, and 27, of the Arms Act, 1959 and under Section 37(1), (3) read with 135 of the Maharashtra Police Act and under Sections 3(1) (ii), 3(4) of the M.C.O.C. Act.

1.1) The Intervenor is the original complainant / informant and has filed the aforenoted Interim Application for intervention, to address the Court and to oppose the prayer of the Petitioner.

2) Heard Mr. Joshi, learned counsel for the Petitioner, Mr. Bhise, learned counsel for the Intervenor, Mr. Raja Thakare, learned senior counsel, *amicus curiae,* and Mr. Patil, learned A.P.P. for the Respondents. Perused entire record produced before us and the Written Submissions on behalf of the Petitioner, dated 25th October 2023.

3) The First Information Report is lodged by Mr. Rajendra K. Karle on 22nd May 2023. The informant is the maternal uncle of Krushna @ Sonya H. Tapkir (deceased). The prosecution case in brief is that, during the Navratri Festival arranged at Patil Nagar, Chikhali in the preceding year, a tussle took place between Karan Rokade (A.No.1) and his friends on one side and Krushna @ Sonya and his friends on the other side. In the said tussle altercations took place. At that time, Karan Rokade had threatened

Krushna @ Sonya of dire consequences. Karan Rokade was also having grudge against Krushna @ Sonya, as the popularity of Krushna @ Sonya was on rise in the vicinity of Chikhali. That, on 22nd May 2023 at about 2.19 p.m. the informant received a call from his sister Smt. Jayashree H. Tapkir, who informed him that Krushna @ Sonya has been assaulted by somebody and admitted in hospital. The informant's nephew namely Milind told him that, on 21st May 2023 one Mr. Saurabh @ Sonya Pansare had come to meet Krushna @ Sonya and apologized for whatever happened during the Navratri Festival and to forget about the past. That, a friend of the informant told him that, at about 1.40 – 1.45 p.m. on the same day Saurabh Pansare and Siddharth Kamble had came on a bike at the place of offence, where Krushna @ Sonya and his friend were standing and thereafter Saurabh Pansare fired bullets on the chest, neck and other parts of body of Krushna @ Sonya and fled away on their KTM motorcycle. Krushna @ Sonya passed away on 22nd May 2023, while undergoing medical treatment. In this brief premise, present crime is registered.

4) During the course of investigation it revealed to the police that, the murder of Krushna @ Sonya is committed by the organised crime syndicate headed by Karan Ratan Rokade (A.No.1) and therefore the Senior Inspector of Police, Chikhali Police Station submitted a report dated 29th June 2023 to the Respondent No.2 for applying the provisions of M.C.O.C. Act to the said C.R. No. 346 of 2023. In the said proposal the Petitioner is

named at Sr. No. 12, as a member of the said syndicate. The Respondent No.2 by its impugned Order dated 5th July 2023 was pleased to grant Prior Approval under Section 23 (1)(a) of the M.C.O.C. Act, to apply the provisions of M.C.O.C. Act to the said crime and to investigate the same. It is stated in the said approval that, Mr. Karan R. Rokade (A.No.1) is the head of the organised crime syndicate and has committed the said crime for establishing supremacy in the locality and through it, to gain pecuniary benefit to the syndicate.

5) The precise allegation against the Petitioner is that, she purchased an Innova car bearing No. MH-20/CH-0651 from the witness namely, Mahesh V. Jagdale on 4th June 2023 i.e. after about 12 days, after commission of the present crime by Karan R. Rokade (A.No.1) and other members of the syndicate and helped/assisted the accused persons and in particular her two sons to abscond by using the said car. That, the said vehicle was purchased by her in her name by paying a sum of Rs.3,00,000/- in cash. The principal accused/co-accused used the said vehicle for absconding after commission of offence and from it went to Mathura, State of Uttar Pradesh. The co-accused informed the place where the said car was left at Mathura to the Petitioner on mobile phone and thereafter the Petitioner went to Mathura along with Mr. Akshay Aher and brought it to Akola and kept it at the place of witness, Mr. Gajanan B. Pohurkar. It is therefore alleged that, the Petitioner aided and assisted the organised crime

syndicate of Karan R. Rokade (A.No.1).

6) Mr. Joshi, learned counsel for the Petitioner submitted that, in the present case the offence occurred on 22nd May 2023 and till 30th June 2023, the name of the Petitioner did not appear in any of the Remand Reports of other accused persons. That, her name is not mentioned in the First Information Report. He submitted that, for the first time the Petitioner received a Notice dated 30th June 2023 from Chikhali Police Station to appear for an inquiry in the said crime on 1st July 2023, at 11.00 a.m.. That, the police did not have any intention to make the Petitioner as an accused in the present crime in the beginning. The Petitioner's role started after commission of the murder, in allegedly helping the co-accused in providing the car and therefore it does not amount to continuing unlawful activity. That, the Petitioner does not have any prior criminal antecedents. The Petitioner has never been prosecuted with any of the members of the alleged organised crime syndicate. That, the Petitioner has not even alleged as an assailant or was a part of the actual assault in the present crime. He submitted that, there is no allegation of conspiracy or having any motive for eliminating the deceased against the Petitioner. That, the name of the Petitioner has surfaced at a belated stage, during the investigation of the offence. That, the Petitioner is impleaded as an accused only because her two sons, namely, Karan R. Rokade (A.No.1) and Rutwik R. Rokade (A.No.6) are principal accused in the present crime. He submitted that, the

Petitioner had been to Mathura by train and not with any of the accused, nor did she ever meet any of the accused persons at Mathura. The Petitioner is having explanation for having Rs.3,00,000/- in cash in her hand for spending it. He submitted that, in view of the above, the Respondent No.2 has erroneously accorded prior approval qua the Petitioner and therefore it may be quashed and set aside. He further submitted that, the Petitioner has been falsely implicated in the present crime and therefore she may be protected by pre-arrest bail. He submitted that, though there is an embargo under Section 21(3) of M.C.O.C. Act to grant a relief under Section 438 of Cr.P.C., the co-ordinate Bench in the case of *Shabhana Parveen Inayatullah Shaikh Vs. The State of Maharashtra, reported in 2022 ALL MR (Cri) 2460,* has granted pre-arrest bail to the Petitioner therein and therefore the same relief may be granted to the Petitioner.

7) Mr. Bhise, learned Advocate for the Intervenor submitted that, there is material on record to show the complicity of the Petitioner in the present crime, in aiding and assisting the organised crime syndicate headed by Karan R. Rokade (A.No.1). He submitted that, in the case of *Shabhana Shaikh (supra)* the Court has not taken into consideration the prevalent and binding decisions of the Hon'ble Supreme Court and this Court, so also the mandate of section 21(3) of M.C.O.C. Act and therefore the said decision is *per incuriam* and has no binding effect. He submitted that, this Court

therefore is not bound to follow a decision which is *per incuriam.* He submitted that, taking into consideration the material available against the Petitioner and the correct legal position, this Court may not grant pre-arrest bail to the Petitioner and the Petition be dismissed.

8) Mr. Patil, learned A.P.P. pointed out the entire material revealed against the Petitioner during the course of the investigation. He produced on record a compilation of statements of witnesses and other relevant documents. He submitted that, the Petitioner purchased the car after commission of the present crime, only to assist the co-accused in absconding from the clutches of law. That, bogus documents are created by the Petitioner and other accused persons to create defence in their favour. He submitted that, there are call records inter se between the Petitioner and other accused after commission of the present crime. He submitted that, there is sufficient material found during the course of investigation which clearly indicates that, the Petitioner aided and abetted the organised crime syndicate headed by Karan R. Rokade (A.No.1). That, the Respondent No.2 has rightly accorded Prior Approval after considering the material on record. He submitted that, the custody of the Petitioner is necessary for the proper and complete investigation of the crime, to take it to its logical end and therefore Petitioner may not be granted pre-arrest bail. He submitted that, there are no merits in the Petition and it be dismissed.

