
(2010) 05 BOM CK 0054
In the Bombay High Court
Case No : Criminal Appeal No. 930 of 2009

Ganesh Nivrutti Marne

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-05-2010

Acts Referred:

Arms Act, 1959 — Section 3(25)
Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 154, 190, 227, 228, 319
Income Tax Act, 1961 — Section 115WB, 115WB(1), 115WB(2), 115WB(3)
Maharashtra Control of Organised Crime Act, 1999 — Section 12, 2(1), 23, 23(1), 23(2)
Partnership Act, 1932 — Section 69(2), 69(3)
Penal Code, 1860 (IPC) — Section 109, 120B, 143, 144, 145
Prevention of Corruption Act, 1988 — Section 19
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 20A, 20A(1), 3, 3(1), 5

Citation : (2010) 112 BOMLR 2280

Hon'ble Judges : V.K. Tahiramani, J;Ranjana Desai, J

Bench : Division Bench

Advocate : S.R. Chitnis and Ashish Sawant, for the Appellant; P.H. Kantharia, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Ranjana Desai, J.—The appellant is accused 7 in MCOCA Special Case No. 2 of 2007 pending in the court of Special Judge (under MCOCA), Pune. In this appeal filed u/s 12 of the Maharashtra Control of Organized Crimes Act, 1999 (for short, "the MCOCA"), the appellant has challenged order dated 19/8/2009 whereby his application for discharge was rejected.

2 The prosecution case needs to be shortly stated. It is as under:

The appellant along with other accused hatched conspiracy and committed murder of Sandeep Mohol (for convenience, "the deceased") on 4/10/2006 at about 11.30 a.m. while he was proceeding in his four wheeler near a traffic

signal near Paud Flyover Bridge, Paud Road, Pune. The appellant and others committed murder of the deceased with the aid of chopper, sickle, revolver, etc. on account of previous enmity and rivalry between the two gangs. The appellant heads the Ganesh Marane Gang and all the accused are members of the said gang. The appellant and other members of the organized crime syndicate have committed several offences of similar nature in the past to gain an edge over the rival gang and to achieve supremacy in the local area. The appellant and other accused acting in a synchronized manner planned and conspired to murder the deceased on 4/10/2006. The accused came on motorcycles and surrounded the four wheeler in which the deceased was sitting. They broke the glasses of the windows of the four wheeler of the deceased and attacked the deceased in a well planned manner. After successfully commissioning the crime, they fled away. Offences punishable under Sections 302, 307, 143, 147, 148, 149, 120B and 109 of the Indian Penal Code (for short, "the IPC") and Section 3(25) of the Arms Act were registered vide C.R. No. 562 of 2006 at Kothrud Police Station, Pune on the complaint lodged by Mr. Prakash Dagdu Karpe against five named accused and 3-4 unknown persons. During the course of investigation, police came to the conclusion that the appellant and other accused are members of organized crime syndicate headed by the appellant and they were indulging in organized crime with a view to gaining pecuniary benefits. Therefore, after obtaining approval u/s 23(1) of the MCOCA, offences under Sections 3(1), 3(2) and 3(4) of the MCOCA came to be added. Thereafter, sanction u/s 23(2) of the MCOCA was obtained from the Competent Authority. The appellant and others came to be arrested on 25/10/2006. The application preferred by the appellant praying for discharge has been rejected vide the impugned order and, hence, the appellant has preferred this appeal.

3. We have heard, at some length, Mr. Chitnis, senior counsel appearing for the appellant. Mr. Chitnis has taken us through the Statement of Objects and Reasons and the Preamble of the MCOCA. He has also taken us through the relevant provisions of the MCOCA more particularly Sections 2(1)(d), 2(1)(e) and 2(1)(f). Mr. Chitnis submitted that Section 2(1)(d) of the MCOCA describes "organized crime" as 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 object of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency. Mr. Chitnis submitted that if we read the Statement of Objects and Reasons of the MCOCA and the Preamble thereof and definition of the term "organized crime", it is clear that the continuing unlawful activity must be indulged in 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. Mr. Chitnis submitted that pecuniary benefits is the main ingredient of this section and unless there is material to show that the continuing unlawful activity was carried out for pecuniary benefit,

the provisions of the MCOCA cannot be attracted. In this connection, Mr. Chitnis relied on the judgment of the Division Bench of this Court in Sherbahadur Akram Khan and Ors. v. State of Maharashtra 2007 ALL MR (Cri.) 1. Mr. Chitnis relied upon the observations made by the Division Bench that the provisions of the MCOCA would be attracted only if it is established that unlawful activity is undertaken by a person with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person or for promoting insurgency. Mr. Chitnis submitted that in this case this Court has made it clear that the words in Section 2(1)(d) - "with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage" will have to be given some effective meaning and applying the principle of ejusdem generis, the words "other advantage" would have to be interpreted in the same manner as the previous terms "pecuniary benefits" or "undue economic advantage". On the doctrine of "ejusdem generis", Mr. Chitnis relied on R. & B. Falcon (A) PTY Ltd. v. Commissioner of Income Tax (2008) 12 SCC 466 and the Commissioner of Income Tax, Udaipur Rajasthan Vs. Mcdowell and Co. Ltd., Mr. Chitnis submitted that in Sherbahadur Khan, this Court has agreed with the view taken by learned Single Judge of this Court in State of Maharashtra v. Bharat Baburao Gavhane and Ors. 2006 ALL MR (Cri.) 2895 that merely stating that a gang leader and his associates run a crime syndicate with a view to gaining pecuniary benefits and advantages and supremacy over rival gangs by violence, intimidation and other coercive means, is not sufficient to maintain a prosecution under the MCOCA. There must be some material even at prima facie stage in that behalf. Counsel submitted that there is absolutely no material in this case to indicate that the offence in question was committed to gain pecuniary benefit or advantage. Counsel submitted that the view taken by learned Special Judge that whenever there is a gang war and a murder, it is necessarily prompted by a desire to have pecuniary gain or pecuniary advantage is a wrong view of law.

4. Counsel also relied on Madan S/o Ramkisan Gangwani v. State of Maharashtra 2009 All MR (Cri.) 1447 in support of his submission that continuing unlawful activity evidenced by more than one chargesheets is one of the ingredients of the offence of organized crime and the purpose thereof is to see antecedents and not to convict without proof of other facts which constitute the ingredients of Section 2(1)(d). Therefore, two charge-sheets cannot be considered by themselves. There has to be something more. The object of the organized crime has to be to gain pecuniary advantage.

