

MAHARASHTRA CONTROL OF ORGANISED CRIME ACT, 1999
(MAHARASHTRA ACT NO 30- OF 1999)
THE ACT

To make special provisions for prevention and control of, and for coping with, criminal activity by organized crime or gang, and for matters connected therewith or incidental thereto.

WHEREAS it was expedient 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;

AND WHEREAS, the Governor of Maharashtra was satisfied that Circumstances existed which rendered it necessary for him to take immediate action to make law, for the purposes aforesaid.

It is hereby enacted in the Fiftieth Year of the Republic of India as follows :

1. Short title, extent and commencement-

- (1) This Act may be called the Maharashtra Control of Organised Crime Act, 1999.
- (2) It extends to the whole of the State of Maharashtra.
- (3) It shall be deemed to have come into force on the 24th February 1999.

2. Definitions-

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

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

(i) the communication or association with any person with the actual knowledge or having reason to believe that he is engaged in assisting in any manner, an organised crime syndicate; (ii) the passing on or publication of, without authority, any information likely to assist the organised crime syndicate and the passing on or publication of or disclosure of any document or matter obtained from the organised crime syndicate; and

(iii) the rendering of any assistance, whether financial or otherwise, to the organised crime Syndicate;

(b) "code" means the Code of Criminal Procedure, 1973;

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

(d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed in a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;

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

Note 1

The expression "organised" in 2 (e) is very important. It means a Crime done by a single person in a planned manner or as a crime committed with the help of others in an organised way. It presupposes that the criminal, before carrying out the crime, has a plan or a design to commit the crime.

as, crime committed, with the help of others in an organised way. It presupposes that the criminal, before committing crime, has obtained complete information regarding the economic as well as social status of the person against whom the crime is committed.

(f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, indulge in activities of organised crime; (g) "Special Court" means the Special Court constituted under section 5.

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

3. Punishment for organised crime-

(1) Whoever commits an offence of organised crime shall,

(i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees one lac;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of a crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(3) Whoever harbours or conceals or attempts to harbour or conceal, any member of an organised crime syndicate, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(4) Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(5) Whoever holds any property derived from or obtained from commission of an organised crime or which has been obtained through the organised crime syndicate funds shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs.

4. Punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate.

If any person on behalf of a member of an organised crime syndicate is, or, at any time has been, in possession of any movable or immovable property which he cannot satisfactorily account for, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine, subject to a minimum fine of rupees one lac and such property shall also be liable for attachment and forfeiture, as provided by section 20.

Organised criminals are undoubtedly hard core criminals. They have no dearth of most modern weapons. Extortion and spreading terrorism in society is their aim. They target elite class of society. Naturally, the money they recover is in proportion. The money is not spent on just causes but to derail state economy. It is therefore, essential to mete out strictest punishment. Punishment envisaged in the Act is 3 to 10 years of imprisonment which can be extended to life imprisonment. Death penalty can also be imposed on the criminals who kill any one. So also a fine of 3 to 10 lacs can be imposed.

It will be interesting to compare the criminals under this Act with criminals under recently repealed Tada Act. Criminals under both Acts differ in attitude and approach. Criminals under Tada aim at disruptive activities. They are a threat to the Nation. On the contrary criminals under present law are extortionists.

This law also proposes punishment to those who possess any type of property accumulated through illegal means.

5. Special Courts

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

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

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

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

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

6. Jurisdiction of Special Court

Notwithstanding anything contained in the Code, every offence punishable under this Act shall, be triable by a Special Court within whose local jurisdiction it was committed or at the place where the case may be, by the Special Court constituted under subsection (1) of section 5.

7. Power of Special Court with respect to other offences.

(1) When trying any offence punishable under this Act, a Special Court may also try any other offence which the accused may, under the Code, be charged at the same trial, if the offence is connected with such other offence.

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

8. Public Prosecutor.

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

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

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

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

9. Procedure and powers of Special Court

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

(2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with a fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 261 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of section 263 to 265 of the Code shall, as far as may be, apply to such trial:

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

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

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

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

Note 3

Criminals under this Act is Special types of criminal and it is not in the interest of society if they move around society

Therefore provisions has been made in the Act for Special Court, to expediate their cases. Qualifications, etc. Jurisdiction of these Judges can be well compared with Judges appointed under Tada act. The Act made by Government has not taken away the powers of the High Court. However, this Court too, when facts are brought before it, take cognizance of the any offence.

10. Trial by Special Courts to have precedence.

The trial of any offence under this Act by a Special Court shall have precedence over the trial of any other case accused in any other Court (not being a Special Court) and shall be concluded in preference of the trial of such other case and accordingly the trial of such other cases shall remain in abeyance.

