

HARYANA VIDHAN SABHA

Bill No. 7 — HLA OF 2023

THE HARYANA CONTROL OF ORGANISED CRIME BILL, 2023

(Bill as passed by the Haryana Vidhan Sabha)

The following Bill was passed by the Haryana Vidhan Sabha :—

A

BILL

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.

Be it enacted by the Legislature of the State of Haryana in the Seventy-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Haryana Control of Organised Crime Act, 2023. Short title,
extent and
commencement.
- (2) It extends to the whole of the State of Haryana.
- (3) It shall come into force on such date, as the State Government may, by notification in the Official Gazette, appoint.
2. (1) In this Act, unless the context otherwise requires,- Definitions.
 - (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 (Central Act 2 of 1974);
 - (c) “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-sheets have been

filed before a competent court within the preceding period of ten years and that court has taken cognizance of such offence;

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

(e) "organised crime syndicate or gang" means a group of two or more persons, who acting either singly or jointly, as a syndicate or gang, indulge in activities of organised crime;

(f) "State Government" means the Government of the State of Haryana in the Home Department;

(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.

Punishment for organised crime.

3. (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 which shall not be less than ten 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 supports, 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 fine which shall not be less than five lakh rupees.
- (3) Whoever harbours or conceals or attempts to harbour or conceal any member of any 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 fine which shall not be less than five lakh rupees.
- (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 fine which shall not be less than five lakh rupees.

(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 which shall not be less than two lakh rupees.

4. If any person on behalf of a member of an organised 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 ten years and shall also be liable to fine which shall not be less than one lakh rupees. Such property shall also be liable for forfeiture and attachment, as provided under section 22.

Punishment for possessing unaccountable wealth.

5. (1) The State Government in consultation with the Punjab and Haryana High Court may, by notification in the Official Gazette, constitute one or more Special Courts for such area or areas, or for such case or group of cases or class, as may be specified in the notification.

Special Court.

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

(3) The 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 Punjab and Haryana High Court. The State Government may also appoint, with the concurrence of the Chief Justice of the Punjab and Haryana High Court, Additional Judges to exercise the jurisdiction in the 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 an 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 in the absence of any Additional Judge.

6. Notwithstanding anything contained in the Code, every offence punishable under this Act shall be triable only by the Special Court within whose local

Jurisdiction of Special Court.

jurisdiction it was committed or by the Special Court constituted for trying such offence under sub-section (1) of section 5, as the case may be.

Power of Special Court with respect to other offences.

7. (1) While trying any offence punishable under this Act, the 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 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 for the punishment thereof authorised by this Act or such other law, as the case may be.

Public Prosecutor.

8. (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:

Provided that the State Government may also appoint for any case or group of cases or class, 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.

Procedure and powers of Special Court.

9. (1) The 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 prescribed 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 a summary trial under this section, it shall be lawful for the Special Court to pass a sentence of imprisonment for a term not exceeding three years.

- (3) The Special Court may, with a view to obtain 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 a full and true disclosure of the whole circumstances within his knowledge relating to the offence and of 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 this Act, the 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. 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 case shall remain in abeyance. Trial by Special Court to have precedence.
11. Where, after taking cognizance of an offence, the 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 cognizance of the offence. Power to transfer case to regular Court.
12. (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order of the Special Court to the Punjab and Haryana High Court. Appeal.
- (2) Every appeal under this section shall be preferred within thirty days from the date of the judgment, sentence or order.
13. For the purpose of interception of wire, electronic or oral communication, the provisions of the Indian Telegraph Act, 1885 (Central Act 13 of 1885), the Information Technology Act, 2000 (Central Act 21 of 2000) as amended from time to time to be read along with rules made thereunder shall be applicable. Applicability of Indian Telegraph Act, 1885 and Information Technology Act, 2000.

Special rules of evidence.

- 14.** (1) Notwithstanding anything to the contrary contained in the Code or the Indian Evidence Act, 1872 (Central Act 1 of 1872), for the purposes of trial and punishment for offences under this Act or connected offences, the Special 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 organised crime or any person on his behalf is or has at any time been in possession of movable or immovable property which he cannot satisfactorily account for, the Special Court 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.

Admissibility of evidence collected through interception of wire, electronic or oral communication.

- 15.** Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 (Central Act 1 of 1872), for the purposes of trial and punishment for offences under this Act or connected offences, evidence collected through the interception of wire, electronic or oral communication under the provision of the Indian Telegraph Act, 1885 (Central Act 13 of 1885) or the Information Technology Act, 2000 (Central Act 21 of 2000) or any other law from the time being in force, 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 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 accused has been furnished with a copy of the order of the competent authority under the aforesaid law, under which the interception was directed, not less than ten days before trial, hearing or proceeding:

Provided further that the period of ten days may be waived by the Judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with such order ten days before the trial, hearing or proceeding and that the accused shall not be prejudiced by the delay in receiving such order.

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

- 16.** (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (Central Act 1 of 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 in writing or on any devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person, co-accused, abettor or conspirator subject to appreciation and objective satisfaction of the Special Court:

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

Provided further that the confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him and the process of recording of confession shall also be mandatorily video graphed.