5. Mr. Chitnis then submitted that learned Special Judge ignored the order passed by his predecessor discharging accused Taru. Mr. Chitnis submitted that learned Special Judge was bound by that order and he should have followed it. Learned Special Judge has not given any reasons why he has departed from the view taken in the case of co-accused where obviously same facts are involved. Counsel urged that the Special Judge has merely made a reference to Sherbahadur Khan and Bharat Gavhane and has not discussed and indicated why he has not followed these judgments which were followed by his predecessor.

Counsel submitted that the predecessor of learned Special Judge has referred to Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, This judgment has great relevance to the issues involved in this case and learned Special Judge has not even referred to it.

6. Counsel submitted that approval u/s 23(1)(a) of the MCOCA is bad in law because it discloses non application of mind. There is a Jawak letter referred to in the approval order which is not forthcoming. Counsel submitted that it is wrong on the part of the State to suppress the said letter on the ground that it is a confidential document. In this connection, he relied on the judgment of the Supreme Court in Anirudhsinhji Jadeja and another Vs. State of Gujarat, He submitted that in this judgment, the Supreme Court was considering an identical provision pertaining to approval under Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short, "the TADA") and the Supreme Court has referred to the entire proposal, which was forwarded by the police. He submitted that therefore, there is nothing confidential in this letter and this letter ought to have been furnished to the appellant. Counsel submitted that in this judgment, the Supreme Court has found fault with the police because while granting approval, they had considered the accused statements. Counsel submitted that the ratio of this judgment is squarely applicable to this case.

7. Lastly, counsel submitted that the approval and sanction must contain the individual role of every accused. Role of each accused should be highlighted. In this connection, counsel relied on paragraphs 3, 4 and 5 of the judgment of the Supreme Court in Rambhai Nathabhai Gadhvi and Others Vs. State of Gujarat, Counsel also relied on judgment of the Division Bench of this Court to which one of us (Tahilramani, J.) is a party in Adnan Bilal Mulla v. State of Maharashtra 2010 All M.R. (Cri.) 1212. Counsel also relied on judgment of the Supreme Court in Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra, in support of his submission that if while examining an application praying for discharge the court comes to a conclusion that two views are possible and evidence produced before the court gives rise to suspicion only as distinguished from grave suspicion, the court will be within its right to discharge the accused. Counsel submitted that the present case is fully covered by the ratio of Yogesh and, hence, the impugned order needs to be set aside.

8. We have also heard Ms. Kantharia, learned A.P.P. appearing for the State. She submitted that the present case is completely covered by the judgment of this Court in Anil Sadashiv Nanduskar v. State of Maharashtra 2008 (3) Mh.L.J. (Cri.) 650. She submitted that every point which is argued before this Court was also argued in Anil Nanduskar and this Court has expressly rejected those submissions. Learned A.P.P. submitted that in Anil Nanduskar, this Court has taken a view that if the sanction or the approval order does not ex facie show consideration of all the materials and or application of mind, the prosecution is entitled to establish the same by leading necessary evidence regarding production of material before the concerned authority. This Court has observed

that the accused cannot be discharged merely on this basis. Learned A.P.P. submitted that the reliance placed by counsel for the petitioner on Sherbahadur Khan is totally misplaced. In Anil Nanduskar, this Court has held that Sherbahadur Khan does not lay down a binding principle because in that case, this Court was not dealing with the definition of the expression "organized crime" u/s 2(1)(d) but the court was discussing the matter in relation to the facts of a particular case. Learned A.P.P. pointed out that even in Govind Sakharam Ubhe v. State of Maharashtra 2009 All M.R. (Cri) 1903 a Division Bench of this Court to which one of us (Smt. Ranjana Desai, J.) was a party has observed that in the facts of Sherbahadur Khan, the offences could, by no stretch of imagination, be considered to give the accused any pecuniary or undue economic or other advantage. Sherbahadur Khan must be, therefore, restricted to its own facts. Learned A.P.P. pointed out that in Bharat Gavhane, a learned Single Judge of this Court has rejected the submission that the words "or other advantage for himself or any other person" appearing in the definition of the term "organized crime" would take their colour from earlier part of the words i.e. the principle of ejusdem generis would apply. Learned A.P.P. pointed out that in Sidharth Ramesh Janmejy v. State of Maharashtra, 2005 (1) Bom.C.R. (Cri.) 372 another Single Judge of this Court has taken a similar view. Learned A.P.P. submitted that in Ranjit Singh Brahmajeetsing Sharma v. State of Maharashtra and Anr. 2005 (2) Bom.C.R. (Cri.) 567 SC the Supreme Court has expressly kept this question open. Learned A.P.P. submitted that therefore this submission deserves to be rejected.

9. Learned A.P.P. submitted that there is sufficient material on record to indicate the complicity of the appellant and, therefore, application of the MCOCA is justified. Learned A.P.P. submitted that this is not a case where two views are possible. The only view which is possible is that the application of the MCOCA is justified. Learned A.P.P. submitted that so far as the discharge of the co-accused is concerned, the State is taking steps to appeal against that order and, therefore, that order should not weigh with this Court while considering the present appeal. Learned A.P.P. submitted that in the circumstances, no interference is called for with the impugned order.

10. Since we are dealing with a discharge application, we shall first ascertain the principles which should guide us while dealing with a discharge application. In Govind Ubhe, this Court has considered all the relevant judgments including the judgment of the Supreme Court in State of Karnataka Vs. L. Muniswamy and Others, and summarized the law in the following manner.

25. The principles laid down by the Supreme Court in the above cases need to be summarized. It is settled law that at the stage of Section 227 of the Code, the court has power to sift the materials collected by the prosecution to find out whether there is prima facie case against the accused or not. The court has to be satisfied that there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him. The

Court's enquiry must not be directed to find out whether the case will end in conviction. However, though roving enquiry is not permissible, the court can consider whether the material collected by the prosecution if accepted as it is without being subjected to cross-examination gives rise to strong and grave suspicion for presuming that the accused has committed the offence and that unrebutted material will lead to a conviction. If at the stage of Section 227 or Section 228, the scales as to the guilt or innocence of the accused are even then the court must proceed to frame a charge. There is no question of giving benefit of doubt to the accused and discharge the accused at that stage because the scales are even. That can be done only at the conclusion of trial. If there is a strong suspicion which leads the court to think that there is a ground for presuming that the accused has committed an offence, then the court will proceed to frame the charge. But if two views are possible and the court is satisfied that the evidence gives rise to some suspicion but not grave suspicion against the accused, the court will be within its right to discharge the accused. Suspicion has to be strong and grave suspicion leading the court to presume that the accused has committed an offence. While basic infirmities and broad probabilities can be considered, the court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it is conducting a trial. Probative value of the material cannot be gone into at that stage.