11. Power to transfer cases to regular Courts.

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

12. Appeal.

(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgement, sentence or order, including an interlocutory order, of a Special Court to the High Court.

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

13. Appointment of Competent Authority.

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

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

(1) A Police officer not below the rank of Superintendent of Police supervising the investigation of an organised crime

(1) Any officer below the rank of Superintendent of Police supervising the investigation of an organised crime under this Act may

submit an application in writing to the Competent Authority for an order authorising or approving the interception of electronic or oral communication by the investigating officer when such interception may provide or has provided any information of any offence involving an organised crime.

(2) Each application shall include the following information :

(a) the identity of the investigative or law enforcement officer making the application, and the head of the office authorising the application :

(b) a statement of the facts and circumstance, relied upon by the applicant, to justify his belief that an offence involving an organised crime has been committed, is being committed, or is about to be committed, including-

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

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

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

(iv) the identity of the person, if known, committing the offence of organised crime whose communication is intercepted;

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

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

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

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

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

(4) Upon such application, the Competent Authority may after recording the reasons in writing reject the application or grant an order, as requested or as modified, authorising or approving interception of wire, electronic or oral communication. The Competent Authority, on the basis of the facts submitted by the applicant that-

(a) there is a probable cause for belief that an individual is committing, has committed, or is about to commit an offence described and made punishable under section 3 and 4 of this Act;

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

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

interception,

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

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

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

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

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

(d) the identity of the agency authorized, to intercept, the communications, and of the person authorizing the application;

(e) the period of time during which such interception is authorized, including a statement as to whether the interception shall automatically terminate when the described communication has been first obtained. (6) The Competent Authority shall immediately after passing the order under sub-section (4), but in any case not later than seven days after the passing of the order, submit a copy of the same to the Review Committee constituted under section 15 along with the relevant underlying papers; record and his own findings, etc; in respect of the said order, for consideration and approval of the order by the Review Committee

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

(8) An order issued under this section may authorize or approve the interception of any wire, electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any case for more than sixty days. Such sixty days period shall begin on the day immediately preceding the day on which the investigating law enforcement officer first begins to conduct an interception under the order or ten days after the order is issued, whichever is earlier. Extension of an order may be granted, but only upon an application for an extension made in accordance with subsection (1) and the Competent Authority making the findings required by sub-section (4). The extension shall be no longer than the Competent Authority deems necessary to achieve the purposes for which the order is granted and in no event for longer than sixty days at a time. Every order and extension, thereof shall contain a provision that the authorization to intercept any event shall be executed as soon as practicable and shall be conducted in such a manner as to minimize the interception of communications not otherwise subject to interception under this section. The interception shall terminate upon attainment of the authorized objective, or in any event on expiry of the period of the order. In the case where intercepted communication is in a code or foreign language, and an expert in that foreign language or person who is reasonably available during the interception period, minimization may be accomplished as soon as practicable after the interception. An interception under this section may be conducted in whole or in part by a public servant, or by a person operating under a contract with the State Government, acting under the supervision of the investigating or law enforcement officer authorized to conduct the interception.

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

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

(a) an emergency situation exists that involves.

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

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

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

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

(b) there are grounds upon which an order could be issued under this section to authorize such interception, made in writing, the investigating Police Officer to intercept such wire, electronic or oral communication, if an application, approving the interception is made in accordance with the provisions. Of sub-sections (1) and (2) within 24 hours after the interception has occurred, or begins to occur.

(11) In the absence of an order approving the interception made under sub-section (10), such interception shall terminate when the communication sought is obtained or when the application for the order is rejected, whichever is earlier. In the event where an application for permitting interception is rejected under sub-section (4) or an application under section (10) for approval is rejected, or in any other case where the interception is terminated without an order issued, the contents of any wire, electronic or oral communication intercepted shall be treated as having been in violation of this section.

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

(b) Applications made and orders issued under this section shall be sealed by the Competent Authority. Copies of applications and orders shall be wherever the Competent Authority directs, and shall not be destroyed except on the order of the Competent Authority, and in any event shall be kept for ten years.

The Competent Authority upon the filing of a motion, may in his discretion make available to such person or his legal representative such portions of the intercepted communications, applications and orders as the Competent Authority may direct to be in the interest of justice.

(13) Notwithstanding anything in the Code or in any other law for the time being in force, the evidence collected under this section shall be admissible as evidence against any person in the Court during the trial of a case.

