

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
APPELLATE JURISDICTION.
CRIMINAL APPEAL NO. 20 OF 2011
WITH
CRIMINAL APPLICATION NO. 798 OF 2011**

The State of Maharashtra. ... Appellant.
V/s.
Jagan Gagansingh Nepali
@ Jagya and another. ... Respondents.
And
Smt.Sandhya Prafulla Patil. ... Intervener.

Mrs.A.S.Pai, Addl.P.P. for the appellant- State.

A.M.Saraogi with Priyatosh R. Tiwari
for respondent No.2.

Amit Desai, Senior Advocate with Gaurish Kadam
and Ravi Kamat i/b. V.V.Purwant for the
applicant (in APPA No.798/2010)

Shrikant Shivade with Ashish S. Sawant
for the intervener.

**WITH
CRIMINAL APPEAL NO. 407 OF 2011**

The State of Maharashtra. ... Appellant.
V/s.
Devendra Baburao Jagtap
alias J.D. And others. ... Respondents.

Mrs.A.S.Pai, Addl.P.P. for the appellant-State.

S.R.Chitnis, Senior Advocate with Ms.Pooja P.
Bhosale for respondent No.1.

A.M.Saraogi for respondent No.2.

WITH
CRIMINAL BAIL APPLICATION NO. 600 OF 2011

Shri Sanjay Bhairu Waskar. ... Applicant.

V/s.

The State of Maharashtra. ... Respondent.

Aabad H.H.Ponda with Daljeet Singh Bhatia
for the applicant.

Mrs.A.S.Pai, Addl.P.P. for the respondent- State.

**CORAM: MOHIT SHAH, C.J., B.R.GAVAI,
AND MRS.ROSHAN DALVI, JJ.**

DATED : 5 August 2011.

Oral order (Per B.R. Gavai, J)

After the judgment is pronounced, the learned Counsel for the respondents-accused pray for Certificate under Article 134-A read with Article 134(1)(c) of the Constitution.

2. The learned Public Prosecutor opposing the request submits that the matters are still pending before the concerned Benches and that the proceedings have not been terminated.

3. The learned counsel for the accused submits that in some of these cases, the accused have been acquitted on the basis of the judgment of the Division Bench which has not been approved by us and, therefore, the view taken by us has attained finality, in so far as this Court is concerned.

4. It is true that the proceedings are still pending. However, the question as to whether the provisions of the Maharashtra Control of Organised Crime Act, 1999 will apply where any continuing unlawful activity by an individual, singly or jointly, either as 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 objective of gaining pecuniary benefits, or gaining undue economic advantage for himself or any other person or whether such advantage could be for any object other than pecuniary or economic is finally decided by our judgment, in so far as this Court is concerned. The Courts taking up the concerned Appeals/Revisions will have to decide the matters in light of the law laid down by us in the judgment.

5. The question as to whether the term “other advantage” has to be given a restrictive meaning as *ejusdem generis* with the words pecuniary benefits and undue economic advantage or it has to be given wider meaning is the substantial question of law having general importance and will have bearing on a number of cases pending before the trial Courts as well as this Court. As such, we grant certificate under Article 134-A read with Article 134(1) (c) of the Constitution that the case is a fit one for appeal to the Supreme Court.

(CHIEF JUSTICE)

(B.R.GAVAI, J.)

(ROSHAN DALVI, J.)