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

**CRIMINAL APPLICATION NO. 1575 OF 2017
IN APEAL/186/2015**

1] Teja S/o Pandu Rathod
Age 45 years, Occ : Labour
R/o Nanded Road, Tamsa
Taluka Hadgaon, Dist.Nanded.

2] Shankar s/o Pandurang Rathod
Age 25 years, Occ:Labour
R/o Nanded Road, Tamsa
Taluka Hadgaon, Dist.Nanded.

APPLICANTS

VERSUS

The State of Maharashtra
Copy to be served on the
Government Pleader, High
Court of Judicature of Bombay
Bench at Aurangabad.

..RESPONDENT

Adv.Mr.N.S.Ghanekar for applicants
APP Mr.Y.G.Gujrathi for respondent State.

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**CORAM : V.L.ACHLIYA,J.
DATE : 19/04/2017**

PER COURT :-

1] The applicants-original applicants no.2 and 10 have moved this application seeking suspension of sentence and release on bail during pendency of Appeal, mainly on the ground that they have undergone substantive sentence and now undergoing

sentence in default of payment of fine. They are claiming to be released on bail on the ground that though the Appeals were filed in the year 2015, the Appeals are not heard and decided expeditiously. Some of the accused are released on bail on same grounds and urged to release them on the ground of parity.

2] Heard the learned counsel for the applicants and A.P.P. for the respondent – State and further perused the record and proceedings.

3] The applicants were tried along with co-accused for committing the offences punishable u/ss 3 (1) (ii), 3 (1) (2) and 3 (1) (4) of the Maharashtra Control of Organized Crime Act, 1999 [for the sake of brevity, 'MCOC ACT']. On conclusion of trial, they were convicted for the offence punishable u/s 3 (1) (ii) to undergo rigorous imprisonment for five (5) years and to pay fine of ` 5,00,000/- [Rupees Five Lakhs] each and in default of payment of fine further to undergo rigorous imprisonment for three (3) years. They are also convicted u/s 3 (1) (4) of the MCOC Act and sentenced to suffer rigorous imprisonment for five (5) years and to pay fine of ` 5,00,000/- [Rupees Five Lakhs] each and in default of payment of fine to undergo rigorous imprisonment for three (3) years.

4] The applicants i.e. accused no.2 and 10 were arrested on 4th February, 2010 and 4th January, 2012 respectively. They were convicted for aforesaid offences on 21/01/2015. During the trial, they were not on bail. As per the Judgment and Order passed by the trial Court the sentences have been ordered to be run concurrently and further they have been given set off u/s 428 of the Code of Criminal Procedure. The applicants were not on

bail during trial. Thus, both the applicants have undergone the substantive sentence of five (5) years imprisonment. The applicant accused no.10 has undergone sentence of more than two (2) years in default of payment of fine as against sentence of three years in default of payment of fine. Similarly the applicant accused no.2 has undergone substantive sentence and now undergoing sentence in default of payment of fine. The Appeal filed by the applicants is pending since 2015. Though the hearing of the case is expedited vide order dated 23/02/2015, the Appeal could not be heard finally.

5] Learned A.P.P. opposed the applications with the contention that the applicants were the members of organized crimes syndicate run by accused No. 1. He submits that if the applicants are enlarged on bail, they may abscond and may indulge in crimes of similar in nature.

6] In my view since substantive sentence is already undergone by the accused and the Appeal could not be decided expeditiously as ordered by the Court, the applicants are entitled to make application for releasing on bail under changed circumstances. The Criminal Application No.642/2017 and 644/2017 by co-accused were entertained on same grounds. The applicants are entitled to claim the bail even on the ground of parity.

7] It is pointed out by the learned counsel for the applicants that the applicants were charged and convicted only for the reason that there were more than one (1) charge sheet against them and they were alleged to be members of crime syndicate. There was no substantive offence registered against them. It is

pointed out that the applicants were acquitted in other cases except in Crime No.5/2009. In that case they are shown as absconding. No attempt was made to produce them in the Court. The case has been closed in respect of other accused. No separate or supplementary charge sheet filed against them till this date.

8] Having regard to the fact that the applicants have undergone the substantive sentence and undergoing sentence in default of payment of fine, I am of the view that the applicants deserves to be enlarged on bail. In case the instant application filed by the applicants is not entertained, then very purpose of filing the Appeals would be defeated. I am, therefore, inclined to allow the application and pass the following order.

ORDER

[1] Application is allowed in terms of prayer clause [B].

[2] Pending disposal of appeal, the execution of further sentence of imprisonment of applicant accused No.2 Teja S/o Pandu Rathod and applicant accused no.10 Shankar S/o Pandurang Rathod stands suspended on their deposit of fine of Rs.10,000/- and Rs.50,000/- respectively.

[3] On payment of fine, they be released on

furnishing bail in the sum of Rs.75,000/- (Rs.Seventy Five Thousand) each with one or two solvent surety in the like amount on following conditions.

[i] The applicants shall appear and record their appearance before the Police Inspector of Mudkhed Police Station, Dist. Nanded on 2nd and 4th Sunday in each month in between 5.00 to 8.00 p.m.

[ii] The applicants shall not leave Nanded city without intimating the Police Inspector of Mudkhed Police Station, Dist. Nanded.

[iii] The applicants shall not indulge in the commission of any criminal offence.

[iv] The applicants shall furnish the names and addresses of their three (3) close relatives.

[4] In case of breach of any condition, the bail granted to the applicants shall be liable to be cancelled.

[5] Police Inspector of Mudkhed Police Station, Dist. Nanded is directed to submit the report in respect of compliance of conditions.

[6] Bail to be furnished in the trial Court.

(V.L.ACHLIYA,J.)

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