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

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

Explanation.--For the purposes of this section

(a) 'write communication' means any aural transfer made in whole

or part through the use of facilities for the transmission of communications by the aid of wire, cable or other like means between (the point of origin and the point of connection, between the point of origin and (the point of reception (in the use of such connection in switching station) and such term includes any electronic storage of such communication

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

communication is not subject to interception under circumstances justifying such expectation but such term include any electronic communication;

(c) "electronic communication" means any transfer of signs, 'signals,' writings, images, sounds, data or intellig nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system inland or foreign commerce but does not include—

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

(ii) any wire or oral communication;

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

(iv) any communication from a tracking device;

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

15. Constitution of Review Committee for review of authorisation orders.

(1) There shall be a Review Committee to review every order passed by the Competent Authority under section 14.

(2) The Review Committee shall consist of the following ex officio members namely ;

(i) the Chief Secretary to Government, Chairman.

(ii) the additional Chief Secretary or the senior most Principal Secretary as the case may be, in the Home Department, Member.

(iii) Principal Secretary or Secretary and Remembrancer of Legal Affairs, Law and Judiciary Department...Member.

(3) Every order passed by the Competent Authority under section 14. placed before the Review Committee shall be considered by the

Review Committee within ten days after its receipt, to decide whether the order, authorising or approving the interception under subsection (4) of section 14, for interception or disapproving the interception made under sub-section (4) of section 14 in emergency situation, passed by the Competent Authority was necessary, reasonable and justified.

(4) The Review Committee, after examining the entire record and holding such enquiry, if any, deemed necessary, shall issue order in writing. either approve the order passed by the Competent Authority or may issue order disapproving the order. On issue of an order of disapproval by the Review Committee, the interception, if any, already commenced shall be discontinued. The intercepted communication, if any, in the form of tape, wire or other device shall, thereupon, be inadmissible as evidence in any case and shall be directed to be destroyed.

16. Interception and disclosure of wire, electronic or oral communications prohibited.

Except as otherwise specifically provided in section 14, any police officer who—

(a) intentionally intercepts, endeavours to intercept, or procures any other person to intercept or endeavour to intercept, any wire, electronic or oral communication;

(b) intentionally uses; endeavours to use, Or procures any other person to use or endeavours to use any mechanical or other device to intercept any oral communication when-

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

- (ii) such device transmits communications by radio, or interferes with the transmission of such communication;
- (c) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic communication, knowing or having reason to know that the information was obtained through the interception of electronic or oral communication in violation of this sub-section;
- (d) intentionally uses, or endeavours to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this subsection; or
- (e) (i) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic communication, intercepted by means authorized by section 14;
- (ii) knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation under this Act;
- (iii) having obtained or received the information in connection with a criminal investigation; and
- (iv) with intent to improperly obstruct, impede, or interfere with a duly authorised criminal investigation; or
- (f) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of the Review Committee under sub-section (4) of section 15, shall for such violation be punishable with imprisonment term which may extend to one year and with fine upto rupees fifty thousand.

17. Special Rules of evidence.

(1) Notwithstanding anything to the contrary contained in the Code, or the Indian Evidence Act, 1872, for the purpose and punishment for offences under this Act or connected offences, the Court may take into consideration the probative value, the fact that the accused was,—

- (a) on any previous occasion bound under section 107 or section 110 of the Code;
- (b) detained under any law relating to preventive detention; or
- (c) on any previous occasion was prosecuted in the Special Court under this Act.

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

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

18. Certain confessions made to police officer to be taken into consideration.

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

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

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

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

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

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

(6) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if by the accused so produced and get his signature and in case of any complaint of torture, the person shall be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon.

Note 4

These are most important provisions in this Act. Though the powers have been granted to police to intercept through by various methods, the Government has retained with it ultimate reviewing powers. Against the unnecessary harassment of innocent persons, it is made essential in every case to obtain orders from the competent authority. Further, a check and review every order passed by the competent authority has been provided. It is a precaution carefully provided by lawmakers to have check at every stage, against the misuse of law. Because, interception of messages is a powerful weapon and any possibility that at same stage it can be misused can not be ignored. Therefore it is essential to have a check over the machinery who are allowed by law to use these methods to obtain information.

19. Protection of witness,

(1) Notwithstanding anything contained in the Code, the proceeding under this Act may be held in Camera, if the Court so desires;

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

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

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgements or in its reports, if, of, the case accessible to public.

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

(d) that, it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner. (4) Any person who contravenes any direction issued under subsection (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

20. Forfeiture and attachment of property.

(1) Where a person has been convicted of any offence punishable under, this Act, the Special Court may, in awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the State Government, free from all encumbrances.