9) Having seen the factual aspects and having heard the learned

counsels for the respective parties on the point of legal submissions advanced by them, the following issues arise for determination :-

(a) Whether the Prior Approval dated 5th July, 2023 deserves to be quashed?

(b) Whether in exercise of jurisdiction under Article 226 of Constitution of India, this Court can grant bail and/or pre-arrest bail under M.C.O.C Act?

(c) Whether the judgment in *Shabhana Shaikh (supra)* rendered by Co-ordinate Bench constitutes binding precedent?

10) Taking into consideration the fact that, an important question of law is involved in the present Petition, we requested Mr. Raja Thakare, learned senior counsel to assist this Court as *amicus curiae.* He has gracefully acceded to our request. During the course of hearing, he submitted his written submissions and has relied upon a compilation of Judgments, which we will refer to and consider in the later part of this Judgment.

11) As far as the binding effect of the decision in the case of *Shabhana Shaikh (supra)* is concerned, Mr. Joshi, learned counsel for the Petitioner submitted that, the question as regards the embargo under Section 21(3) of M.C.O.C. Act vis-a-vis grant of pre-arrest bail was considered by the co-ordinate Bench of this Court and the observations

made in paragraph Nos. 13 to 25 of the decision in the case of *Shabhana Shaikh (supra)* are relevant. That, the Court has referred to the decision in the case of *State of Maharashtra Vs. Lalit S. Nagpal, reported in 2007 ALL SCR 1078,* while arriving at the said conclusion. He submitted that, the said Judgment has not been questioned by the State before the Hon'ble Supreme Court. That, the prosecution has not been able to bring on record that, the decision in the case of *Shabhana Shaikh (supra)* has not considered the embargo under Section 21(3) of M.C.O.C. Act, vis-a-vis grant of pre-arrest bail and the said Judgment was delivered contrary to any other previous decision either of the Hon'ble Supreme Court or of this Court holding the field, which has differently interpreted the embargo under Section 21(3) of the said Act. He submitted that, thus the law laid down in the case of *Shabhana Shaikh (supra)* is good law and holds the field.

11.1) Mr. Joshi submitted that, in case this Court comes to the conclusion that, the decision in the case of *Shabhana Shaikh (supra)* has not taken into consideration the binding precedents or the relevant provisions of law, or that the said Judgment does not lay down the correct law, then this Court may refer the said issue to a larger Bench to examine it.

11.2) Mr. Joshi submitted that, Section 18 of S.C.S.T. Act is *pari materia* with Section 21(3) of M.C.O.C. Act. In the case of *Prathvi Raj*

Chauhan Vs. Union of India & Ors., reported in (2020) 4 SCC 727, the Hon'ble Supreme Court while examining the scope of Section 18 of S.C.S.T. Act read with Section 438 of Cr.P.C. has held that, concerning the applicability of provisions of Section 438 of Cr.P.C., it shall not apply to the cases under the said Act. However, if the complaint does not make out a *prima facie* case for applicability of the provisions of the S.C.S.T. Act, the bar created by Section 18 & 18-A(i) shall not apply. That, the Apex Court has held that as far as provisions of Section 18-A and anticipatory bail are concerned, in cases where no *prima facie* material exists warranting arrest in a complaint, the Court has the inherent power to direct a pre-arrest bail.

11.3) By relying on a decision of the Hon'ble Supreme Court in the case of *Arnab M. Goswami,* learned counsel for the Petitioner submitted that, in a Petition before the High Court under Article 226 of the Constitution of India read with Section 482 of Cr.P.C., the High Court must be circumspect in exercising its powers on the basis of the facts of each case. However, the High Court should not foreclose itself from the exercise of the power when a citizen has been arbitrarily deprived of their personal liberty in an excess of State power. He submitted that, in the case of *Hema Mishra Vs. State of U.P.,* it is held that, in appropriate cases, the High Court is empowered to entertain a Petition under Article 226 of the Constitution of India, where the main relief itself is against the arrest. The Supreme Court has emphasized that, the High Court is not bereft of its power under

Article 226 of the Constitution of India. He submitted that, in the case of *Kartar Singh V/s. State of Punjab,* it is held that, the High Court should exercise the powers under Article 226 for grant of bail sparingly and that too, only in a rare and appropriate cases, in extreme circumstances.

11.4) Mr. Joshi submitted that, in the present case the applicability of the provisions of M.C.O.C. Act and the prayer for grant of relief under Section 438 of Cr.P.C. are both subject matter of the Petition and infact prayer clauses (a) and (b) are the substantive prayers and prayer clause (c) is for interim relief. That, the Petitioner by invoking powers of this Court under Article 226 of Constitution of India has questioned the Order of prior approval under Section 23(1)(a) of M.C.O.C. Act, as it has been wrongly invoked against her.

11.5) Mr. Joshi, learned counsel for Petitioner, in support of his submissions relied on the following decisions:-

1) *State of Maharashtra Vs. Abdul Hamid Haji Mohammed, reported in (1994) 2 SCC 664;*
2) *Kartar Singh Vs. State of Punjab, reported in (1994) 3 SCC 569;*
3) *State of Bihar Vs. Kalika Kuer Alias Kalika Singh & Ors., reported in (2003) 5 SCC 448 : 2003 SCC OnLine SC 578;*
4) *State of Maharashtra Vs. Bharat Shanti Lal Shah & Ors., reported in (2008) 13 SCC 5;*
5) *Prakash Gobindram Ahuja Vs. Ganesh Pandharinath Dhonde & Ors., reported in 2016 SCC OnLine Bom 8884 : (2016) 6 Bom*

CR 262 : (2016) 6 AIR Bom R 745 : AIR 2017 (NOC 631) 215;

6) *Deepak Madhavrao Mankar Vs. State of Maharashtra, Writ Petition. No.1670 of 2019 dated 22nd October, 2019;*

7) *Prathvi Raj Chauhan Vs. Union of India & Ors., reported in (2020) 4 SCC 727;*

8) *Arnab Manoranjan Goswami Vs. State of Maharashtra & Ors., reported in (2021) 2 SCC 427;*

9) *A.P. Mahesh Cooperative Urban Bank Shareholders Welfare Association Vs. Ramesh Kumar Bung & Ors., reported in (2021) 9 SCC 152;*

10) *Abhishek Vs. State of Maharashtra & Ors., reported in (2022) 8 SCC 282 and;*

11) *Shabhana Parveen Inayatullah Shaikh Vs. The State of Maharashtra, reported in 2022 All MR (Cri) 2460.*

12) Mr. Bhise, learned counsel appearing for the Applicant/ Intervenor submitted that, the murder of Krushna @ Sonya is committed by the organised crime syndicate headed by Karan R. Rokade (A.No.1), who was having grudge against the deceased, as the deceased was becoming more popular in the locality. That, the organised crime syndicate wanted to have its supremacy in the locality and therefore it committed present crime. He submitted that, the Petitioner has aided and abetted the organised crime syndicate headed by Karan R. Rokade (A.No.1).

12.1) He submitted that, the prior approval under Section 21(1)(a) of M.C.O.C. Act is qua the offence and not the offender as such. As long as the incidents referred to in the earlier crimes are committed by a group of

persons and one common individual was involved in all the incidents, the offence under the M.C.O.C. Act can be invoked.