11. Mr. Chitnis has relied on Yogesh to which reference is not made in Govind Ubhe. Yogesh lays down the same principles. In that case, the Supreme Court has observed that if two views are equally possible and the judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. There can be no two opinions on this statement of law. In fact, in the paragraph which we have quoted hereinabove from Govind Ubhe, this Court has reproduced the same principle. Keeping the above parameters that determine the courts' power qua prayer for discharge, we will deal with this case.

12. Mr. Chitnis strenuously urged that since the facts involved in the co-accused's case are identical and similar arguments were advanced in both the matters, judicial propriety demanded learned Special Judge to follow the view taken in the similar matter by his predecessor and discharge the appellant. Ordinarily if the role of the accused is identical and all the facts are similar, a court would follow the view taken by a coordinate court. However, before us the entire matter is at large. We will have to consider the case of the present appellant independently. The view taken by a coordinate trial court is not binding on us. We must also bear in mind that the present appellant heads the gang. The gang is named after him. We would, therefore, consider his case independently. We must however note our dissatisfaction about the conduct of the investigating agency. It is not understood how if it was desirous of challenging the order discharging the co-accused Taru, it slept over the matter for such a long time. The Director General of Police, State of Maharashtra needs to look into this matter.

13. In the context of rival submissions, we need to examine whether the role of each accused must be stated in the proposal and the sanction. Similarly, what needs to be examined is whether objective of gaining pecuniary advantage is the core of Section 2(1)(d) and the words "other advantage" found therein are to be construed "ejusdem generis" with the earlier terms in the light of Sherbahadur Khan.

14. Section 2(1)(d) of the MCOCA must be kept in the forefront as the arguments revolve around it. It reads as under:

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

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

(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;

15. At the outset, we must state that we are unable to accept the argument that the approval order or the sanction order must specifically state the charges and the role of each accused. Neither the approval order nor the sanction order is expected to be like a treatise. It cannot be equated with a charge-sheet. Undoubtedly, it is necessary for the investigating authority to place adequate material before the authority which grants approval and sanction and the approval order and the sanction order being not a mechanical exercise must disclose application of mind. But, they are not expected to be verbose. It is wrong to hold that prolixity is indicative of application of mind. We have carefully read the approval order. It refers to the proposal and relevant papers submitted by the Kothrud Police Station. It states the names of the accused, who are members of the organized crime syndicate. It states that after perusal of the material it appears that the accused are indulging in continuing unlawful activities for gaining pecuniary undue economic and other advantages and, therefore, it is necessary to initiate action under the provisions of the MCOCA and, therefore, the approval is being given for that purpose. The approval order, in our opinion, is issued after proper application of mind.

16. It is pertinent to note that the sanction order begins by saying that the Assistant Commissioner of Police, Crime-I has submitted official note sheets dated 20/3/2007 and 28/3/2007 along with papers of investigation of C.R. No. 562 of 2006 and proposal for sanction u/s 23(2) of the MCOCA. It states the

names of the accused. It refers to the evidence collected during investigation and states that it reveals that the accused are members of the organized crime syndicate. It states that the investigation has revealed that the appellant and his associates run an organized crime syndicate with a view to gaining pecuniary benefits and other advantages for themselves by use of violence, intimidation and other coercive means. It states that the evidence clearly establishes that the appellant and his associates in furtherance of the activities of their organized crime syndicate have committed offence in question by using firearms voluntarily to establish their supremacy over their rival gang.

17. We are, therefore, of the opinion that the sanction order has been issued after perusing the proposal as well as two official note sheets. It is not as if the sanction order has been issued on the basis of a cryptic note placed before the sanctioning authority. The averments made in the sanction order indicate that it is issued after application of mind.

18. We shall now turn to the submission based on Anirudhsinhji Karansinhji Jadeja that the javak letter referred to in the approval order should be supplied to the appellant.

19. In our opinion, Anirudhsinhji Karansinhji Jadeja is not applicable to the facts of the present case. No doubt, Section 20A(1) of TADA is similar to Section 23(1) of the MCOCA. But, in Anirudhsinhji Karansinhji Jadeja, the appellant had urged that prior approval as required u/s 20A(1) was not taken. After considering the facts, the Supreme Court came to the conclusion that the DSP did not exercise the jurisdiction vested in him u/s 20A(1) and referred the matter to the Additional Chief Secretary requesting for permission to invoke the provisions of Sections 3 and 5 of the TADA. The Supreme Court observed that by sending a report, the DSP did not exercise his power vested in him in law. It must be remembered that there is no such allegation in this case. The Supreme Court then went on to examine the sanction in that case and came to the conclusion that the sanction was issued without application of mind on the following grounds:

- (a) Sanction was given merely on a fax message of the DSP;
- (b) The Government did not take steps to satisfy itself whether what had been stated by the DSP was borne out by the record which apparently had not been called for.
- (c) Sanction was given post haste on 18/3/1995 i.e. the very next day of the fax message of DSP dated 17/3/1995.
- (d) The DSP emphasized the political angle and referred to statements of the accused before arrest.
- (e) The State Government gave the sanction even without discussing the matter with the investigating officer.

20. In this case, sanction is not granted merely on the basis of the fax message. We have already noted that sanctioning authority has stated that official note sheets dated 20/3/2007 and 28/3/2007 along with papers of investigation and proposal were sent to him and after perusal of the same the sanction order was issued. It is clearly stated that the evidence collected during the investigation revealed that the accused are members of the organized crime syndicate. There is repeated reference to the revelations made during the investigation and facts disclosed from the evidence. Therefore, it cannot be stated that the Additional DG relied merely on a fax message. It is also pertinent to note that sanction is not given on the next day. The approval is dated 30/12/2006 whereas note sheets are dated 20/3/2007 and 28/3/2007 and sanction is dated 30/3/2007. Therefore, sanction is not granted post haste. The proposal does not refer to any political angle.

21. So far as the contention that javak letter referred to in the approval order be made available to the appellant is concerned, it is not possible for us to accede to that request. In *Anirudhsinhji Karansinhji Jadeja* the Supreme Court quoted the fax message from the approval order and not from the sanction. In any case, the Supreme Court has not laid down any law that all documents referred to in the sanction order or in the approval order must be made available to the accused. It is in the peculiar facts of the case before it where the DSP had abdicated his power to issue sanction order that the Supreme Court went through the records and quoted the fax message which was the only material on which sanction was issued. Besides, it appears to us that there was a political angle to that case and DSP had emphasized that in the fax message. We prima facie do not find any political angle to this case. We say prima facie because it would always be open to the appellant to prove to the contrary in the trial court if he so desires. At any rate, no ratio can be deduced from the above judgment that all documents referred to in the approval order and the sanction order even though they may be confidential must be made available to the accused.

