

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1030 OF 2016

IN

CRIMINAL APPEAL NO.563 OF 2016

1) MUSHTAQUE AHMED MOHAMMED ISHAK)
2) JAVED AHMED ABDUL MAJEED ANSARI)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Shaikh Mohammed Sharif a/w. Mr.Ansar Tamboli, Advocates for the Applicants.

Ms.V.S.Mhaispurkar, APP for the Respondent - State.

CORAM : P N. DESHMUKH, J.

DATE : 7th OCTOBER 2016.

P.C. :

1 This application is filed by original accused nos.5 and 6 who came to be tried and convicted by the learned Special Court in M.C.O.C. Special Case No.16 of 2006 along with 18 of 2006, 20 of 2007, 8 of 2009, 20 of 2012, decided by common judgment on 28th July 2016 for suspension of substantive sentence and for grant of bail. Learned counsel for applicants has contended that both the applicants were arrested on 13th May 2006 and were released on bail on 21st

October 2013 and on 7th February 2014 respectively by this court as well as by learned Special court, and has further contended that having been convicted for the offence punishable under Explosive Substance Act, are acquitted of the offences under M.C.O.C. Act. It is also submitted that applicants, as such, have undergone more than 7 years of imprisonment, and thus prayed that pending appeal, application be allowed.

2 Learned APP had opposed the application on the ground that involvement of both applicants is clearly established from the evidence of PW12 and 13, and thus, proposal forwarded by State Government for filing appeal for enhancement of sentence imposed upon applicants and for their acquittal under M.C.O.C. Act is pending for consideration. Learned APP has tendered a chart at the bar containing particulars of applicants showing their custody period, as made available by the Investigating Officer.

3 It appears that applicant Mushtaque came to be convicted for the offences under Sections 25(1AA) of the Arms Act and Section 5(b) of the Explosive Substance Act and sentenced to suffer rigorous imprisonment for 8 years and to pay a fine of Rs.20,000/-, in default, to

undergo simple imprisonment for 1 year, and is acquitted of the offence under Sections 10, 13, 16, 18, 20, 23, 38, 39 of the Unlawful Activities (Prevention) Act, Section 120B of the Indian Penal Code, Sections 3(2), 3(1)(ii) & 3(4) of the M.C.O.C. Act and Section 27 of the Arms Act.

Applicant Javed came to be convicted for the offences under Section 6 of the Explosive Substance Act and is sentenced to suffer rigorous imprisonment for 8 years and to pay a fine of Rs.20,000/-, in default, to undergo simple imprisonment for one year, and is acquitted of the offences under Section 10(a), 13, 16, 18, 20, 23, 38, 39 of the Unlawful Activities (Prevention) Act, Section 120B of IPC, Sections 25(1A), 25(1AA), 25(1B)(a), 26 read with Section 7 and Section 27 of the Arms Act; Section 4(b)(ii) and 5(b) of the Explosive Substance Act; Section 9B(a)(b) of Explosive Substance Act and Sections 3(2), 3(1)(ii) and 3(4) of M.C.O.C. Act.

4 From the sentence of imprisonment referred as aforesaid, it is found that both the applicants are sentenced to suffer rigorous imprisonment for 8 years. That is the maximum punishment imposed upon the applicants, while from the particulars of custody period, it is noted that applicant Mushtaque has undergone custody of 7 years 9 months and 15 days by the end of July 2016, and applicant Javed has

undergone custody of 7 years 6 months and 6 days by 28th July 2016.

5 Considering the period of imprisonment imposed as of 8 years and also considering the fact that both the applicants were on bail, vide order passed by this court with regard to applicant Javed on 21st October 2013 and of applicant Mushtaque by the learned Special court, application is liable to be allowed.

6 From the documents annexed to the application, it is found that both the applicants have paid fine of Rs.20,000/- and it is no case of prosecution that pending the trial, when applicants were on bail, they had misused the liberty granted to them.

7 In that view of the matter and as appeal is of the year 2016, application is liable to be allowed, as in any case after a couple of months, same would become infructuous as applicants would complete the term of their sentence of 8 years. Hence the following order :

i) Application is allowed.

ii) Applicants shall be released on bail on their executing fresh P.R.Bonds in the sum of Rs.50,000/- and shall be allowed to continue the earlier sureties.

- iii) While on bail, applicants shall mark their presence with ATS Mumbai, once in 3 months, on the first day of such month, and shall also mark their presence with Malegaon City Police Station, on the 15th day of each month, pending appeal.
- iv) Applicants shall submit proof of their residence to the Investigating Officer and update change in address, if any, in future, to the concerned police station.

(P. N. DESHMUKH, J.)