

## **Control Of Organized Crimes Act, 2000**

**1 of 2002**

**[02 December 2001]**

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# **Control Of Organized Crimes Act, 2000**

**1 of 2002**

**[02 December 2001]**

An Act to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang, and for matters connected therewith or incidental thereto; Whereas it is expedient to make special provisions for prevention and control of, and coping with, criminal activity by organized crime syndicate or gang and for matters connected therewith or incidental thereto; Be it enacted by the Karnataka State Legislature in the fifty first year of the Republic of India as follows: - 1. First published in the Karnataka Gazette Extra-ordinary on the second day of January, 2002.

## **1. Short Title, Extent And Commencement :-**

(1) This Act may be called the Karnataka Control of Organized Crimes Act, 2000.

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

(3) It shall come into force at once.

## **2. Definitions :-**

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

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

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

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

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

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

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

(d) "Continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence

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

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

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

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

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

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

### **3. Punishment For Organized Crime :-**

(1) Whoever commits an organized crime shall, -

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

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

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

(3) Whoever harbors or conceals or attempts to harbor or conceal, any member of an organized crime syndicate shall be punishable

with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to a fine, which shall not be less than five lakh rupees.

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

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

#### **4. Punishment For Possessing Unaccountable Wealth On Behalf Of A Member Of Organized Crime Syndicate :-**

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

#### **5. Special Courts :-**

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

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

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

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

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

## **6. Jurisdiction Of Special Court :-**

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

## **7. Power Of Special Courts With Respect To Other Offences :-**

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

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

## **8. Public Prosecutor :-**

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

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

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

less than ten years.

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

### **9. Procedure And Powers Of Special Court :-**

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

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

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

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

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

(4) Subject to other provisions of the Act, a Special court shall, for the purpose of trial of any offence, have all the powers of a court of

Session and shall try such offence as if it were a Court of Session, so far as may be, in accordance with the procedure specified in the Code for the trial before a Court of Session.

#### **10. Trial By Special Courts To Have Precedence :-**

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

#### **11. Power To Transfer Cases To Regular Courts :-**

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

#### **12. Appeal :-**

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

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

#### **13. Appointment Of Competent Authority :-**

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

#### **14. Authorization Of Interception Of Wire, Electronic Or Oral Communication :-**

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

such interception may provide or has provided evidence of any offence involving an organized crime.

(2) Each application shall include the following information:

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

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

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

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

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

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

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

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

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

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

(3) The Competent Authority may require the applicant to furnish



additional oral or documentary evidence in support of the application.

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

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

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

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

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

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

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

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

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

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

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

(6) The competent authority shall immediately after passing the order under sub-section (4) but in any case not later than seven days from the passing of the order submit a copy of the same to

the Review Committee constituted under section 16 along with all the relevant underlying papers, record and his own findings, etc., in respect of the said order, for consideration and approval of the order by the Review Committee.

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

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

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

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

(a) An emergency situation exists that involves, -

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

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

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

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

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

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

(12) (a) The contents of any wire, electronic or oral communication intercepted by any means authorized by this section shall, if possible be recorded on tape or wire or other comparable device. Recording of the contents of any wire, electronic or oral communication under this sub-section shall be done in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of order, or

extension thereof, such recordings shall be made available to the Competent Authority issuing such order and shall be sealed under his directions. Custody of the recording shall be whenever the Competent Authority orders. They shall not be destroyed except upon an order of the Competent Authority and in any event shall be kept for ten years.

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

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

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

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

Explanation. - For the purpose of this section,-

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

(b) Oral communication means any oral communication uttered by a person exhibiting an expectation that such communication is not

subject to interception under circumstances justifying such expectation but such term does not include any electronic communication.

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

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

(ii) Any wire or oral communication;

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

(iv) Any communication from a tracking device;

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

### **15. Special Provisions Regarding Cellular Phones :-**

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

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

### **16. Constitution Of Review Committee For Review Of Authorization Orders :-**

(1) There shall be a Review Committee to review every order

passed by the Competent Authority under section 14 or an order passed by the Officer referred to in sub-section (10) of that section.

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

(i) The Chief Secretary, Government of Karnataka Chairman

(ii) The Principal Secretary, Home Department. Government of Karnataka. Member

(iii) The Secretary to Government Law Department, Government of Karnataka. Member

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

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

### **17. Interception And Disclosure Of Wire, Electronic Or Oral Communications Prohibited :-**

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

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

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

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

or

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

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

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

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

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

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

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

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

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

### **18. Special Rules Of Evidence :-**

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

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

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

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

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

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

**19. Certain Confessions Made To Police Officer To Be Taken Into Consideration :-**

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

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

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

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

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

(5) The person from whom a confession has been recorded under



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

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

## **20. Protection Of Witness :-**

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

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

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

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

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

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

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

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

## **21. Forfeiture And Attachment Of Property :-**

Where a person has been convicted of any offence punishable under this Act, the Special Court may, in addition to awarding any

punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the State Government, free from all encumbrances.

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

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

(b) The Special court issuing a proclamation under clause (a) may, at any time, order the attachment of any property, movable or immovable or both, belonging to the proclaimed person, and thereupon the provisions of sections 83 to 85 of the Code shall apply to such attachment as if such attachment were made under that Code.

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

## **22. Modified Application Of Certain Provisions Of The Code**

:-

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

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

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

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

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

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

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

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

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

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

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

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

custody and also for the delay if any, seeking the police custody.

### **23. Presumption As To Offences Under Section 3 :-**

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

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

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

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

### **24. Cognizance Of And Investigation Into An Offence :-**

(1) Notwithstanding anything contained in the Code, -

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

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

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

### **25. Punishment For Public Servants Failing In The Discharge Of Their Duties :-**

Whoever being a public servant renders any help or support in any manner in the commission of organized crime as defined in clause

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

## **26. Overriding Effects :-**

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

## **27. Protection Of Action Taken In Good Faith :-**

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

## **28. Annual Report Of Interceptions :-**

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

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

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

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

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

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

Provided that if the State Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to

the security of the State or to the prevention or detection of any organized crime, the State Government may exclude such matter from being included in such annual report.

### **29. Power Of High Court To Make Rules :-**

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

### **30. Powers Of State Government To Make Rules :-**

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

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