- (2) 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.
 - (3) 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.
 - (4) 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.
 - (5) The Chief Metropolitan Magistrate or the Chief Judicial 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 below the rank of an Assistant Civil Surgeon.
- 17.** (1) Notwithstanding anything contained in the Code, the proceedings under this Act may be held in camera, if the Special Court so desires.
- (2) The Special Court may, on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such

Protection of witnesses.

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

Attachment of
property.

18. (1) If the District Magistrate has reason to believe that any property, whether moveable or immovable, in possession of any person has been acquired, as a result of the commission of an offence triable under this Act, he may order attachment of such property whether or not cognizance of such offence has been taken by any court.

(2) Notwithstanding the provisions of the Code, the District Magistrate may appoint an administrator of any property attached under sub-section (1) and the administrator shall have all the powers to administer such property in the best interest thereof.

(3) The District Magistrate may provide police help to the administrator for proper and effective administration of such property.

Release of property.

19. (1) Where any property is attached under section 18, the claimant of property may within three months from the date of knowledge of such attachment make a representation to the District Magistrate showing the circumstances in and the sources by which such property was acquired by him.

(2) If the District Magistrate is satisfied about the genuineness of the claim made under sub-section (1), he shall forthwith release the property from attachment and thereupon such property shall be released to the claimant.

20. (1) Where no representation is made within the period specified in sub-section (1) of section 19 or the District Magistrate does not release the property under sub-section (2) of section 19, he shall refer the matter with his report to the Court having jurisdiction to try an offence under this Act. Inquiry into character of acquisition of property by Court.
- (2) Where the District Magistrate has refused to attach any property under sub-section (1) of section 18 or has ordered for release of any property under sub-section (2) of section 19, the State Government or any person aggrieved by such refusal or release may make an application to the Court referred to in sub-section (1) for inquiry as to whether the property was acquired by or as a result of the commission of an offence triable under this Act. Such Court may, if it considers necessary or expedient in the interest of justice so to do, order attachment of such property.
- (3) (a) On receipt of the reference under sub-section (1) or an application under sub-section (2), the Court shall fix a date for inquiry and give notice thereof to the person making the application under sub-section (2) or to the person making the representation under section 19, as the case may be and to the State Government and also to any other person whose interest appears to be involved in the case.
- (b) On the date so fixed or any subsequent date to which the inquiry may be adjourned, the Court shall hear the parties, receive evidence produced by them, take such further evidence as it considers necessary, decide whether the property was acquired by a gangster as a result of the commission of an offence triable under this Act and shall pass such order under section 18 as may be just and necessary in the circumstances of the case.
- (4) For the purpose of inquiry under sub-section (3), the Court shall have the power of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matter, namely:-
- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or copy thereof from any Court or office;
 - (e) issuing commission for examination of witness or documents;
 - (f) dismissing a reference for default or deciding it ex parte;
 - (g) setting aside an order of dismissal for default or ex parte decision.

- (5) In any proceedings under this section, the burden of proving that the property in question or any part thereof was not acquired by a gangster as a result of the commission of any offence triable under this Act, shall be on the person claiming the property, anything to the contrary contained in the Indian Evidence Act, 1872 (Central Act 1 of 1872) notwithstanding.

Order after inquiry. **21.** If upon such inquiry the Court finds that the property was not acquired, as a result of the commission of any offence triable under this Act, it shall order for release of the property of the person from whose possession it was attached. In any other case, the Court may make such order, as it thinks fit for the disposal of the property by attachment, confiscation or delivery to any person entitled to the possession thereof or otherwise.

Forfeiture and attachment of property.

22. (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, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the State Government, free from all encumbrances.

(2) Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him, to pass an order that all or any properties, movable or immovable 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 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, 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 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, 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 was made under the 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 therefrom all costs incurred in consequence of the attachment, be delivered to him.

23. (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 construed accordingly.

Modified application of certain provisions of Code.

- (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 occurring, 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 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 Special 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 Special Court that he was on bail in an offence under this 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.

Presumption as to offences under section 3.

24. (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,

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).

Cognizance and investigation of offence.

25. (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 cognizance of any offence under this Act without the previous sanction of the State Government.
- 26.** Whoever being a public servant renders any help or support in any manner in the commission of organised crime as defined in clause (d) of section 2, whether before or after the commission of any offence by a member of an organised crime syndicate or abstains from taking lawful measures under this Act or intentionally avoids to carry out the directions of 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. Punishment for public servants.
- 27.** The provisions of this Act shall be in addition to and not in derogation of provisions of any other law for the time being in force except specifically provided under this Act, in case of any inconsistency in provisions other than specifically provided under this Act, the provisions of Central Acts shall have overriding effect to the extent of inconsistency. Act not in derogation of any other law.
- 28.** 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. Protection of action taken in good faith.
- 29.** The Punjab and Haryana 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 Court. Power of High Court to make rules.
- 30.** (1) Without prejudice to the powers of the Punjab and Haryana 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. Power of State Government to make rules.
- (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

Chandigarh :
The 31st March, 2023.

R.K. NANDAL,
Secretary.