

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.554 OF 2016

IN

CRIMINAL APPEAL NO.464 OF 2016

**BANTI @ RAMDAS ANNA GAIKWAD)
(PAPPAIYA) AND OTHERS)...APPLICANTS**

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Mandar Goswami i/b. Mr.K.S.Patil, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 1st FEBRUARY 2017.

P.C. :

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

2 Though the applicant / accused along with other accused persons 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 he along with three co-accused came to be convicted for offences punishable under Sections 3(1)(ii) and 3(4) of the MCOC Act, for which he was sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.5 Lakh. The applicant / accused came to be acquitted of rest of the offences alleged against him.

3 Heard the learned advocate appearing for the applicant / accused. He argued that the applicant / accused is 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 the applicant / accused ought not to have been convicted of the offences punishable under the MCOC Act, more particularly, when he is acquitted of all offences under the IPC and the Indian Arms Act.

1 (2015) 14 Supreme Court Cases 272

4 The learned APP opposed the application by contending that as the offence alleged is serious, the applicant 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 judgment and order of conviction. According to the prosecution case, the applicant is the kingpin of the organized crime syndicate and he along with other co-accused had 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 Considering the fact that the applicant / accused has
already undergone more than half of the sentence imposed upon
him by the learned Trial Court and the appeal will take its own
time for disposal, his application deserves to be allowed, and
therefore the order :

i) The application is allowed

ii) Substantive sentence of imprisonment imposed upon
the applicant / accused is suspended and he is
directed to be released on bail on executing P.R.Bond

in the sum of Rs.20,000/- and on furnishing surety in like amount.

iii) As a condition of this order, applicant / 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) The applicant / 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 applicant / accused.

(A. M. BADAR, J.)