22. Having gone through the javak letter, we may only state that the said letter contains several facts which have a bearing on the applicability of the MCOCA and it does not rest on the accused statements.

23. Reliance placed on *Dilawar Singh Vs. Parvinder Singh @ Iqbal Singh and Another*, is misplaced. That was a case where the accused was charged under the Prevention of Corruption Act (for short, "the PC Act"). The Supreme Court was considering Sections 190 and 319 of the Code and Section 19 of the PC Act, which provides for sanction. The Supreme Court held that the PC Act is a Special Act and, hence, it will have an overriding effect over the general provisions contained in Section 190 or Section 319 of the Code. u/s 190 of the Code, a Magistrate can take cognizance of offence after conditions stated therein are fulfilled and u/s 319 of the Code a court has a power to proceed against a person who appears to be guilty of offence. This, a Special Judge under the PC Act cannot do. The Supreme Court observed that the Special Judge trying an offence

under the PC Act cannot in purported exercise of power u/s 319 of the Code summon any person and try him if no sanction is granted by the appropriate authority under the PC Act. It is in this context that the Supreme Court held that the contention that the court takes cognizance of offence and not an offender holds good when the Magistrate takes cognizance u/s 190 of the Code. But, that will not apply to prosecution under the PC Act. The Supreme Court distinguished the cases under the PC Act and said that for a prosecution under the PC Act, sanction is sine qua non for taking cognizance of the offence qua that person. In that case, the accused was being prosecuted without sanction under the PC Act. The emphasis of the Supreme Court was on these facts. Nowhere has the Supreme Court laid down the law in Dilawar Singh that in sanction the role of each accused must be stated. This submission must, therefore, be rejected.

24. Before we go to the doctrine of ejusdem generis in the context of Section 2(1) (d) of the MCOCA, it is necessary to see the law on sanction. Fortunately for us, the law is succinctly discussed by the Division Bench of this Court in Anil Nanduskar. It is, therefore, not necessary for us to look for the relevant judgments elsewhere. We shall just refer to the relevant judgments quoted by this Court in AIR 1948 82 (Privy Council) AIR 1948 Privy Counsel 82 the Privy Counsel has held that the sanction for prosecution would be good if it was proved by evidence that it had been granted after all the necessary facts had been placed before the sanctioning authority though those facts might not have been stated on the face of the sanction itself. This view has been endorsed by the Supreme Court in Feroz Din and Others Vs. State of West Bengal,

25. In The State of Rajasthan Vs. Tarachand Jain, the Supreme Court observed that the burden of proof that the requisite sanction had been obtained rests upon the prosecution. The burden includes proof that sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based. These facts might appear on the face of the sanction or it might be proved by independent evidence that sanction was accorded for prosecution after those facts had been placed before the sanctioning authority.

26. In Superintendent of Police (C.B.I) Vs. Deepak Chowdhary and others, the Supreme Court held that the grant of sanction is only an administrative function, though it is true that the accused may be saddled with the liability to be prosecuted in a court of law. What is material at that time is that the necessary facts collected during the investigation constituting the offence have to be placed before the sanctioning authority and it has to consider the material. Prima facie, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to grant sanction.

27. In Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, it was held that it is incumbent upon the prosecution to prove that a valid sanction has been granted by the sanctioning authority after it was satisfied that a case for sanction has been made out constituting the offence and this should be done in two ways - either (i) by producing the original sanction which itself contains the facts

constituting the offence and the grounds of satisfaction, or (ii) by adducing the evidence aliunde to show that the facts were placed before the sanctioning authority and the satisfaction arrived at by it. In State (Anti Corruption Branch) Govt. of N.C.T. of Delhi and Another Vs. Dr. R.C. Anand and Another, the Supreme Court reiterated the same principle and held that the order of sanction may ex-facie disclose that the sanctioning authority had considered the evidence and further material placed before it. This fact can be established by extrinsic evidence by placing the relevant files before the court to show that all relevant facts were considered by the sanctioning authority.

28. In C.S. Krishnamurthy v. State of Karnataka : 2005 (4) SCC 81 the Supreme Court while reiterating its earlier decision in R.S. Pandit v. State of Bihar 1963 Supp. (2) SCR 652 to the effect that "the facts should be referred to on the face of the sanction and if they do not so appear, the prosecution must prove them by extraneous evidence, is clearly sound having regard to the purpose of the requirements of a sanction.." held that "the ratio in sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order".

29. After considering the above judgments in Anil Nanduskar, the Division Bench noted its conclusions 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.

30. We concur with the above view of this Court, which is based on the relevant judgments of the Supreme Court. We are of the view that in this case, the proposal and the sanction order ex-facie show that the sanctioning authority has considered the relevant material. In our opinion, there is application of mind. The said material has been produced before us. After perusing the same, we feel that the relevant material was considered by the authorities. In any case, if the appellant raises an issue that the relevant material was not before the concerned authority and there was no application of mind, the prosecution can always lead evidence to prove to the contrary. It is the case of the prosecution that the organized crime was committed for pecuniary gain. According to the appellant this case merely involves a gang war. Gang war is not prompted by the object of gaining pecuniary advantage. In our opinion on the basis of the settled principles, the prosecution can always lead evidence to show that the objective of the organized crime in this case was pecuniary gain. On the ground that the proposal and the sanction order allegedly do not disclose this angle, the appellant cannot be discharged.

31. It was contended that Nirranjan Singh Punjabi, where the Supreme Court was dealing with a discharge application in a TADA case, was considered by the trial court while discharging the co-accused. But, it was not referred to by the judge, who has passed the impugned order. Admittedly, this judgment was not cited before the judge, who has passed the impugned order. No fault, therefore, could be found with him for not referring to it.

32. Coming to Nirranjan Singh Punjab i , in our opinion, it is not applicable to the present case. In that case on facts, the Supreme Court considered the statements and came to the conclusion that the intention of the accused was to eliminate the rival gang and gain supremacy in the underworld so that they may be known as bullies of the locality. The Supreme Court was of the opinion that terror and fear in the minds of the people may be a mere fallout of the violent acts of the accused, but that cannot be said to be their intention. Their intention was to only eliminate Raju and Keshav for gaining supremacy in the underworld. It is against this background that the Supreme Court observed that the material placed on record and the documents relied on did not prima facie disclose commission of the offence punishable u/s 3(1) of the TADA.

