

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.354 OF 2017
IN
CRIMINAL APPEAL NO.464 OF 2016**

Milind Rajendra Awate & Ors. ... **Applicants**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Mandar Goswami, Advocate for the Applicants.
Ms.V.S.Mhaispurkar, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 16th MARCH 2017.

P.C. :

1 This is an application for suspension of sentence and releasing the applicants / accused on bail during pendency of the appeal.

2 Though applicants / accused along with another accused person were prosecuted for offence punishable under Section 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crimes Act (MCOC Act) and under Sections 395, 385, 341, 323, 504 and 506 of the IPC as well as under Section 3 read with Section 25 of the Indian Arms Act, ultimately they along with

a co-accused came to be convicted for offences punishable under Sections 3(1)(ii) and 3(4) of the MCOC Act, for which they were sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.5 Lakh. Applicants / accused came to be acquitted of rest of the offences alleged against them.

3 Heard the learned advocate appearing for the applicants / accused. He argued that the applicants / accused are behind bars for a period of about 3 years and short sentence of 5 years is imposed upon him. The learned advocate further argued that in view of the judgment of the Hon'ble Apex Court in **State of Maharashtra vs. Shiva alias Shivaji Ramaji Sonawane and Others**¹ applicants / accused ought not to have been convicted of the offences punishable under the MCOC Act, more particularly, when they are acquitted of all offences under the IPC and the Indian Arms Act. It is further argued that co-accused Banti @ Ramdas Anna Gaikwad had also been released on bail by this Court vide order dated 1st February 2017 in Criminal Application No.554 of 2016.

4 The learned APP opposed the application by contending that as the offence alleged is serious, applicants cannot be released on bail during pendency of the appeal.

5 I have carefully considered the rival submissions and also perused the copies of deposition as well as the impugned

1 (2015) 14 Supreme Court Cases 272

judgment and order of conviction. According to the prosecution case, accused No.1 Banti is the kingpin of the organized crime syndicate and he along with present applicants have attempted to extort huge amount from the informant by threatening him. It is seen that after considering the evidence adduced by the prosecution, the learned Trial Court has held that the prosecution has failed to prove the offences under the IPC and the Arms Act, and therefore, all accused were acquitted of offences punishable under Sections 395, 385, 341, 323, 504 and 506 read with Section 34 of the IPC, so also in respect of offences punishable under the Arms Act.

6 In paragraph 9 of its judgment in the matter of **Shiva alias Shivaji (supra)** the Hon'ble Apex Court has held thus :

“9 It was in the above backdrop that the High Court held that once the respondents had been acquitted for the offence punishable under the IPC and Arms Act in Crimes No.37 and 38 of 2001 and once the Trial Court had recorded an acquittal even for the offence punishable under Section 4 read with Section 25 of the Arms Act in MCOCA Crimes No.1 and 2 of 2002 all that remained incriminating was the filing of charge sheets against the respondents in the past and taking of cognizance by the competent court over a period of

ten years prior to the enforcement of the MCOCA. The filing of charge sheets or taking of the cognizance in the same did not, declared the High Court, by itself constitute an offence punishable under Section 3 of the MCOCA. That is because the involvement of respondents in previous offences was just about one requirement but by no means the only requirement which the prosecution has to satisfy to secure a conviction under MCOCA.

What was equally, if not, more important was the commission of an offence by the respondents that would constitute “continuing unlawful activity”. So long as that requirement failed, as was the position in the instant case, there was no question of convicting the respondents under Section 3 of the MCOCA. That reasoning does not, in our opinion, suffer from any infirmity.

It is, thus, clear that, commission of offence which will constitute continuing unlawful assembly is essential.

7 Undisputedly, accused Banti @ Ramdas is released on bail during pendency of the appeal. Considering the fact that applicants / accused have already undergone more than half of the sentence imposed upon them by the learned Trial Court and the appeal will take its own time for disposal, their application

deserves to be allowed, and therefore the order :

- i) The application is allowed
- ii) Substantive sentence of imprisonment imposed upon applicants / accused is suspended and they are directed to be released on bail on executing P.R.Bond in the sum of Rs.20,000/- each and on furnishing surety in like amount by each of them.
- iii)As a condition of this order, applicants / accused should attend Dhule City Police Station, Dhule, on every first Sunday of the month in between 11 a.m. and 1 p.m. till disposal of the appeal.
- iv)Applicants / accused should not indulge in any criminal activity during pendency of the instant appeal.
- v) Failure to abide by the conditions would result in cancellation of the bail granted to the applicants / accused.

(A.M.BADAR J.)