12.2) By relying on a decision of this Court in the case of *Anil Nanduskar,* he submitted that, an accused desiring to raise objection regarding the defects in such an approval or sanction, or grant, he can raise such objection; however for conclusive decision on the said point, the accused has to wait till the trial is complete and on that ground he cannot insist for discharge unless the objection relates to inherent lack of jurisdiction of the concerned authority to grant sanction or approval. He submitted that, if there is no infringement of any of fundamental rights of Petitioner, the Court generally may not grant relief as prayed for by the Petitioner. He submitted that, the Petitioner has not made out any exceptional case to grant the relief of pre-arrest bail to her and therefore under normal circumstances, the Petitioner would not be entitled to claim such a relief under Article 226 of Constitution of India.

12.3) Mr. Bhise submitted that, in the case of *Shabhana Shaikh (supra)* the co-ordinate Bench has not taken into consideration the mandate of law laid down by the Hon'ble Supreme Court in the case of *Kartar Singh (supra)* and the embargo under Section 21(3) of M.C.O.C. Act, while granting relief of pre-arrest bail to the Petitioner therein and therefore the said decision is *per incuriam* and has no binding effect on subsequent decisions following it. That, in the case of *Hema Mishra Vs. State of U.P. &*

Ors., the Supreme Court has held that, obviously when provisions of Section 438 of Cr.P.C. are not available to the accused, under normal circumstances such accused would not be entitled to claim such relief under Article 226 of Constitution of India. The said relief cannot be converted into a second window for the relief which is consciously denied by a statute. He submitted that, even if a person is to be released on regular bail under Section 21(4) of M.C.O.C. Act, the twin conditions mentioned therein are necessarily to be fulfilled, without which a person cannot be released on bail and therefore also the Petitioner cannot be granted pre-arrest bail as a matter of right. He submitted that, as the decision in the case of *Shabhana Shaikh (supra)* is *per incuriam*, it is not necessary for this Court to refer the issue to a larger Bench. That, in view of the express bar under Section 21(3) of M.C.O.C. Act, in a petition under Article 226 of the Constitution of India, the relief of pre-arrest bail cannot be granted.

12.4) Mr. Bhise, learned Advocate for the Intervenor in support of his contentions has placed reliance on the following decisions :-

1) *State of Orissa Vs. Madan Gopal Rungta, reported in 1951 SCC 1024 : 1951 SCC OnLine SC 63;*
2) *U.P. State Sugar Corporation Ltd. & Ors. Vs. Kamal Swaroop Tondon, reported in (2008) 2 SCC 41;*
3) *Anil Sadashiv Nanduskar Vs. State of Maharashtra, reported in 2008 (3) Mh.L.J. (Cri.) 650;*
4) *Hema Mishra Vs. State of Uttar Pradesh & Ors., reported in*

(2014) 4 SCC 453;

5) *Satpal Singh Vs. State of Punjab, reported in (2018) 13 SCC 813;*

6) *Kavitha Lankesh Vs. State of Karnataka & Ors., reported in 2021 SCC OnLine SC 956;*

7) *Directorate of Enforcement Vs. M. Gopal Reddy & Anr., reported in 2022 SCC OnLine SC 1862.*

13) Mr. Raja Thakare, learned senior counsel, *amicus curiae,* submitted that, the provisions under Section 43-D(4) of U.A.P.A. Act; Section 20(7) of T.A.D.A. Act and Section 21(3) of M.C.O.C. Act are *pari materia*. That, the application of Section 438 of Cr.P.C. has been intentionally dropped by the Legislature while enacting the said Acts. There is a specific bar put to grant of pre-arrest bail under the said statutes. That, under Section 43-D(5) of U.A.P.A. Act; under Section 20(8) of T.A.D.A. Act; under Section 37(1) of N.D.P.S. Act and under Section 21(4) of M.C.O.C. Act, for grant of bail under Section 439 of Cr.P.C. twin conditions are stipulated. Though Section 18 of S.C.S.T. Act is *pari materia* with Section 21(3) of M.C.O.C. Act, there is no such twin condition prescribed for bail under the S.C.S.T. Act and it is the important distinguishing feature between the said two Acts. He submitted that, in the case of *State of Maharashtra Vs. Bharat C. Raghani & Ors.,* the Hon'ble Supreme Court has considered the intention of Legislature, while enacting the T.A.D.A. Act. The Hon'ble Supreme Court has observed that, the word of 'gangsters'

popularly known as ‘underworld’, comprises various gangs headed by notorious dons for whom the only valuable thing in life is ‘wealth’ and the useless thing, the ‘life’ of others. That, deaths are sold by these dons at their asking price and purchased by those who resort to have immediate results for their enrichment with the deflation of their otherwise inflated moneybags. A feeling is prevalent in the city that it is not the State alone which can protect the life and property of the rich and influential, but it is the criminals who render protection to such people for the consideration of the “protection money” received by them. The eruption of organised crime in India is of recent origin and is at the initial stage. It is the need of the hour to control such criminal activities which tempt the persons involved to amass huge profit. Such crimes have not only a legal facet but have a social and economic aspect which is required to be felt and dealt with by all concerned including the judiciary, the executive, the politicians, the social reformers, the intelligentsia and the law enforcing agency. He submitted that, the concept and intention of Legislature while enacting the S.C.S.T. Act is totally different from the M.C.O.C. Act and therefore the the provisions of S.C.S.T. Act, cannot be equated with the M.C.O.C. Act or T.A.D.A. Act.

13.1) Mr. Thakare submitted that, in the case of *Directorate of Enforcement Vs. M. Gopal Reddy & Anr.,* the Hon’ble Supreme Court has held that, if a prayer is made for anticipatory bail in connection with the

provisions of P.M.L.A. Act 2002, the underlying principles and rigors of Section 45 of the said Act must get triggered, although the application is under Section 438 of Cr.P.C.. He submitted that, in the case of *Kartar Singh Vs. State of Punjab,* the Hon'ble Supreme Court while upholding the constitutional validity of Section 20(7) of T.A.D.A. Act, has held that, the said section, excluding the application of Section 438 of Cr.P.C. in relation to any case under the said Act and the Rules made thereunder cannot be said to have deprived the personal liberty of a person as enshrined in Article 21 of the Constitution. That, the Supreme Court has also upheld the constitutional validity of Section 20(8) of T.A.D.A. Act. He submitted that, an application for bail under Article 226 of Constitution of India can be considered sparingly and that too, only in rare and appropriate cases in extreme circumstances.

13.2) Mr. Thakare submitted that, in the case of *Prathvi Raj Chauhan Vs. Union of India & Ors.,* the Supreme Court has clarified that, the provisions of Section 438 of Cr.P.C. shall not apply to the cases under the S.C.S.T. Act. However, if the complaint does not make out a *prima facie* case for applicability of the provisions of the said Act, the bar created by Sections 18 and 18-A(i) of the said Act shall not apply. Therefore also the provisions of M.C.O.C. Act, excluding the application of Section 438 of Cr.P.C. cannot be equated with S.C.S.T. Act. He submitted that, in the case of *Arnab M. Goswami Vs. State of Maharashtra,* the Hon'ble Supreme Court