33. It is pertinent to note that u/s 3(1) of the TADA, terrorist act is defined as an act done with intent to overawe the Government or to strike terror in the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people by using bombs, etc. in such a manner as to inter alia cause death or to cause loss to property or disruption of any supplies essential to the life of community. In Nirranjan Singh Punjabi, the Supreme Court on facts came to a conclusion that it was an individual dispute between two gangs and there was no intention to create terror. Section 2(1)(d)

of the MCOCA is not in pari materia with Section 3(1) of the TADA. The concept of "organized crime syndicate" and its attempt to gain pecuniary benefits or other advantages is peculiar to the MCOCA. Therefore, on facts, the present case and Niranjani Singh Punjabi cannot be equated with each other.

34. We have carefully gone through the materials which were placed before the authorities, which granted approval and sanction in this case and we find that there are several statements of witnesses which prima facie indicate that the appellant and others were indulging in organized crime for pecuniary gain. It is not necessary for us to give details of those statements because that will come on record only in the trial. Undoubtedly, in a given case, gang war may also be prompted by consideration of economic supremacy and there is nothing wrong in taking that view. There are cases where gangs try to eliminate each other for economic supremacy. In this case, there is enough material on record to prima facie hold that economic gain was one of the objectives of the appellant and the co-accused. This case, therefore, cannot be compared with Niranjani Singh Punjabi.

35. Bharat Gavhane also does not help the appellant. In that case, in one CR offences were under Sections 143, 144 - 149 and 341 of the IPC read with Section 135 of the Bombay Police Act and in another CR, the offences were under Sections 323, 325, 452 and 395 of the IPC. In the third case, offence was u/s 307 of the IPC. On the facts, learned Single Judge of this Court came to the conclusion that emphasis was to attack and assault rival gang members with weapons. Learned Single Judge observed that mere reference to the provisions of IPC is not enough. There has to be prima facie objective to gain advantages and benefits pecuniary or otherwise. In this case, serious offences are alleged against the appellant and the co-accused. The material does disclose that the objective of the organized crime syndicate headed by the appellant was to gain pecuniary benefits and other advantages by use of violence, intimidation and other coercive means. Bharat Gavhane is, therefore, not applicable to the present case. Judgment in Madan Gangwani will also not be applicable to this case because merely filing of two charge-sheets is not considered for application of the MCOCA. The object of the organized crime syndicate headed by the appellant is also to gain pecuniary advantage.

36. It was urged that the words "other advantage" appearing in Section 2(1)(d) must be read ejusdem generis with the preceding objectives. Sherbahadur Khan was relied upon by Mr. Chitnis. In that case, the Division Bench of this Court held that the words in Section 2(1)(d) "with the objective of gaining pecuniary benefits or gaining undue economic or other advantage" will have to be given some effective meaning. The Division Bench further observed that applying the principle of ejusdem generis, the words "other advantage" would have to be interpreted in the same manner as the previous terms "pecuniary benefits" or "undue economic advantage". We must note that in Anil Nanduskar, this judgment was considered by the Division Bench and the Division Bench held that

in Sherbahadur Khan, the consideration of words "other advantages" was strictly with reference to the facts of the case rather than interpreting the provision under Sections 2(1)(d) of the MCOCA. The Division Bench after referring to Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, held that such a ruling cannot be said to lay down a binding principle. It was observed that the ratio of a decision is one which is pronounced after taking into consideration the point which arises for consideration, the arguments advanced with reference to such point and analysis thereof and considered opinion expressed thereupon. The Division Bench observed that Sherbahadur Khan cannot be held to be laying down a law in relation to the words "other advantages" appearing in Section 2(1)(d) of MCOCA.

37. We must mention that in Ranjitsingh Sharma, the Supreme Court has kept this point open. Since it is argued that the view taken by this Court in Anil Nanduskar is not correct and the view taken in Sherbahadur Khan has been wrongly distinguished, though we are of the opinion that in this case organized crime is committed with the objective of pecuniary gain, by way of abundant caution, we will examine independently whether as stated by this Court in Sherbahadur Khan, the words "other advantage" will have to be interpreted in the same manner as the previous terms "pecuniary benefits" or "undue economic advantage".

38. In this connection we must reproduce how The Law Lexicon (Reprint Edition 1987) defines the word "Other". "Other: Different from that which has been specified; not the same; different.

Other "always implies something additional." per Erle, C.J., Ayrion v. Abbott 14 Q.B. 17; or something different. Lord Tenterden in Sandiman v. Breach 7 B. & C. 99 : said, - "Where a statute, or other document, enumerates several classes of persons or things, and immediately following and classed with such enumeration the clause embraces "other" persons or things, -the word "other" will generally be read as "other such like", so that the persons or things therein comprised may be read as ejusdem generis with and not of a quality superior to, or different from, those specially enumerated. The principle of this rule as regards statutes was explained by Kenyon, C.J., in R. v. Wallis 5 T.R. 379 wherein he said that if the legislature had meant the general words to be applied without restriction it "would have used only one compendious word." Yet, on the other hand, though "it is very likely that in former days the doctrine was applied strictly, there are cases which show that the modern tendency is to reject a restricted construction". per Esher, M.R. Anderson v. Anderson 64 L.J.Q.B. 458 : (1895) 1 Q.B. 749.

The rule of ejusdem generis is by no means a rule of universal application, and its use is to carry out not to defeat, the legislative intent. When it can be seen that the particular word by which the general word is followed was inserted, not to give a coloring to the general word, but for a distinct object, then, to carry out the purpose of the statute, the general word ought to govern. It is a mistake to

allow the rule to pervert the construction. (Words and Phrases.)

39. We have to see therefore whether the words "gaining pecuniary benefits" or "gaining undue economic advantage" are used for any distinct purpose. We must also find out what is the legislative intent because the use of doctrine of ejusdem generis is to carry out and not to defeat the legislative intent. The Preamble and Statements of Objects and Reasons of the MCOCA read as follows:

Preamble:

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.

Statements of Objects & Reasons:

Organised crime has been for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fuelled by illegal wealth generated by contract killing, extortion, smuggling in contrabands, illegal trade in narcotics kidnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organized crime being very huge, it has had serious adverse effect on our economy. It was seen that the organized criminal syndicates made a common cause with terrorist gangs and foster terrorism which extend beyond the national boundaries. There was reason to believe that organized criminal gangs have been operating in the State and, thus, there was immediate need to curb their activities.

It was also noticed that the organized criminals have been making 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 would be 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 were found to be rather inadequate to curb or control the menace of organized crime. Government, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, I electronic or oral communication to control the menace of the organized crime.

It is the purpose of this Act to achieve these objects.

