

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1351 OF 2015

IN

CRIMINAL APPEAL NO.1047 OF 2015

MAHESH BABJI KALINGAN

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Shri Prakash N. Wagh, Advocate for the Applicant.

Shri Deepak Thakre, APP for the Respondent – State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 12th JANUARY 2016.

P.C. :

1 Heard Shri Prakash Wagh, the learned counsel for the applicant. The appeal filed by the applicant challenging his conviction and the sentence imposed upon him has already been admitted. By the present application, the applicant prays that the sentence imposed upon the applicant be suspended, and that, he be released on bail.

2 The applicant was the accused no.2 in the trial court. He has been convicted of an offence punishable under Section 3(2) of the M.C.O.C. Act, and has been sentenced to suffer Rigorous Imprisonment for 5 years and to pay a fine of Rs.5 Lac, in default, to suffer Rigorous Imprisonment for 3 years. He has also been convicted of an offence punishable under Section 3(4) of the M.C.O.C. Act, but no separate sentence has been imposed upon him with respect to the said offence.

3 The learned counsel for the applicant pointed out that the applicant has remained in custody for a period of more than six years. He has, thus, fully undergone the substantive sentence imposed upon him. The applicant has also undergone substantial part of the default sentence imposed upon him.

4 The learned counsel for the applicant pointed out that, admittedly, the applicant was not present on the scene of the offence, when the incident of firing allegedly took place. He

pointed out that the only material against the applicant is that, he had, six months prior to the incident, accompanied the accused no.1, and had gone to the office of the victim for demanding contribution / donation. The only other piece of evidence against the applicant is said to be his confession recorded under the provisions of Section 18 of the M.C.O.C. Act.

5 The learned counsel for the applicant submitted that the so called confession was not a confession at all in reality. No incriminating facts were admitted by the applicant. He has drawn my attention to the relevant parts of the impugned judgment.

6 The appeal cannot be heard immediately.

7 Considering all the relevant aspects of the matter, and even after keeping in mind the restrictive provisions regarding bail in the M.C.O.C. Act, in my opinion, a case for suspending the sentence imposed upon the applicant and his release on bail is made out.

8 The application is allowed.

9 Pending the hearing and final disposal of the appeal, the sentence imposed upon the applicant shall stand suspended and the applicant shall be released on bail in the sum of Rs.15,000/- with 1 surety in like amount.

10 Hearing of the appeal is ordered to be expedited.

11 Liberty to the applicant to move the court for getting a date for final hearing of the appeal fixed, after the receipt of the paper book.

(ABHAY M. THIPSAY, J.)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment /Order.**