has reiterated that, the High Court while exercising its jurisdiction under Article 226 of the Constitution of India and particularly considering an application for bail, has to exercise its powers in a very sparing manner and is not to be used to choke or smother the prosecution that is legitimate. That, the High Court must exercise its power with caution and circumspection, cognizant of the fact that, this jurisdiction is not a ready substitute for recourse to the remedy for bail under Section 439 of Cr.P.C.. He submitted that, in the case of *Niharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Ors.,* the Supreme Court has reiterated the said legal position as stated in the case of *Arnab M. Goswami.* That, in the case of *State of Maharashtra Vs. Pankaj J. Gangar,* the Supreme Court has held that, as per the law laid down by the Supreme Court in catena of decisions, the Division Bench of this Court, ought not to have released the accused on bail by way of interim relief. Mr. Thakare also relied on the decision of the Supreme Court in the case of *Hema Mishra (supra)* and submitted that, the power under Article 226 of Constitution has to be exercised very cautiously keeping in view that the said provisions are a device to advance justice and to not frustrate it. The Court is to ensure that such a power under Article 226 is not to be exercised liberally, so as to convert it into Section 438 Cr.P.C. proceedings. Keeping in mind that, when the said provisions of specifically omitted in the said statute i.e. M.C.O.C. Act and it cannot be restored as back door entry via Article 226. He fairly submitted that, in the

case of *Surjitsingh B. Gambhir Vs. State of Maharashtra,* the co-ordinate Bench of this Court has considered and granted the relief of bail under Section 439 of Cr.P.C. in the case under the provisions of M.C.O.C. Act, as a consequential relief after perusing the entire chargesheet and coming to the conclusion that the provisions of M.C.O.C. Act are *prima facie* not applicable to the said case and an exceptional case is made out by the Petitioner after filing of chargesheet. However, in the said case also the co-ordinate Bench has not considered the principles of law stated by the Supreme Court in the case of *Kartar Singh (supra).*

13.3) Mr. Thakare submitted that, the decision in the case of *Shabhana Shaikh (supra)* was pronounced on 13th August 2021. That, in the said case though various reliefs were prayed for by the Petitioner and as reproduced in para No.2 thereof, the Court ultimately granted only the relief of anticipatory bail to the Petitioner therein without considering the substantive reliefs prayed for. He submitted that, a writ petition under Article 226 of Constitution of India, impugning a judicial Order passed in an anticipatory bail application was not legally tenable and permissible and despite the said fact, the Court entertained the petition and has ultimately granted the only relief of pre-arrest bail, which is not legally permissible.

13.4) He submitted that, on the same day i.e. on 13th August 2021 the same Division Bench in the case of *Lata Dadarao Pawar @ Ayesha Amir Shaikh Vs. State of Maharashtra, in Criminal Writ Petition No. 2632 of*

2021, while considering similar reliefs as in the case of *Shabhana Shaikh (supra)* has dismissed the said petition, after taking into consideration all the necessary and relevant prevalent decisions in the field. The S.L.P. preferred against the said decision by the Petitioner therein has been dismissed by the Supreme Court on 3rd September 2021. That, there is legal anomaly in the said two decisions and therefore also the decision in the case of *Shabhana Shaikh (supra)* cannot be treated as a binding precedent. He submitted that, taking into consideration the principles of law laid down by the Supreme Court in the aforenoted decisions, the decision in the case of *Shabhana Shaikh (supra)* granting only relief of pre-arrest bail is *per incuriam* and cannot be considered as a binding precedent.

13.5) Mr. Raja Thakare, learned senior counsel, *amicus curiae,* has relied on the following decisions :-

1) *Kartar Singh Vs. State of Punjab, reported in (1994) 3 SCC 569;*
2) *State of Maharashtra Vs. Bharat Chaganlal Raghani & Ors., reported in (2001) 9 SCC 1;*
3) *Anil Umrao Gote Vs. State of Maharashtra, reported in MANU/MH/1530/2004;*
4) *Vinod G. Asrani Vs. State of Maharashtra, reported in (2007) 3 SCC 633;*
5) *Pankaj Jagshi Gangar Vs. State of Maharashtra, Criminal Writ Petition No. 4639 of 2018 dated 29th January, 2019;*
6) *Surjitsingh Bhagatsingh Gambhir Vs. The State of Maharashtra,*

Criminal Writ Petition No. 913 of 2019 dated 13th September, 2019;

7) *Deepak Madhavrao Mankar Vs. State of Maharashtra, Criminal Writ Petition. No.1670 of 2019 dated 22nd October, 2019;*

8) *Dr. Shah Faesal & Ors. Vs. Union of India & Anr., reported in (2020) 4 SCC 1;*

9) *Prathvi Raj Chauhan Vs. Union of India & Ors., reported in (2020) 4 SCC 727;*

10) *Anand Teltumbde & Ors. Vs. The State of Maharashtra & Ors., reported in MANU/MH/0278/2020;*

11) *Neeharika Infrastructure Pvt. Ltd Vs. State of Maharashtra & Ors., reported in 2021 SCC OnLine SC 315;*

12) *Arnab Manoranjan Goswami Vs. State of Maharashtra & Ors., reported in (2021) 2 SCC 427;*

13) *Sagar Balasaheb Gaikwad Vs. State of Maharashtra & Ors., reported in 2021 SCC OnLine Bom 447 : (2021) 4 Bom CR (Cri) 356;*

14) *Rajendra Bhau Patole Vs. The State of Maharashtra & Anr., Criminal Writ Petition No.3812 of 2021 dated on 21st December 2021;*

15) *Shabhana Parveen Inayatullah Shaikh Vs. The State of Maharashtra, Criminal Writ Petition No.1959 of 2021 dated 13th August, 2021;*

16) *Smt. Lata Dadarao Pawar @ Smt. Ayesha Amir Shaikh Vs. State of Maharashtra & Ors., Criminal Writ Petition No.2632 of 2021 dated 13th August, 2021;*

17) *Directorate of Enforcement Vs M. Gopal Reddy & Anr., reported in 2022 SCC OnLine SC 1862;*

18) *State of Maharashtra Vs. Pankaj Jagshi Gangar, reported in*

(2022) 2 SCC 66 and;

19) *Kavitha Lankesh Vs. State of Karnataka & Ors., reported in (2022) 12 SCC 753.*

14) We will firstly consider the challenge to the Prior Approval dated 5th July 2023 issued by Respondent No.2 under Section 23(1) of M.C.O.C. Act .

Perusal of record indicates that, after the crime bearing No.346 of 2023 came to be registered with Chikhali Police Station, Pune for committing murder of Krushna @ Sonya, during the course of investigation it is revealed to the police that, the said murder is committed by the organised crime syndicate headed by Karan R. Rokade (A.No.1) for establishing supremacy in the locality and through it to gain pecuniary benefit to the said syndicate. The Senior Inspector of Police, Chikhali Police Station therefore submitted a report dated 29th June 2023 to the Respondent No.2 for applying the provisions of M.C.O.C. Act to the said crime. In the said report itself, the name of Petitioner is mentioned at Sr.No.12, as a member of the said syndicate. The Respondent No.2 after perusing the record has thereafter passed the impugned Prior Approval under Section 23(1)(a) of M.C.O.C. Act by its Order dated 5th July 2023.

15) A prior approval under Section 23(1)(a) of the M.C.O.C. Act, by the Competent Authority, only permits application of the provisions of the said Act and to proceed with the investigation of the same and nothing

more. Application of provisions of M.C.O.C. Act does not in any way or manner infringes the fundamental right of any accused therein, as it is applied after following the due process of law to investigate an alleged crime under the said Act.

15.1) It is the settled position of law that, while interpreting the expression 'continuing unlawful activity' with reference to and about the requirement of one or more chargesheets is with respect to the unlawful activities of organised crime syndicate and not qua the individual member thereof.

