

## **MAHARASHTRA CONTROL OF ORGANISED CRIME ACT, 1999**

**30 of 1999**

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# **MAHARASHTRA CONTROL OF ORGANISED CRIME ACT, 1999**

**30 of 1999**

**[ ]**

An Act to make special provisions for prevention and control of, and for coping with, criminal activity by organised crime syndicate 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 organised crime syndicate or gang, and for matters connected therewith or incidental thereto; AND WHEREAS, both Houses of the State Legislature were not in session; AND WHEREAS, the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to make a law, for the purposes aforesaid; and therefore, promulgated the Maharashtra Control of Organised Crime Ordinance, 1999, on the 24<sup>th</sup> February 1999; AND WHEREAS, it is expedient to replace the said Ordinance by an Act of the State Legislature; 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 24<sup>th</sup> February 1999.

## **2. Definition :-**

(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 such person is engaged in assisting in any manner, an organised crime syndicate;

(ii) the passing on or publication of, without any lawful authority, any information likely to (assist the organised crime syndicate and the passing on or publication of or distribution 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 cognisable 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 before a competent Court within the preceding period of ten years and that Court has taken cognisance of such offence;

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

(f) "organised 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 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 respectively 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 lakh;

(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

minimum fine of rupees five lakhs.

(2) Whoever con'spires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised 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 a minimum fine of rupees five lakhs.

(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 lakhs.

(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 lakhs.

(5) Whoever holds any property derived or obtained from commission of an organised crime or which has been acquired 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 lakhs.

#### **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, or, at any time has been, in possession of moveable or immoveable 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 lakh and such property shall also be liable for attachment and forfeiture, as provided by section 20 .

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

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

specified in the notification.

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

#### **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 a 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 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 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 may pass any sentence authorised by this Act or, 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 or Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of S.2 of Code of Criminal Procedure, 1973, and the provisions of the Code shall have effect accordingly.

## **9. Procedure and powers of Special Court :-**

(1) A Special Court may take cognisance 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 S.260 of the Code of Criminal Procedure, 1973 or S. 262 of the Code of Criminal Procedure, 1973, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of Section 263 of the Code of Criminal Procedure, 1973 to S.265 of Code of Criminal Procedure, 1973 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 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 or indirectly concerned in or privy to an offence, tender a pardon to such person on condition of his making full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned, whether as principle or abettor, in the commission thereof, and may pardon so tendered shall, for the purpose of Section 308 of the Code of Criminal Procedure, 1973 , 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.

#### **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 against the 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 cognisance 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 the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognisance of the offence.

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

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

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

**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. Authorisation 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 organised crime under this Act may submit an application in writing to the Competent Authority for an order 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 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 department authorising 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 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 from 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 organised crime whose communications are 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 to 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 authorisation for interception should be 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 facts concerning all previous applications known to the individual authorising and making the application, made to the Competent Authority for authorisation 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, authorising 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 section 3 and SECTION 4 of this Act;

(b) there is a probable cause for disbelief 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 to be used or are about to be used, in connection with the commission of such offence, leased to, or are listed in the name of or commonly used by such person.

(5) Each order by the Competent Authority authorising 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 communication 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 authorised to intercept the communications and of the person authorising the application; and

(e) the period of time during which such interception is authorised, 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 15 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 authorising the interception of a wire, electronic or oral communication under this section shall, upon request of the applicant, direct that the 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 authorise or approve the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorisation, nor in any event longer than sixty days. Such sixty days period 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 makings the findings required by subsection (4). The period of extension shall be no 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 authorisation shall intercept be executed as soon as practicable and shall be conducted in such a way or manner as to minimise the interception of communications not otherwise subject to interception under this section and must terminate upon attainment of the authorised objective, or in any event on expiry of the period of order. In the event the intercepted communications is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimisation may be accomplished as soon as practicable after such interception. An interception under this section may be conducted in whole or in part by public servant, or by an individual operating under a contract with the State Government, acting under the supervision of the investigative or law enforcement officer authorised to conduct the interception.