40. In this connection, we may usefully refer to the judgment of the Supreme Court in Jagdish Chander Gupta Vs. Kajaria Traders (India) Ltd., . In that case, the Supreme Court was considering whether the words "other proceeding" found in Section 69(3) of the Indian Partnership Act, 1932 have to be interpreted ejusdem generis, that is to say, whether the natural meaning of "other proceeding" should be cut down in the light of the words that precede them, the

words which preceded the words "other proceeding" being the words "a claim of set-off". The Supreme Court observed as under:

6. ...When in a statute particular classes are mentioned by name and then are followed by general words, the general words are sometimes construed ejusdem generis, i.e., limited to the same category or genus comprehended by the particular words. But it is not necessary that this rule must always apply. The nature of the special words and the general words must be considered before the rule is applied. In *Allen v. Emerson* (1944) 1 KB 362 Asquith, J., gave interesting examples of particular words followed by general words where the principle of ejusdem generis might or might not apply. We think that the following illustration will clear any difficulty. In the expression "books, pamphlets, newspapers and other documents" private letters may not be held included if "other documents" be interpreted ejusdem generis with what goes before. But in a provision which reads "newspapers or other document likely to convey secrets to the enemy", the words "other document" would include document of any kind and would not take their colour from "news papers". It follows, therefore, that interpretation ejusdem generis or noscitur a sociis need not always be made when words showing particular classes are followed by general words. Before the general words can be so interpreted there must be a genus constituted or a category disclosed with reference to which the general words can and are intended to be restricted.

41. On the facts before it, the Supreme Court accepted the contention that it was impossible to think of any proceedings of the nature of a claim of set-off other than a claim of set-off which could be raised in a suit such as is described in Sub-section (2) of Section 69 of the Indian Partnership Act, 1932. The Supreme Court was of the view that therefore, the words "other proceeding" cannot belong to the same genus as a claim of set-off. The Supreme Court, therefore, rejected as far-fetched the argument that the words "other proceeding" must be read as ejusdem generis" with a claim of set-off. In our opinion, therefore, the court must find out (a) whether the particular words constitute a genus (b) whether there is intention to restrict the general word with reference to the category constituted by the particular word and (c) what is the nature of the particular word and the general word.

42. We may also refer to the judgment of the Supreme Court in *Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others*, In that case, the Supreme Court was considering whether the words "any cause other than" found in Section 43 of the Bengal Excise Act, 1909 can be read ejusdem generis with the causes specified in Clause (a) to (g) thereof. Section 42(1) stated the grounds on which licence, permit or pass granted under the Bengal Excise Act may be cancelled or suspended. Section 43 pertained to power to withdraw licences and it inter alia stated that whenever the authority who granted any licence under this Act considers that the licence should be withdrawn for any cause other than those specified in Section 42, it shall remit a sum equal

to the sum". It was argued that Section 43 of the Bengal Excise Act could be saved from the challenge of arbitrariness if the expression "any cause other than" found in Section 43(1) is construed ejusdem generis with the Clauses (a) to (g) of Section 42(1) of the Bengal Excise Act. While rejecting this submission, the Supreme Court observed as under:

The ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category. (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration and (v) there is no indication of a different legislative intent. In the present case, it is not easy to construe the various clauses of Section 42 as constituting one category or class. But that apart, the very language of the two sections and the objects intended respectively to be achieved by them also negative any intention of the legislature to attract the rule of ejusdem generis.

43. In McDowell & Co. on which Mr. Chitnis has placed reliance, the Supreme Court quoted the above analysis of the doctrine of ejusdem generis from Amar Chandra Chakraborty.

44. In R & B Falcon, on which Mr. Chitnis has placed reliance, the Supreme Court again considered this doctrine. The question which was posed before the Supreme Court was whether the expenditure incurred by the employer to enable the employee to undertake a journey from his place of residence to the place of work or either reimbursement of the amount for journey or free tickets therefore provided by him would come within the purview of the term "by way of reimbursement or otherwise" found in Section 115WB(1)(a) of the Income Tax Act, 1961 i.e. whether the said expenditure would be fringe benefit. Section 115WB of the Income Tax Act, 1961 provides for fringe benefits. Sub-section (1) thereof takes within its sweep any consideration for employment, inter alia, by way of privilege service, facility or amenity directly or indirectly. It reads thus:

115-WB. Fringe benefits. - (1) For the purposes of this Chapter, "fringe benefits" means any consideration for employment provided by way of -

(a) any privilege, service, facility or amenity, directly or indirectly, provided by an employer, whether by way of reimbursement or otherwise, to his employees (including former employee or employees);

(b) any free or concessional ticket provided by the employer for private journeys of his employees or their family members; and

Sub-section (2) thereof contains an expansive meaning. The Supreme Court observed that it expanded the meaning of "fringe benefit" stating as to when the fringe benefit would be deemed to have been provided. The Supreme Court observed that the expansive meaning of the said term "benefits" by reason of a legal fiction created also brings within its purview, benefits which would be

deemed to have been provided by the employer to his employees during the previous year. Sub-section (3) provides for an exemption. It makes clear that the privilege, service, facility or amenity does not include perquisites in respect of which tax is paid or payable by the employee or any benefit or amenity in the nature of free or subsidized transport or any such allowance provided by the employer to his employees for journeys by the employees from their residence to the place of work or such place of work to the place of residence. The Supreme Court considered the definition of the word "otherwise" as given in Advanced Law Lexicon and Standard Dictionary. The Supreme Court then observed that as under:

26. As a general rule, "otherwise" when following an enumeration, should receive an ejusdem generis interpretation per *Cleasby, B. Monck v. Hilton* (1877) 46 LJMC 163. The words "or otherwise", in law, when used as a general phrase following an enumeration of particulars, are commonly interpreted in a restricted sense, as referring to such other matters as are kindred to the classes before mentioned (Cent. Dict.).

45. It is pertinent to note that while holding that the matters enumerated in Sub-section 2 of Section 115WB are not covered by Sub-section (3) thereof and the amenity in the nature of free or subsidized transport is covered by Sub-section (1), the Supreme Court took into consideration, the well-settled principle that a statute should be given a purposive construction. Relevant paragraph of the Supreme Court's judgment may be quoted.