15.2) The Division Bench of this Court in the case of *Govind Sakharam Ubhe v. State of Maharashtra, reported in 2009 ALL MR (Cri.) 1903*, while interpreting the expression 'continuing unlawful activity' with reference to and about the requirement of one or more charge-sheets has in unequivocal terms, in paragraph Nos. 39 and 44 held thus:-

> *"39. The submission on behalf of the appellant is that even though all the four accused namely, A, B, C and D may be members of the organized crime syndicate since against each of the accused not more than one charge-sheet is filed, it cannot be held that they are engaged in continuing unlawful activity as contemplated under Section 2(1)(d) of the MCOCA. Apart from the reasons which we have given hereinabove as to why such a construction is not possible, having regard to the object with which the MCOCA was enacted, namely to make special provisions for prevention and control of organized crime syndicate and for coping with criminal activity by organized crime*

syndicate, in our opinion, Section 2(1)(d) cannot be so construed. Such a construction will defeat the object of the MCOCA. 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 described therein have been undertaken either singly or jointly as a member of organized crime syndicate and in respect of which more than one charge-sheets have been filed. Stress is on the unlawful activities committed by the organized crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate."

"44. Since in Asif Khan, the point which we are considering was squarely raised and answered, its ratio is attracted to the present case. In Deepak Bajaj v. State of Maharashtra & Anr., 2008 AIR SCW 7788, while considering the precedential value of a judgment, the Supreme Court took a resume of several decisions rendered by it. The Supreme Court referred to its judgment in Ambica Quarry Works v. State of Gujarat & Ors. (1987) 1 SCC 213, where it has observed that the ratio of any decision must be understood in the background of the facts of that case and a case is only an authority for what it actually decides and not what logically follows from it. 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 organized crime syndicate. Requirement of more than one charge-sheet is qua the unlawful activities of the organized crime syndicate and not qua individual member thereof."

It is thus clear that the Division Bench of this Court in the case of *Govind Sakharam Ubhe (supra)* has after taking into

consideration all the judgments prevailing in the field at that time has laid down the ratio as noted above.

16) Record of investigation discloses that, after commission of the crime in question on 22nd May 2023, with a view to help the accused persons therein, the Petitioner purchased a white colour Toyota Innova Car bearing No. MH-20/CH-0651 from witness, Mahesh Jagdale by paying a cash amount of Rs.3,00,000/-. Thereafter under the directions of Petitioner, the driver namely Mr. Hindurao More took it to Signcity Society, Chikhali and from there the accused persons namely, Karan Rokade, Rutwik Rokade, Manav Rokade and Rinku Kumar went to Mathura and remained absconded till their arrest. The FASTag sticker for the said car was purchased in the name of Smt. Malanbai Gavai, who is the mother of the Petitioner. The purpose of purchase of the said car in the name of Petitioner and the FASTag Sticker in the name of her mother is to harbor and assist other accused persons fleeing the clutches of law. It is further revealed that, the Invitation Card of the marriage of Karan Rokade produced by the Petitioner is a bogus document created by the Petitioner in connivance with other accused persons to create a defence in their favour. Relevant statements of all the witnesses have been recorded by the Police. The evidence on record indicates that, after commission of the present offence, the Petitioner had given 1059 calls on the mobile phone of co-accused Rinku Kumar and *vice versa* Rinku Kumar had given 393 calls to the Petitioner. At this stage, we

are refraining ourselves from minutely dissecting the evidence on record, as it may cause prejudice to the Petitioner in the further proceedings. Suffice it to say that, at this stage there is sufficient material available against the Petitioner to proceed further against her.

16.1) Section 2(i)(a) defines 'abet' with its grammatical variations and cognate expressions and includes therein under sub-section (iii) the rendering of any assistance whether financial or otherwise to the organised crime syndicate.

16.2) The Division Bench of this Court, of which one of us (A.S. Gadkari, J.) was a member, in the case of *Sachin Bansilal Ghaiwal V/s. State of Maharashtra,* after taking into consideration the principle of law laid down in an unreported Judgment of the learned Single Judge of this Court in the case of *Anil U. Gote V/s. The State of Maharashtra in Criminal Application No.3978 of 2004 dated 3rd November, 2004,* has held as under:-

> *"19. It is the settled position of law that the singular unlawful activity would attract the provisions of ordinary law and if it is the continuing one, and to wit, third offence of specified type which fulfills the requirement of the provisions of the MCOC Act, it becomes organized crime to be registered as an offence under the MCOC Act. In such situation there are two options available to the prosecution/Investigating Agency, that is, either they can separately record the information about the commission of an offence of organized crime after successive unlawful activity of the specified type have been committed, for and on behalf of the organized syndicate,*

which has been done in the present case, or invoke the provisions of the said enactment to the unlawful activity already reported which is the successive in point of time that is to say the provisions of the MCOC Act can be invoked or applied to an existing CR/FIR. Reliance is placed on an unreported judgment of the learned Single Judge of this Court in Criminal Application No.3978 of 2004 in case of Anil U. Gote Vs. The State of Maharashtra dated 3rd November 2004 which indubitably lays down the correct position of law pertaining to the invocation/applicability of the provisions of the MCOC Act."

16.3) In the case in hand the provisions of the M.C.O.C. Act have been applied to an existing crime i.e. to C.R. No.346 of 2023, dated 22nd May 2023, registered with Chikhali Police Station and according to us, the said provisions have rightly been applied in view of the facts of the present case. As noted above and after perusing the record of investigation, we are of the considered view that, the Petitioner not only is a member of the organised crime syndicate headed by Karan Rokade, but has actively aided and abetted the organised crime syndicate headed by him.

16.4) The Division Bench of this Court in the case of *Anil S. Nanduskar Vs. State of Maharashtra, reported in 2008(12) LJ Soft 156 : 2008(3) Mh.L.J. (Cri.) 650,* in para No.13 has held as under :-

"13. The settled law by a catena of decisions of the Apex Court is to the effect that it is desirable that every order whether the approval or sanction it should speak for itself, i.e. ex-facie it should disclose consideration of the materials placed before it and

application of mind thereto. However, failure to reproduce or refer those recitals in the resolution or order itself would not render the order of approval or sanction to be invalid unless the prosecution fails to establish by leading evidence that all the materials necessary for the grant of approval or sanction were placed before the concerned authority for due application of mind by such authority before the grant of approval and or sanction. It apparently discloses that question of validity of approval or sanction cannot be decided unless the prosecution is afforded opportunity to lead evidence in that regard. Undoubtedly, an accused desiring to raise objection regarding the defects in such approval or sanction, or grant, he can raise such objection; however, for conclusive decision on the said point the accused has to wait till the trial is complete and on that ground he cannot insist for discharge unless the objection relates to inherent lack of jurisdiction to the concerned authority to grant sanction or approval and such issue can be decided on undisputed facts. The law being well settled to the effect that the prosecution in a case where sanction or the approval order does not ex-facie show consideration of all the materials and/or application of mind, is entitled to establish the same by leading necessary evidence regarding production of materials before the concerned authority, the question of discharge of accused merely on the basis of such objection being raised cannot arise. The decision on the point of defect, if any, in the order of approval or sanction will have to be at the conclusion of the trial."

According to us, it is the correct legal position and requires no deviation from it.

16.5) In view of the above, we are of the considered opinion that, there is no merit to the challenge of the impugned Prior Approval dated 5th July 2023, under Section 23(1)(a) of M.C.O.C. Act, granted by Respondent No.2, to apply the provisions of said Act to the present crime.

17) We will now turn to the second issue crystallized as regards grant of bail and/or pre-arrest bail under Article 226 of Constitution of India.

