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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION
CRIMINAL APPLICATION NO.555 OF 2016 IN
CRIMINAL APPEAL NO.303 OF 2016

Hasib Zubeir Mulla ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr.Sudeep Pasbola a/w Mr.Bhavesh Thakur i/b Mr.Rahul
Arote for the applicant
Ms Rohini Salian, Special P.P for the State

CORAM : A.S.OKA, &
A.A.SAYED, JJ.
DATE : AUGUST 3, 2016

P.C.:

1 Heard the learned counsel for the applicant and the learned Special P.P. The applicant is the appellant in the Criminal Appeal No.303 of 2016. By the impugned order in Appeal, the applicant was convicted for the offence punishable under section 4 (a) of the Prevention of Terrorism Act,2002 (for short 'POTA'). He has been also convicted for the offence punishable under sections 3, 7 read with section 25 (1A) of the Arms Act,1959. He has been also convicted for the offence punishable under section 3, 7 r/w 25 (1-B)(a) of the Arms Act,1959. The maximum substantive sentence is R.I for 10 years. All the substantive sentences have been ordered to run concurrently. The learned counsel for the applicant submits that the applicant has already undergone incarceration for a period of

eight years. He submits that as the appeal is not likely to be heard within a period of two years, a case is made out for suspension of sentence and for enlarging the applicant on bail. The learned Special P.P opposes the application. On a query made by this Court, on instructions she states that except for the case in hand, there are no antecedents against the applicant. She is relying upon the affidavit filed by Shri P.C.Bhosale, the Assistant Commissioner of Police in which it is contended that the applicant has been acquitted for the offences punishable under sections 3(3), 21(2) and 21(4) of the POTA, and an appeal against acquittal is being preferred by the State.

2 Out of substantive sentences of 10 years, it is not disputed by the Special P.P appearing for State Government that the applicant has already undergone 8 years. Considering the pendency of very old appeals in this Court, appeal of the year 2016 is not likely to be heard in near future and in any event within a period of two years. The proposal of the State Government to file an appeal against acquittal is not relevant for considering this application. Moreover, it is pointed out that there are no antecedents of the applicant except the case in hand. Therefore, in our view, a case is made out for grant of relief to the applicant. However, stringent conditions will have to be imposed considering the seriousness of the offences alleged against the applicant which have been held as proved by the learned Special Judge, Greater Mumbai

appointed under the POTA.

3 Accordingly, we dispose of the application by passing the following order:

- (I) The substantive sentences of the applicant stand suspended till the final disposal of the appeal and the applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.1,00,000/- (Rupees one lac only) with one solvent surety in the like amount;
- (II) Bail is granted subject to condition of the applicant filing an undertaking on oath in this Court within a period of three weeks from today that he will not indulge in any illegal activities;
- (III) Bail is granted subject to condition of the applicant depositing his passport with the Registrar (Judicial-I) of this Court within a period of three weeks from today;
- (IV) If the applicant is not holding any passport, he shall file an affidavit to that effect within a period of three weeks from today;
- (V) Bail is granted subject to further condition that the applicant shall not leave India without prior permission of this Court;
- (VI) Bail is granted subject to further condition that the applicant will remain present before the learned Special Judge under POTA at 11.00 a.m on 1st Monday of months of January and July of every calender year till

the disposal of the Appeal;

(VII) If the applicant fails to remain present before the learned Special Judge, Greater Mumbai appointed under the POTA, he shall submit a report to that effect to the Registrar (Judicial-I) of this Court. If such report is received, the same shall be forthwith placed before the appropriate Court;

(VIII) If the applicant commits any breach of the conditions imposed as aforesaid, it will be open for the respondent to apply for cancellation of bail;

(IX) Criminal Application is disposed of on above terms.

(A.A.SAYED,J.)

(A.S.OKA,J.)