(2) Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him

(2) Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him to order that all or any properties, movable or immovable or both belonging to him, shall, during the period of his attachment, and where such trial ends in conviction, the properties so attached shall stand forfeited to the State free from all encumbrances.

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

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

(b) The Special Court issuing a proclamation under clause (a) may, at any time, order the attachment of a movable or immovable or both; belonging to the proclaimed person, and thereupon the provisions of sections 83 and 84 of the Code shall apply to such attachment as if such attachment were made under that Code.

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

Note 5

Provisions in these sections are of general nature. Persons supplying information or procuring evidence against an accused might be in danger to his life. It is the duty of law to provide them protection. It is equally essential to observe the evidence of these witnesses. For this care will have to be taken that their identity is not disclosed. Provision has been made in section 19. Provision is also made in section 20 to attach the property of absconding offender.

21. Modified application of certain provisions of the code.

(1) Notwithstanding anything contained in the Code or in any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and "cognizable offence" defined in that clause shall be construed accordingly.

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

(a) the reference to "fifteen days", and "sixty days" wherever they occur, shall be construed as references to "ninety days" and "sixty days" respectively;

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

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

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

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

custody, or released on bail or on his own bond, unless—

- (a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and
 - (b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.
- (5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question.
- (6) The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code or any other law for the time being in force on the granting of bail.
- (7) The police officer seeking the custody of any person for pre-indictment or pre-trial interrogation from the judicial magistrate shall file a written statement explaining the reason for seeking such custody and also for the delay, if any, in police custody.

22. Presumption as to offences under section 3.

- (1) In a prosecution for an offence of organised crime punishable under section 3, if it is proved—
- (a) that unlawful arms and other material including documents or papers were recovered from the possession of the accused and there are reasons to believe that such unlawful arms and other material including documents or papers were used in the commission of such offence; or
 - (b) that by the evidence of an expert, the finger prints of the accused were found at the site of the offence or at the place where the offence was committed, including unlawful arms and other material including documents or papers and vehicle used in connection with the commission of such offence, the Special Court shall presume, unless the contrary is proved, that the accused committed such offence.
- (2) In a prosecution for an offence of organised crime punishable under sub-section (2) of section 3, if it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of, an offence of organised crime, the Special Court shall presume, unless the contrary is proved, that such person has committed the offence under the said sub-section (2).

23. Cognizance of, and investigation into, an offence.

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973—
- (a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police; and
 - (b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.
- (2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police.

24. Punishment for public servants failing in the discharge of their duties.

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

25. Overriding effect.

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

26. Protection of action taken in good faith.

No Suit, prosecution or other legal proceeding shall lie against the State Government or any officer or authority Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rule under or any order issued under any such rule.

27. Annual Report of Interceptions.

(1) The State Government shall cause an annual report to be prepared giving a full account of,

(i) the number of applications for authorisation of interceptions received by the Competent Authority from Department in which; prosecutions have been launched;

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

(iii) the number of interceptions carried out in emergency situations and the number of ex-post-facto authentic approvals granted or rejected in such matters; (iv) the number of prosecutions launched based on such interdictory convictions resulting from such interceptions, alongwith an explanatory memorandum giving general assessment utility and importance of the interceptions authorised.

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

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

28. Power of High Court to make rules.

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

29. Power of State Government to make rules.

(1) Without prejudice to the powers of the High Court to make rules under section 28, the State Government may, by notification in the Official Gazette, make rules for carrying out the purpose of this Act.

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

Note 6

Law-makers have gone into several minute things before enacting the present law. As [here are provisions] which provide for the misuse of this Act against innocent persons, there are also stricter provisions against bail being granted to an accused person on any flimsy ground. Before granting bail the special court will take into account many factors, such as-

1) The opportunity must be given to the public prosecutor to oppose the bail;

2) The court first must ensure that the accused, if released on bail shall not indulge in any unlawful activity; and

2) The court must ensure that the accused, if released on bail shall not indulge in any unlawful activity, and

3) The most important factor is that the court must be satisfied that the accused who was arrested for crime was not on bail for any other crime under this or any other act, when the crime under inquiry was committed.

Section 27 has made it compulsory to submit detailed annual report on interceptions of messages, to both the legislature secret matters have been allowed to be dropped from such report.

Sections 28 and 29 empower the high Court and the Government to make necessary rules under this Act.

30. Repeal of Mali. Ord. III of 1999 and saving

(1) The Maharashtra Control of Organised Crime Ordinance 1999 is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the said Ordinance shall be deemed to be done or taken, as the case may be, under the corresponding provisions of this Act