18) The Constitution Bench of the Hon'ble Supreme Court in the case of *Kartar Singh Vs. State of Punjab (supra)* has held as under :-

> *328. ..... Can it be said with certainty that terrorists and disruptionists who create terrorism and disruption and inject sense of insecurity, are not likely to abscond or misuse their liberty if released on anticipatory bail. Evidently, the Parliament has thought it fit not to extend the benefit of Section 438 to such offenders.*
>
> *329. Further, at the risk of repetition, we may add that Section 438 is a new provision incorporated in the present Code creating a new right. If that new right is taken away, can it be said that the removal of Section 438 is violative of Article 21. In Gurbaksh Singh, there is no specific statement that the removal of Section 438 at any time will amount to violation of Article 21 of the Constitution.*
>
> *330. Hence for the aforementioned reasons, the attack made on the validity of sub-section (7) of Section 20 has to fail.*
>
> *334. Hence, in view of the discussion made in relation to Section*

20(7) of the TADA Act and of the legislative competence of the State, the contention that it is violative of Articles 14, 19 and 21 of the Constitution has no merit and as such has to be rejected.

359. Though the High Courts have very wide powers under Article 226, the very vastness of the powers imposes on it the responsibility to use them with circumspection and in accordance with the judicial consideration and well established principles. The legislative history and the object of TADA Act indicate that the special Act has been enacted to meet challenges arising out of terrorism and disruption. Special provisions are enacted in the Act with regard to the grant of bail and appeals arising from any judgment, sentence or order (not being an interlocutory order) of a Designated Court etc. The overriding effect of the provisions of the Act (i.e. Section 25 of TADA Act) and the Rules made thereunder and the non-obstante clause in Section 20(7) reading, "Notwithstanding anything contained in the Code……" clearly postulate that in granting of bail, the special provisions alone should be made applicable. If any party is aggrieved by the order, the only remedy under the Act is to approach the Supreme Court by way of an appeal. If the High Courts entertain bail applications invoking their extraordinary jurisdiction under Article 226 and pass orders, then the very scheme and object of the Act and the intendment of the Parliament would be completely defeated and frustrated. But at the same time it cannot be said that the High Courts have no jurisdiction. Therefore, we totally agree with the view taken by this Court in Abdul Hamid Haji Mohammed that if the High Court is inclined to entertain any application under Article 226, that power should be exercised

most sparingly and only in rare and appropriate cases in extreme circumstances. What those rare cases are and what would be the circumstances that would justify the entertaining of applications under Article 226 cannot be put in strait- jacket. However, we would like to emphasise and re- emphasise that the judicial discipline and comity of courts require that the High Courts should refrain from exercising their jurisdiction in entertaining bail applications in respect of an accused indicted under the special Act since this Court has jurisdiction to interfere and correct the orders of the High Courts under Article 136 of the Constitution.

368. The above are to maintain the higher rhythms of pulsating democratic life in a constitutional order.

TO SUM UP

(1) ……

(14) Section 20(7) of the TADA Act excluding the application of Section 438 of the Code of Criminal Procedure in relation to any case under the Act and the Rules made thereunder, cannot be said to have deprived the personal liberty of a person as enshrined in Article 21 of the Constitution;

(15) The deletion of the application of Section 438 in the State of Uttar Pradesh by Section 9 of the Code of Criminal Procedure (U.P.) Amendment, 1976 does not offend either Article 14 or Article 19 or Article 21 of the Constitution and the State Legislature is competent to delete that section, which is one of the matters enumerated in the Concurrent List (List III of the Seventh Schedule) and such deletion is valid under Article 254(2) of the Constitution;

(16) Sub-section (8) of Section 20 of TADA Act imposing the ban on release of bail of a person accused of any offence punishable under the Act or any rule made thereunder, but diluting the ban only on the fulfillment of the two conditions mentioned in clauses (a) and (b) of that sub-section cannot be said to be infringing the principle adumbrated in Article 21 of the Constitution;

(17) Though it cannot be said that the High Court has no jurisdiction to entertain an application for bail under Article 226 of the Constitution and pass orders either way, relating to the cases under the Act 1987, that power should be exercised sparingly, that too only in rare and appropriate cases in extreme circumstances. But the judicial discipline and comity of courts require that the High Courts should refrain from exercising the extraordinary jurisdiction in such matters;

(18) ……

18.1) The Hon'ble Supreme Court in the case of *Hema Mishra (supra)* in para No.27 has held as under :-

"It is for this reason, we are of the opinion that in appropriate cases the High Court is empowered to entertain the petition under Article 226 of the Constitution of India where the main relief itself is against arrest. Obviously, when provisions of Section 438 of Cr.P.C. are not available to the accused persons in the State of Uttar Pradesh, under the normal circumstances such accused persons would not be entitled to claim such a relief under Article 226 of the Constitution. It cannot be converted into a second window for the

relief which is consciously denied statutorily making it a case of casus omissus. At the same time, as rightly observed in para 21 extracted above, the High Court cannot be completely denuded of its powers under Article 226 of the Constitution, to grant such a relief in appropriate and deserving cases; albeit this power is to be exercised with extreme caution and sparingly in those cases where arrest of a person would lead to total miscarriage of justice. There may be cases where pre-arrest may be entirely unwarranted and lead to disastrous consequences. Whenever the High Court is convinced of such a situation, it would be appropriate to grant the relief against pre-arrest in such cases. What would be those cases will have to be left to the wisdom of the High Court. What is emphasized is that the High Court is not bereft of its powers to grant this relief under Article 226 of the Constitution."

18.2) In the case of *Arnab M. Goswami Vs. State of Maharashtra (supra),* the Hon'ble Supreme Court has reiterated that the High Court while exercising its jurisdiction under Article 226 of the Constitution of India and particularly considering an application for bail, has to exercise its powers in a very sparing manner and is not to be used to choke or smother the prosecution that is legitimate. That, the High Court must exercise its power with caution and circumspection, cognizant of the fact that, this jurisdiction is not a ready substitute for recourse to the remedy for bail under Section 439 of Cr.P.C..

18.3) The Hon'ble Supreme Court in the case of *Muraleedharan V/s. State of Kerala, reported in AIR 2001 SC 1699,* while considering Section

8(2) of the Kerala Abkari Act which is in *pari materia* with Section 37 of the Narcotic Drugs and Psychotropic Substances Act, in para No. 7 has held as under:-

> *"7. The above provision is in pari materia with Section 37 of the Narcotic Drugs and Psychotropic Substances Act. This Court has held, time and again, that no person who is involved in an offence under that Act shall be released on bail in contravention of the conditions laid down in the said Section. (vide Union of India vs. Ram Samujh (1999) 9 SCC 429). If the position is thus in regard to an accused even after arrest, it is incomprehensible how the position would be less when he approaches the court for pre-arrest bail knowing that he would also be implicated as an accused. Custodial interrogation of such accused is indispensably necessary for the investigating agency to unearth all the links involved in the criminal conspiracies committed by the persons which ultimately led to the capital tragedy. We express our reprobation at the supercilious manner in which the Sessions Judge decided to think that "no material could be collected by the investigating agency to connect the petitioner with the crime except the confessional statement of the co-accused." Such a wayward thinking emanating from a Sessions Judge deserves judicial condemnation. No court can afford to presume that the investigating agency would fail to trace out more materials to prove the accusation against an accused. We are at a loss to understand what would have prompted the Sessions Judge to conclude, at this early stage, that the investigating agency would not be able to collect any material to connect the appellant with the crime. The order of the Sessions Judge, blessing the appellant with a pre-arrest bail order, would*

have remained as a bugbear of how the discretion conferred on Sessions Judges under Section 438 of the Cr.P.C would have been misused. It is heartening that the High Court of Kerala did not allow such an order to remain in force for long. By the impugned order passed by the learned single Judge of the High Court an unwholesome benefit wangled by the appellant was rightly reversed."