29. Parliament, in introducing the concept of fringe benefits, was clear in its mind insofar as on the one hand it avoided imposition of double taxation i.e. tax both on the hands of the employees and employers; on the other, it intended to bring succor to the employers offering some privilege, service, facility or amenity which was otherwise thought to be necessary or expedient. If any other construction is put to Sub-sections (1) and (3), the purpose of grant of exemption shall be defeated. If the latter part of Sub-section (3) cannot be given any meaning, it will result in an anomaly or absurdity. It is also now a well-settled principle of law that the court shall avoid such constructions which would render a part of the statutory provision otiose or meaningless. See *Visitor, Visitor and Others Vs. K.S. Misra, Commissioner of Sales Tax, Delhi and Others Vs. Shri Krishna Engg. Co. and Others*,

46. Section 2(1)(d) needs to be considered against the background of the above principle. We have already quoted the Preamble and the statement of Objects and Reasons. The Preamble states that the MCOCA makes provision for prevention and control of and for coping with criminal activity of organized crime syndicate or gang and for matters connected therewith. Therefore, it is the criminal activities of the organized crime syndicate which the MCOCA seeks to deal with. Statement of Objects and Reasons states how organized crime has become a serious threat to the society, how it knows no national boundaries and how illegal money generated by the organized crime syndicate affects the

national economy. It states that existing legal framework is found inadequate to curb menace of organized crime and, hence, it is decided by the Government to enact a special law. Each provision of the MCOCA must be read against the background of the Preamble and the Statements of Objects and Reasons and must be given purposive construction so as to fulfill the legislative intent. The MCOCA seeks to cover a variety of cases and not merely cases which involve economic gain or economic advantage.

47. As stated by the Supreme Court in the above cases, no provision can be given a restrictive meaning to frustrate the legislative intent. It is clarified by the Supreme Court that rule of ejusdem generis is by no means a rule of universal application and its use is to carry out and not to defeat the legislative intent. Nature of the particular word and general word has to be seen. Whether the particular word constitutes genus or not must also be seen and it must be seen whether the intention of the legislature is to restrict the meaning of the general word with reference to the particular word. Section 2(1)(d) contains an enumeration of specific words. They are "with objective of gaining pecuniary benefits, or gaining undue economic advantage". They constitute a category. If we look at the legislative intent, the words "other advantage" will have to be given an expansive meaning. They cannot be restricted to the category constituted by the preceding terms. They cannot be construed ejusdem generis with the preceding objectives because that will frustrate the legislative intent. It must be borne in mind that the legislature does not use any words as surplusage. Hence, the words "or other advantage" will have to be given a meaning which will be in tune with the legislative intent.

48. In Bharat Gavhane, learned Single Judge (Dharmadhikari, J.) has taken the same view on this point. We agree with him. We must quote the relevant paragraph.

The settled principle is that the Legislature does not use any word without intending any meaning to it. In other words, it is not mere surplusage. Once the objective of gaining pecuniary benefits is separated from gaining undue economic or other advantage, that means the Legislature desired a wider meaning so as to bring within the sweep of the definition of the word "organized crime" all activities which are continuing and unlawful in nature, by individuals undertaken singly or jointly either as member of an organized crime syndicate or on behalf of such syndicate and in the earlier part of the definition after the words "violence, threat of violence or intimidation or coercion, the Legislature did not exhaust itself but went ahead and referred to other unlawful means, then similar meaning will have to be given to the words which are in issue. Therefore, the objective may be of gaining not just pecuniary or undue economic benefits and advantages but other advantages as well, and, therefore, a restricted or narrow interpretation and meaning cannot be given as suggested by Shri Chitnis.

49. We may also refer to yet another judgment of learned Single Judge of this Court in Sidharth Janmejy. Learned Single Judge was dealing with the term

"other unlawful means" appearing in Section 2(1)(d) of the MCOCA. It was argued that the words "other lawful means" should be read ejusdem generis with the expression "by use of violence or threat of violence or intimidation or coercion". Learned Single Judge rejected this submission after referring to the Preamble and Statement of Objects and Reasons of the MCOCA. Learned Single Judge observed that the MCOCA is a special law enacted to prevent and control the continuing menace or organized crime, which is resorted to in different forms and, therefore, it is not possible to limit the meaning of expression "or other unlawful means" as suggested by the counsel for the accused. It was observed that the said expression will have to be given proper meaning so as to uphold the object and intent of the legislation, which is essentially to prevent and control the threat to the society caused by the illegal wealth generated "by various unlawful means" by organized syndicate or gang, who can be said to be indulging in professional crime.

50. In that case, learned Single Judge quoted relevant paragraph from Shankar @ Gauri Shankar and Others Vs. State of Tamil Nadu, which states what is organized crime. We may quote the same.

In large urban areas this kind of organized crime has taken deep roots. It has become the way of life of these organized criminal groups particularly indulging in underground unlawful activities. Eventually, the underground economy has entered on the vitals of the society gradually rendering it malignant. The organized crime has profit as its primary goal to be achieved at any cost. The potential for criminal violence in such crimes is inherently present in an organized crime group. The activities such crime groups indulge in may vary numerously. Prostitution is an activity bad in social sense as witnessed and is prohibited legally. Yet for many potential buyers the services of prostitutes are goods in the strict economic sense of the term goods. The buyers are willing to pay for these goods in the market transaction. It is these monetary values, though illegal, underlying that eventually lead to growth of these organized crimes and further criminal specialization whose only common aim is attainment of wealth primarily of course and then if possible power and influence by illegal means. It has thus become an enterprise not infrequently aiming at purchase of respectability. After all money is money and that which is illegally gained can seemingly be legally spent to achieve social status. That kind of criminally acquired social status is completely out of place and forlorn as to come anywhere near the concept of mitigating circumstances....

51. Learned Single Judge also quoted relevant extract from State of Maharashtra v. Bharat Chaganlal Raghani and Ors. 2002 Bom. CR (Cri.) (S.C.) 45 where the Supreme Court has again explained the term "organized crime". It reads thus:

In Europe, the terms "organized crime" and "professional crime" are largely interchangeable. As compared to American standards, the European criminal organizations are small-scale and short-lived. Such crimes are defined as involving a system of specifically defined relationships with mutual obligations

and privileges and association of a small group of criminals for the execution of the intended crime. The eruption of organized 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.

52. Keeping the above observations of the Supreme Court and the Preamble and Statements of Objects and Reasons, learned Single Judge refused to give restrictive meaning to the term "other unlawful means" by reading it ejusdem generis. By analogy and for the same reasons and in the light of other judgments to which we have made a reference, we are not inclined to read the words "other advantage" ejusdem generis with the preceding terms. The view expressed by the Division Bench of this Court in Anil Nanduskar, commends itself to us on all aspects. We also hold that Sherbahadur Khan will have to be restricted to its own facts.

