

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

**CRIMINAL APPLICATION NO.5533 OF 2016
IN
CRIMINAL APPEAL NO.570 OF 2016**

- | | |
|---|---|
| 1. Nishant Ananda Bhosale
Age-27 years, Occu-Nil,
R/o. Village Kawadgaon Gairan,
Tq. Paithan, Dist. Aurangabad | .. Applicant
(Ori. Accused
Nos.4 & 8) |
| 2. Bhagwan Alias Andaj Alias
Langda Ananda Bhosale,
Age-53 years, Occu-Nil,
R/o. As above | |

Versus

The State of Maharashtra	.. Respondent
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Mr.Govind A. Kulkarni, Advocate h/f Mr. Rajendra S.
Deshmukh, Advocaes 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 applicants (accused Nos.4 & 8) have preferred appeal challenging the impugned judgment and order dated 07.09.2016 passed by the learned Special Judge (MCOCA), Aurangabad. The applicants have been convicted alongwith co-accused under Section 3(1)(ii) of the M.C.O.C.Act and each of them sentenced to suffer rigorous imprisonment for five years and to pay fine of

Rs.5,00,000/- and in default to undergo simple imprisonment for one year. Applicants are also convicted under Section 3(4) of the M.C.O.C. Act each of them and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.5,00,000/- and in default to undergo simple imprisonment for one year. The applicants are also convicted for the offence punishable 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. Besides the conviction under the provision of M.C.O.C. Act the applicants are also convicted under Section 395 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years and each of them to pay fine of Rs.10,000/- in default simple imprisonment for one year. Pending disposal of appeal the applicants have prayed for released on bail.

2. Learned counsel for the applicants submits that the applicants practically completed substantive sentence awarded by the trial Court. He further submits that the applicants were arrested on 18.11.2011. By the judgment and order dated 07.09.2011 they are convicted and sentenced as said above. He therefore submits that except the sentence to undergo in default of payment of fine the applicants have substantially undergone the

substantive sentence awarded by the Trial Court. He has further submitted that the applicants are unable to deposit the fine amount as imposed by the Trial Court and they have good case to succeed in appeal.

3. Learned APP has opposed the application with contention that prosecution has proved its case beyond reasonable doubt. She further submits that applicants are members of organized crime syndicate and they had indulged into serious offences. So also there is every likelihood that they may indulge into similar type of offence and may abscond on their released on bail.

4. Having appreciated the submissions advanced in the light of impugned judgment and order I am of the view that the case is made out to entertain the request to release the applicants on bail. It is not in dispute that the maximum sentence awarded is of five years. The sentence as stated are ordered to be run concurrently. Further the applicants are given set off under Section 428 of the Criminal Procedure Code to adjust the period during which they remained as under prisoner against the sentence to undergo. In this view the applicants have practically completed the substantive sentence of 5 years awarded by the trial Court.

5. Applicant No.1 Nishant/accused No.4 is ordered to deposit the fine which is about Rs.10,10,000/-. Applicant No.2 Bhagwan/accused No.8 is ordered to deposit the fine of Rs.15,10,000/-. There is arguable case made out in appeal to be considered on merit. Since about five years the applicants are in jail I am therefore of the view that pending disposal of appeal the appellants be released on bail subject to deposit of fine amount to the extent of 25% of the total fine amount to be deposited by each of them. I am inclined to pass the following order:

O R D E R

i. Application is allowed in terms of prayer clause (B).

ii. Pending disposal of appeal the substantive sentences awarded by the trial Court as against the applicant No.1/accused No.4 and applicant No.2/accused No.8 stand suspended on each of them depositing the fine amount to the extent of 25% of total fine to be deposited in terms of judgment and order. On fulfillment of condition of deposit of fine, they be released on their furnishing bail bond in the sum of Rs.50,000/- each with one surety in like amount, on following conditions.

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

(b) Applicants shall report and record their attendance by appearing before the Police Station, Bidkin, Aurangabad on every 1st and 4rd Sunday in between 10 a.m. to 11 a.m. in each month till disposal of appeal.

(c) Applicants shall not indulge into any criminal activity during the pendency of appeal.

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

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

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

(6)

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iii. In the event of non observance or breach of any of the conditions, the bail granted to the applicants shall be liable to be canceled.

iv. Bail to be furnished before the trial Court.

[V.L.ACHLIYA,J.]