19) It is thus clear that, the High Court can entertain a Petition under Article 226 of the Constitution of India for grant of bail and/or pre-arrest bail under M.C.O.C. Act in extreme and exceptional circumstances. It be noted here that, an 'extreme' or 'exceptional' circumstance be one which would qualify the terminology of the said two words and as enunciated by the Hon'ble Supreme Court in the aforenoted decisions and should not entertain a petition in a mundane or routine manner, as if it is considering an application under Section 438 of Cr.P.C., as the Court of first instance.

20) Having held that this Court can entertain Petition under Article 226 for grant of bail and/or pre-arrest bail, we shall now consider whether pre-arrest bail can be granted to the Petitioner.

21) Mr. Joshi seeks to support his prayer for grant of pre-arrest bail on two fold submissions firstly that the embargo placed by Section 21(3) of M.C.O.C Act will not operate if no *prima facie* case is made out by relying upon the decision in *Prathvi Raj Chauhan V/s. Union of India (supra)* and secondly that Co-ordinate Bench of this Court in *Shabhana Shaikh (supra)*

had granted pre-arrest bail and constitutes binding precedent.

22) As far as the reliance placed on decision of *Prathvi Raj Chauhan (supra)* is concerned, the said decision was rendered in context of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (S.C.S.T Act). In the present case the crime has been registered under the provisions of M.C.O.C Act. Section 21(3) of the M.C.O.C. Act is not only analogous but *pari materia* with Section 20(7) of the T.A.D.A. Act.

22.1) Section 20(7) of T.A.D.A. Act reads as under :-

> *"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 offenc punishable under this Act or any rule made thereunder."*

22.2) Section 21(3) of M.C.O.C. Act reads as under :-

> *"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."*

23) The penal statutes and the provisions thereof are necessarily required to be strictly construed and interpreted. It is trite that, the penal laws must be construed according to the legislative intent as expressed in the enactment and the provisions thereof.

23.1) It is the settled position of law by a catena of judgments that, a statute is an edict of the Legislature and the conventional way of

interpreting or construing a statute is to seek the 'intention' of its maker. A statute is to be construed according to the intent of them, that make it and the duty of judicature is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature, in other words the 'legal meaning' or 'true meaning' of the statutory provision. The statute must be read as a whole in its context. It is now firmly established that the intention of the Legislature must be found by reading the statute as a whole.

23.2) The statute to be construed to make it effective and workable and the Courts strongly lean against a construction which reduces a statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative. The Courts should therefore reject that construction which will defeat the plain intention of the Legislature even though there may be some inaccuracy or inexactness in the language used in a provision.

23.3) Every provision and word must be looked at generally and in the context in which it is used. Elementary principle of interpreting any word while considering a statute is to gather the intention of the legislature. The Court can make a purposeful interpretation so as to effectuate the intention of the legislature and not a purposeless one in order

to defeat the intention of the legislature wholly or in part.

24) The M.C.O.C. Act is enacted by the Legislature 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. The intention of Legislature behind enacting the said Act can be discerned from the Statement of Objects and Reasons of the said Act, which reads as under:-

> *"Organised crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnapping for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organised crime is very huge and has serious adverse effect on our economy. It is seen that the organised criminal syndicates make a common cause with terrorists gangs and foster narco terrorism which extend beyond the national boundaries. There is reason to believe that organised criminal gangs are operating in the State and thus, there is immediate need to curb their activities.*
>
> *It is also noticed that the organized criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.*
>
> *2. The existing legal frame work i.e. the penal and procedural*

laws and the adjudicatory system are found to be rather inadequate to curb or control the menace of organised crime. Government has, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime."

24.1) The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was introduced in the Parliament, to protect the marginalized communities against discrimination and atrocities. This Act provides the protection from social disabilities such as denial of access to certain places and to use customary passage, personal atrocities like forceful drinking or eating of inedible food, sexual exploitation, injury, etc. atrocities affecting properties, malicious prosecution, political disabilities and economic exploitation. The said Act provides for the provisions for punishment for offences of atrocities and neglect of duties, special and exclusive courts, Act provides for rights of the victim and witnesses, further powers and procedures are described and discussed more specifically in the said Act. The very aim and object of the said Act is to protect the innocent and not to dilute the law. The object is of deliver justice to marginalize through proactive efforts, giving them a life of dignity, self-esteem and a life without fear, violence or separation from the dominant castes. The intention of Legislature behind enacting the said Act can be discerned from

the Statement of Objects and Reasons of the said Act, which reads as under:-

> *"1. Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.*
>
> *2. Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and the Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and the Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes. Under the*

circumstances, the existing laws like the Protection of Civil Rights Act, 1955 and the normal provisions of the Indian Penal Code have been found to be inadequate to check these crimes. A special Legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary.

3. *The term 'atrocity' has not been defined so far. It is considered necessary that not only the term 'atrocity' should be defined but stringent measures should be introduced to provide for higher punishments for committing such atrocities. It is also proposed to enjoining on the States and the Union Territories to take specific preventive and punitive measures to protect the Scheduled Castes and the Scheduled Tribes from being victimised and where atrocities are committed, to provide adequate relief and assistance to rehabilitate them.*
4. *The Bill seeks to achieve the above objects."*

25) It is to be noted here that, in the S.C.S.T. Act though the provision of Section 18 is *pari materia* with Section 21(3) of M.C.O.C. or Section 20(7) of T.A.D.A. Act, there is no provision such as Section 21(4) of M.C.O.C. Act or Section 20(8) of T.A.D.A. Act, imposing twin condition for releasing an accused even on regular bail.

25.1) In the case of *Prathvi Raj Chauhan (supra)* the Hon'ble Supreme Court, while considering the bar created by Sections 18 and 18-A(2) of S.C.S.T. Act for the applicability of provisions of Section 438 of Cr.P.C. has held that, if the complaint does not make out a *prima facie* case,

then the said bar shall not apply. It is further held that, as far as the provisions of Section 18-A and anticipatory bail is concerned, in cases where no *prima facie* material exists warranting arrest in a complaint, the Court has the inherent power to direct a pre-arrest bail. The Supreme Court has emphasised that, while considering any application seeking pre-arrest bail, the High Court has to balance the two interests; i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of Cr.P.C., but that it is used sparingly and such orders made in very exceptional cases, where no *prima facie* offence is made out as shown in the F.I.R. and further also that, if such orders are not made in those classes of cases, the result would inevitably a miscarriage of justice or abuse of process of law. That, such stringent terms, otherwise contrary to the philosophy of bail, are absolutely essential because a liberal use of power to grant pre-arrest bail would defeat the intention of Parliament.

26) As noted earlier, the M.C.O.C. Act and S.C.S.T. Act operates in different spheres and the intention of Legislature in enacting the same is also different. The M.C.O.C. Act is enacted to control the menace of organised crime, whereas the S.C.S.T. Act is a social Legislation to maintain social engineering and equilibrium in the society at large. In view thereof, the contention of the learned counsel for the Petitioner for equating the provisions of Section 18 of S.C.S.T. Act with Section 21(3) of M.C.O.C. Act, cannot be accepted and is accordingly rejected.

27) The evidence/material revealed during the course of investigation is in brief discussed by us in the foregoing para No.16 and for the sake of brevity we do not intend to reproduce it here. Suffice it to say that, there is more than sufficient material found against the Petitioner during the investigation of present crime to show her involvement in it and therefore the Petitioner is not entitled to be protected by way of pre-arrest bail.