53. Mr. Chitnis also relied on Rambhai Gadhvi where the Supreme Court was dealing with Section 20A of the TADA which is similar to Section 23(1) of the MCOCA. In that case, it was held that there was no valid sanction. In the facts before the Supreme Court, the sanction order made reference only to the FIR and the letter sent by the Superintendent of Police, seeking permission for sanction. The Supreme Court reproduced the sanction in the judgment. The sanction merely made reference to the letters and stated nothing more. In the circumstances, the Supreme Court observed that the Superintendent of Police did not send any material along with his letter. The Supreme Court observed that the Director General of Police also did not call for any record and, therefore, the sanction cannot be said to have been given after application of mind. We have already touched upon this point. The approval and the sanction order in this case are not brief. They give necessary particulars and the relevant record was before the concerned authorities for its perusal before the approval and the sanction order was passed. Therefore, the observations of the Supreme Court in Rambhai Gadhvi are not applicable to this case.

54. We must mention that in Anil Nanduskar, where Mr. Chitnis had appeared, reliance was placed on Rambhai Gadhvi. The Division Bench referred to the judgment in Prakash Kumar @ Prakash Bhutto Vs. State of Gujarat, and observed that in that case the Supreme Court has held that Rambhai Gadhvi is per incuriam because it did not notice two important judgments of the Supreme Court (Bilal Ahmed and Gurpreet Singh). The Division Bench observed that the advocates are expected to verify whether a judgment is declared per incuriam or not and overruled judgments should not be cited. The Division Bench further observed that failure in that regard can be construed as an attempt to mislead the court and can result in serious consequences. The Division Bench further

observed that no remorse was expressed by senior advocate when this was pointed out to him.

55. Mr. Chitnis submitted that these comments are unwarranted because in Prakash Kumar, judgment in Rambhai Gadhvi was declared per incuriam qua Section 12 and not qua Section 28A on which he is placing reliance. He submitted that in the circumstances, this matter should be referred to a larger Bench. It is not possible for us to refer the matter to a larger Bench. In our opinion, proper remedy for Mr. Chitnis was to challenge the judgment in Anil Nanduskar in the Supreme Court or make an application for review. We must mention that in Criminal Appeal No. 84 of 2008 similar prayer was made by Mr. Chitnis. The Division Bench presided over by the then Chief Justice Swanterkumar, C.J. (now a judge of the Supreme Court), rejected this prayer after making following observations.-

6. Another incidental argument raised by the learned Counsel appearing for the Appellant is that certain observations have been made by a Division Bench of this Court in its order dated 23rd November, 2007 passed in Criminal Appeal No. 536 of 2007 in the case of Anil Sadashiv Nanduskar v. State of Maharashtra. In paragraph 20 of that judgment, the Division Bench has observed that the decision of the Apex Court in the case of Rambhai Nathabhai Gadhvi and Others Vs. State of Gujarat, is no more a good law as was specifically declared to be per incurium by the Apex Court in the case of Prakash Kumar @ Prakash Bhutto Vs. State of Gujarat, It has been submitted that the position of law has been incorrectly stated with certain other observations by the Bench. We think that judicial propriety demands that an equal bench should not interfere with the observations on facts and law made by the Division Bench of this Court in Anil Sadashiv Nanduskar's case (supra) and it would be inappropriate to go into the facts and find out whether they are correct or incorrect. There is a remedy open to the aggrieved party to take appropriate steps in relation to the correction of the judgment either on fact or law. It would not be proper that after having heard this matter at some length, we comment that the judgment referred was not correct exposition of law and refer the matter to a larger bench. We have nothing to do with that, in the facts and circumstances of the case in hand and leave that question open.

56. Judicial propriety demands that we follow the same view and leave the question open. We must also refer to another argument advanced by Mr. Chitnis viz. that in the FIR, five accused and three absconding accused are named. However, in the sanction letter, more than eight accused are named and, therefore, sanction is vitiated. In Vinod G. Asrani Vs. State of Maharashtra, similar contention was rejected by the Supreme Court. We may quote the relevant observations of the Supreme Court.-

The scheme of CrPC makes it clear that once the information of the commission of an offence is received u/s 154 thereof, the investigating authorities take up the investigation and file charge-sheet against whoever is found during the

investigation to be 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 person 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 u/s 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 u/s 23(2) of the MCOCA.

This argument must, therefore, be rejected.

57. Mr. Chitnis also relied upon State of Maharashtra and Others Vs. Lalit Somdatta Nagpal and Another, He drew our attention to paragraph 62 of the said judgment where the Supreme Court has observed that having regard to the stringent provisions of the MCOCA, they will have to be very strictly interpreted and the concerned authorities would have to be bound down to the strict observance of the said provisions. The Supreme Court further observed that it has to be seen whether the investigation from its very inception has been conducted strictly in accordance with the provisions of the MCOCA. There can be no dispute about this proposition of law and we are of the opinion that prima facie no fault could be found with the approval or the sanction order to persuade us to hold that the investigation is not proper and discharge the appellant. In our opinion, judgment of this Court in Adnan Mulla has no relevance to the issues involved in this case. Hence, it is not necessary to discuss it.

58. It was argued by Mr. Chitnis that the belated affidavit filed by the State does not refer to any material indicating that the object of the organized crime syndicate is to gain pecuniary advantage. In fact it states that taking into consideration the past history of all the accused persons, the provisions of the MCOCA were applied to C.R. No. 562 of 2006. Mr. Chitnis is justified in making a grievance that the affidavit in reply was filed after the hearing of the petition began. We have taken note of the fact that in order dated 15/12/2009, the earlier Bench had directed that this appeal should be finally heard at the admission stage. The petition was filed on 14/9/2009 and the affidavit in reply is tendered in the court after the hearing began. It was sworn on 7/4/2010. We record our displeasure about this approach of the State Government. We hope that in future such lethargy is not shown by it. We also wish that the affidavit was more dexterously drafted. There is indeed no reply to the argument on pecuniary gain or advantage. But, because of such brief and delayed affidavit, the appellant cannot be discharged. We have perused the material which was placed before the sanctioning authority. We are prima facie satisfied that there is adequate material to justify application of the MCOCA. We prima facie feel that there is strong and grave suspicion which leads us to conclude that the appellant

is a leader of the organized crime syndicate and he and his associates have committed the offences alleged against them. We are not inclined to hold that on the facts before us two views are possible, one which is in favour of the appellant and the other which is against him. We prima facie feel that the only view which is possible is that application of the MCOCA is perfectly justified. Therefore, the appellant cannot be discharged. In our opinion, no interference is necessary with the impugned order.

59. We wish to make it clear that any observations made by us touching the merits of the case are prima facie observations.

60. The appeal is dismissed.