(9) Whenever, an order authorising 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 process has been made towards achievement of the authorised 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 in rank of 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 organised crime, that requires a wire, electronic or oral communication to be intercepted before an order from the Competent Authority authorising such interception can, with due diligence, be obtained, and

(b) there are grounds upon which an order could be issued under this section to authorise such interception.

(11) In the absence of an order approving the interception mere 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 where an application for permitting interception is rejected under sub-section (4) or an application under sub-section (10) for approval is rejected, or in any other case where the interception is 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 authorised by this section shall, if possible, be recorded on tape or wire or other comparable device. Recording of the contents of 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 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. 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.

(13) Notwithstanding anything contained 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 as evidence against the accused 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 or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any 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 approved:

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 will not be prejudiced by the delay in receiving such information.

Explanation:- For the purposes of this section:-

(a) 'wire 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 connection between the point of origin and the point of 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, writings, 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 of wire, electronic or oral communication through the use 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 application under sub-section (4) of section 14 , for interception or disapproving the interception made under sub-section (10) of that section 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 may, by order in writing, either approve the order passed by the Competent Authority or may issue order disapproving the same. The issue of a n order of 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 t 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 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 connections used in wire communication; or

(ii) such device transmits communication 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 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 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 sub-section; or

(e)

(i) intentionally discloses or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, intercepted by means authorised 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 any order of disapproval by the Review Committee under sub-section (4) of section 15 , shall for such violation be punishable with imprisonment for a 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 Evidence Act, 1872 , for the purposes 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 S.107 of the Code of Criminal Procedure, 1973 or Section 110 of the Code of Criminal Procedure, 1973 ;

(b) detained under any law relating to preventive detention; or

(c) on any previous occasions 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 moveable or immoveable 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.

### **18. Certain confession made to police officer to be taken into consideration :-**

(1) Notwithstanding anything in the Code or in the 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 a 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 cognisance 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 (4) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay.

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

## **19. Protection of witnesses :-**

(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 addresses of the witnesses in its orders or judgments or in any records 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 contravened 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.

## **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 addition to awarding any punishment, by order in writing, declare that any property moveable or immoveable 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, to pass an order that all or any properties, moveable or immoveable or both, belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the properties so attached, and where such trial ends in conviction, the properties so attached shall stand forfeited to the State Government, 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 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 that he may not be apprehended , such Court may, notwithstanding anything contained in Section 82 of the Code of Criminal Procedure, 1973 , 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 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 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, moveable or both, belonging to the proclaimed person and thereupon the provisions of S.83 of Code of Criminal Procedure, 1973 to S.85 of Code of Criminal Procedure, 1973 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 of Criminal Procedure, 1973 , appears voluntarily or is apprehended and brought before the Special Court by whose order the property was attached, or the Court or 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 has 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 therefrom all costs incurred in consequence of the attachment, be delivered to him.

## **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 cognisable offence within the meaning of clause (c) of Section 2 of the Code of Criminal Procedure, 1973 and "cognisable case" as defined in that clause shall be construed accordingly.

(2) S.167 of Code of Criminal Procedure, 1973 shall apply in relation to a case involving an offence punishable under this Act subject to the modification that, in sub-section (2).:-

(a) the references to "fifteen days" and "sixty days", wherever they occur, shall be construed 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 upto 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 of Criminal Procedure, 1973 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 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 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 custody shall file a written statement explaining the reason for seeking such custody and also for the delay, if any, in seeking the 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 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 by 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 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. Cognisance of, and investigation into, an offence :-**

(1) Notwithstanding anything contained in the Code:-

(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;

(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 cognisance of any offence under this

Act without the previous sanction of the police officer not below the rank of Additional Director General 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 as defined 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 direction 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.

**25. Overriding effect :-**

The provisions of this Act or any rule made thereunder 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 or in any instrument 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 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 thereunder 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 the Police Department in which prosecutions have been launched;

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

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

(iv) the number of prosecutions launched based in such interceptions and convictions resulting from such interceptions, along with an explanatory memorandum giving general assessment

of the 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 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 detention 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 rules as it may deem necessary for carrying out the provisions of this Act relating to the Special Courts.

**29. Powers 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 purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may 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 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.

**30. Repeal of Mah 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 have been done or taken, as the case may be, under the corresponding provisions

of this act.