28) We shall now consider the seminal legal issue of the precedential value of the decision in *Shabhana Shaikh (supra)* as the submission of Mr. Joshi is that the said decision constitutes binding precedent.

29) What constitutes binding precedent has been well settled by the Apex Court in *Union of India V/s. Dhanwanti Devi, reported in (1996) 6 SCC 44,* wherein the Apex Court has held as under:

> *"9. Before adverting to and considering whether solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that Union of India v. Hari Krishan Khosla case [1993 Supp (2) SCC 149], is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and is per se per incuriam. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio*

decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates- (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for

what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi."

30) In *The Regional Manager V/s. Pawan Kumar Dubey, reported in AIR 1976 SC 1766,* the Apex Court on the aspect of what constitutes *ratio decidendi* has held thus :-

"7. We think that the principles involved in applying Article 311(2) having been sufficiently explained in Shamsher Singh's case [AIR 1974 SC 2192], it should no longer be possible to urge that Sughar Singh's case [AIR 1974 SC 423], could give rise to some misapprehension of the law. Indeed we do not think that the principles of law declared and applied so often have really changed. But, the application of the same law to the differing circumstances and facts of various cases which have come up to this Court could create the impression sometimes that there is some conflict between different decisions of this Court. Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

31) It is thus clear that to constitute a binding precedent the rule

deducible from the application of law to the facts and circumstances of the case must be ascertained. It is not the conclusion based upon facts which constitutes the ratio of the decision. To put it simply in other words, it is not what the Court did in a particular matter which binds the co-ordinate Bench but what is binding is the principle of law enunciated after adopting process of reasoning.

32) Against the well settled legal propositions of binding precedent, the decision in *Shabhana Shaikh (supra)* will have to be examined to deduce the binding principle of law laid down.

33) As submitted by Mr. Thakare, learned *amicus curiae,* that on 13th August 2021 itself the same Court has dismissed a Writ Petition filed by *Smt. Lata Pawar (supra)* with similar reliefs, as were prayed in the case of *Shabhana Shaikh (supra),* after considering all the necessary and relevant provisions and the said Order has been upheld by the Hon'ble Supreme Court by its Order dated 3rd September 2021. We are at pains to note that, Mr. Joshi, learned counsel for the Petitioner did not point out the said decision to us with fairness and in fact withheld it and therefore it was pointed out by the learned *amicus curiae.*

34) In the case of *Shabhana Shaikh (supra)* the Petition under Article 226 was filed for the following reliefs.

> *"(a) To quash and set aside the impugned order passed by the Ld. Special Judge in Anticipatory Bail Application No. 1523 of*

2020, dated 27.4.2021;

(b) To quash and set aside the sanction order, dated 9.2.2021 under Section 23(2) of Maharashtra Control of Organized Crime Act, 1999 passed by the Director General of Police;

(c) To release the petitioner on suitable bail in the event of her arrest pertaining to the case registered at C.R. No. 332 of 2020 with Trombay Police Station, on such terms and conditions."

The Court considered the material against the Petitioner therein and *prima facie* came to the conclusion that, there is no material to establish the nexus between the Petitioner and the organised crime syndicate. The Court has relied upon the decision in the case of State of *Maharashtra Vs. Lalit Somdatta Nagpal, reported in (2007) 4 SCC 171 : 2007 ALL SCR 1078,* for strict interpretation of the provisions of M.C.O.C. Act. The Court thereafter recorded its finding that, once it records a *prima facie* satisfaction that the invocation of the provisions under M.C.O.C. Act qua the Petitioner was not justified by, then the embargo under Section 23 of the M.C.O.C. Act may not come in to play and the entitlement of the Petitioner for the grant of the relief of pre-arrest bail would hinge upon considerations which generally weigh in the existence of the discretion to grant pre-arrest bail. The Court has scrutinized the material on record and as and by way of final relief has granted pre-arrest bail to the Petitioner therein. It appears from the perusal of the said judgment that the main prayers/substantial prayers i.e. prayer clauses (a) and (b) have not been

granted and as and by way of final relief the prayer of pre-arrest bail is granted.

35) From the authoratative judicial pronouncement of the Apex Court in case of *Kartar Singh (supra)* and *Hema Mishra(supra),* it can be discerned that the Apex Court has laid down in unequivocal terms that, the Petitions under Article 226 of the Constitution of India seeking pre-arrest bail or bail should be entertained only in rare and appropriate cases and in extreme circumstances. The Apex Court in the case of *Kartar Singh (supra)* as well as in the case of *Hema Mishra (supra),* has left it to the wisdom of High Court, where High Court is convinced of an extreme situation and in rare and deserving cases to grant the relief of pre-arrest bail.

36) The reliance which has been placed by Mr. Joshi on the decision in the case of *Shabhana Shaikh (supra)* to drive home the point that even in the present case the relief of pre-arrest bail should be granted is misplaced for the reason that in the decision of *Shabhana Shaikh (supra),* we do not find a reflection of the factors, which have to be considered as laid down by the Apex Court in the cases of *Kartar Singh (supra)* and *Hema Mishra (supra)* . In *Shabhana Shaikh (supra),* the Co-ordinate Bench has considered the facts of that case and has come to a conclusion that there is hardly any material which justifies her designation as a member of the organised crime syndicate and has thereafter proceeded to consider the relief of pre-arrest bail. Based on appreciation of the

material on record, the Court had granted pre-arrest bail to the Accused. From the said decision we are unable to discern any legal principle of general applicability. A decision to grant pre-arrest bail in circumstances of that case can never be regarded as binding precedent. It is only the statement of principles of law upon which the decision is based which would be binding. The decision of *Shabhana Shaikh (supra)* being a conclusion drawn on the facts of that case without any statement of principles of law, in our view, would not constitute binding precedent.

37) It is thus clear to us that, the Court in the case of *Shabhana Shaikh (supra)* does not lay down any principle of law and therefore we unhesitatingly hold that, the decision in the case of *Shabhana Shaikh (supra)* does not constitute binding precedent.

38) Accordingly, we answer the issues raised for consideration as under :-

(a) There is no merit in the challenge to the Prior Approval dated 5th July, 2023.

(b) In exercise of powers under Article 226 of Constitution of India, High Court can entertain a Petition for grant of bail and/or pre-arrest bail under M.C.O.C Act.

(c) The decision rendered by Co-ordinate Bench in *Shabhana Shaikh vs State of Maharashtra (Criminal Writ Petition No. 1959 of 2021)* does not constitute binding precedent.

39) Resultantly the Writ Petition stands dismissed.

39.1) In view of dismissal of Writ Petition, Interim Application No. 3062 of 2023 does not survive and is accordingly disposed off.

40) Before parting with the Judgment, we would like to place on record our sincere appreciation for the efforts put in by Mr. Thakare, the learned *amicus-curiae* in rationally assisting this Court in the present case.

(SHARMILA U. DESHMUKH, J.) **(A.S. GADKARI, J.)**

41) At this stage, Mr. Joshi, learned counsel for Petitioner submitted that, the Petitioner intends to question correctness of the present Order before the Hon'ble Supreme Court. That, by an Order dated 11th August 2023 the Petitioner has been protected by way of ad-interim relief and the same may be continued for a period of three weeks from today.

41.1) Mr. Patil, learned A.P.P. and Mr. Bhise, learned counsel for Applicant-Intervenor vehemently opposed the said prayer.

41.2) However, taking into consideration the fact that the Petitioner is protected by way of ad-interim relief since 11th August 2023, we deem it appropriate to continue the said ad-interim relief for a period of three weeks from today.

(SHARMILA U. DESHMUKH, J.) **(A.S. GADKARI, J.)**