

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.5273 OF 2016
IN
CRIMINAL APPEAL NO.532 OF 2016**

Kavita Bhagwan Bhosale

.. Applicant
(Org. Accused No.9)

Versus

The State of Maharashtra

.. Respondent

Mr.Abhaysinh K. Bhosale, Advocate for the applicant
Mrs.P.V.Diggikar, APP for the respondent/State

**CORAM : V.L.ACHLIYA, J.
DATED : 13.10.2016**

P.C. :-

1. The applicant/Org. Accused No.9 has preferred appeal challenging the impugned judgment and order dated 07.09.2016 passed by the learned Special Judge (MCOCA), Aurangabad. The applicant has been convicted alongwith co-accused under Section 3(1)(ii) of the M.C.O.C.Act and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.5,00,000/- in default to undergo simple imprisonment for one year. Applicant is also convicted under Section 3(4) of the M.C.O.C. Act and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.5,00,000/- in default to undergo simple imprisonment for one year. The applicant is also

convicted under Section 4 of the M.C.O.C. Act and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,00,000/- and in default to undergo simple imprisonment for one year. Beside the conviction under the provisions of M.C.O.C. Act the applicant is also convicted for committing offence punishable under Section 395 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.10,000/- in default to undergo simple imprisonment for one year. Pending disposal of appeal the applicant has prayed to release on bail.

2. Mr. Bhosle, learned Advocate appearing for the applicant invited my attention to the proposal forwarded vide Exhibit-101, wherein Assistant Commissioner of Police has requested Special Inspector General of Police, Aurangabad Range to grant sanction to apply the provision of M.C.O.C. Act only against five accused namely; Shishya, Shabrya, Nishant, Sukha and Bhagwan by mentioning the criminal activities of the said accused and particularly the chart showing the criminal cases registered against them and necessity to accord somehow to proceed them under the provisions of M.C.O.C. Act. Learned counsel pointed out that in the chart annexed to the proposal as against the name of the applicant except the instant case no other case shown to be registered.

Her name also not figured in list of these five accused against who sanctioned to apply provisions of M.C.O.C. Act sought by Assistant Commissioner. Inspite of that Special Inspector General of Police, Aurangabad Range has granted sanction as against all the eleven accused and including applicant against whom there is no charge-sheet except the present case. He submits that *prima-facie* the conviction of applicant is not sustainable under the provisions of M.C.O.C.Act.

3. He further pointed that that in the entire judgment the learned Special Judge has not recorded any findings as to how the provisions of M.C.O.C. Act attracted against the applicant. Learned counsel submits that the applicant has been falsely implicated in the case and prosecuted alongwith other accused only for the reasons that she being wife of one of the accused and certain property alleged to be purchased by him from the money yield by indulging into organize crime. He further submits that no case other than instant case registered against the applicant and during trial the applicant was on bail.

4. Mrs. P.V.Diggikar, APP for the respondent/State has opposed the application with contention that prosecution has adduced sufficient evidence sustain the

charge under Section 4 of the M.C.O.C. Act. Learned APP further submits that the applicant is wife of co-accused Bhagwan against whom more than one charge-sheets have been filed and during the investigation it was transpired that he was member of crime syndicate and purchased landed property in the name of minor son out of proceeds acquired by indulging into such crime. Though the applicant has no any source of income it was found that she has purchased said property in the name of her minor son.

5. Having appreciated the submissions advanced in the light of provisions of M.C.O.C. Act, overall case of the prosecution and the reasons and findings recorded by the trial Court and further taken into consideration that the applicant was on bail during the trial. I am of the view that the case has been made out to entertain the present application to the extent of applicant/accused No.9. It appears from the proposal submitted to Special Inspector General (Prison) except the instant case no other case was registered against while seeking sanction to apply the provisions of M.C.O.C. Act. The proposal appears to be made against the five accused. The name of applicant not find place amongst these five accused. The sanction order reflects that the sanctioning authority has granted sanction to apply the provision of M.C.O.C.

Act against all the accused, which includes the applicant. It appears that the applicant is convicted mainly for the reasons that during the investigation it was transpired she has purchased one plot in the name of her minor son, without any source of income to purchase such plot. Therefore considering over all evidence against the applicant arguable case is made out to consider in appeal. I am, therefore, inclined to allow the application and pass the following order:

O R D E R

- i. Application is allowed in terms of prayer clause (a).
- ii. Pending disposal of appeal the substantive sentences awarded by the trial Court stand suspended as against the applicant Kavita Bhagwan Bhosale (original Accused No.9) subject to deposit of fine to the extent of 25% of total fine amount awarded by the trial Court. On depositing of fine the applicant be released on bail on her furnishing bail bond on the sum of Rs.50,000/- (Rupees Fifty Thousand) with one surety in like amount on following conditions.

(a) Applicant shall not leave city of Aurangabad without seeking prior permission from this Court.

(b) Applicant shall appear and record her attendance before the Inspector of Police Officer of Police Station Bidkin Aurangabad on every 1st and 4th Saturday in between 10.00 a.m. to 11.00 a.m. in each month till disposal of appeal.

(c) Applicant shall not indulge into any criminal activity during this period.

(d) The applicant shall furnish the names and addresses of her 3 close relatives with phone numbers.

(e) The applicant shall not cause threat to complainant and other prosecution witnesses.

(f) In the event of change in address the applicant shall intimate concerned police station as well as this court.

(7)

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iii. In the event of non observance or breach of any of the conditions, the bail granted to the applicant/accused No.9 shall be liable to be canceled.

[V.L.ACHLIYA,J.]