

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1324 OF 2016
IN
CRIMINAL APPEAL NO.737 OF 2016**

Vijay Dilip Charya ... **Applicant**
V/s.
The State of Maharashtra ... **Respondents**

**WITH
CRIMINAL APPLICATION NO.1330 OF 2016
IN
CRIMINAL APPEAL NO.738 OF 2016**

Prakash Shriram Bankar ... **Applicant**
V/s.
The State of Maharashtra ... **Respondents**

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Mr.Kaustubh N.Marathe, Advocate for the Applicants.

Ms.Pallavi N. Dabholkar, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 8th August 2017.

P.C. :

1 These are Applications by original accused No.1 and original accused No.2 respectively seeking suspension of sentence and releasing them on bail during pendency of Appeals filed by them challenging the Order dated 30/06/2016 passed by the learned Special Judge, Pune under the Maharashtra Control of

Organized Crimes Act, 1999 (“the M.C.O.C.Act” the for the sake of brevity) thereby convicting both of them for offences punishable under Sections 307, 392, 397, 398 and 401 read with Section 34 of the Indian Penal Code (“the IPC” for the sake of brevity) and under Sections 3(1)(ii) and Section 3(4) of the M.C.O.C. Act. For the offence punishable under Section 307 read with Section 34, applicants are sentenced to suffer rigorous imprisonment for seven years apart from direction to pay fine of Rs.10,000/- and in default to undergo further rigorous imprisonment for six months. Similar sentence and fine are imposed on both of them for the offences punishable under Section 392 read with Section 34 for the IPC and under Section 398 read with Section 34 for the IPC. Both of them are sentenced to suffer rigorous imprisonment for seven years for the offence punishable under Section 397 read with Section 34 of the IPC. For the offence punishable under Section 401 read with Section 34 of the IPC they are sentenced to suffer rigorous imprisonment for five years apart from direction to pay fine of Rs.5,000/- and in default to undergo further rigorous imprisonment for three months. So far as M.C.O.C.Act, 1999 is concerned, for the offence punishable under Section 3(1)(ii) for the Applicants are sentenced to suffer rigorous imprisonment for 10 years apart from direction to pay fine of Rs.5,00,000/- and in default to suffer further rigorous imprisonment for two years. So far as Section 3(4) of the said Act is concerned, similar sentence is imposed on both of them.

2 Heard the learned Advocate appearing for the Applicants for sufficient length of time. The learned Advocate for both the Applicants argued that there is no direct evidence against both of these Applicants as seen from paragraph 29 of the impugned Judgment and Order. Owner of 'Solanki Jewellers' shop namely Ashok Solanki and his relative Hasmukh Chopda have not identified both the Applicants. It is further argued that P.W.No.3 Mahesh Khande, police constable has deposed that when he reached on the spot he found people holding two accused persons. This implies that P.W.No.3 Mahesh Khande is not an eye witness to the crime in question. It is further argued that the impugned Judgment and Order shows that one of the employees of Solanki Jewellers namely Vijay was an eye witness to the incident in question, but he has not been examined by the prosecution. Evidence of P.W.No.3 Mahesh Khande shows that around 25 to 30 persons gathered on the spot, but none from them is examined by the prosecution in order to bring home the guilt to the accused persons. It is further argued that there is contradiction in respect of evidence regarding injuries suffered by both the Applicants. The Medical officer in his cross-examination has stated that injuries found on person of both the applicants/accused are possible because of accident. It is further argued that while deciding Bail Application of one of the accused, namely Dnyaneshwar Ambhore vide its Order dated 5th April 2013 in Criminal Bail Application No.68 of 2013, this Court (Coram :

Honourable Shri.Justice Abhay M.Thipsay) has held that there is nothing to indicate in the prior approval or Sanction Order that accused persons have involved in continuing unlawful activity on behalf of an '*organized crime syndicate*'. My attention is drawn to paragraph Nos.8 and 10 of the said Order. With this, it is argued that evidence of P.W.No.8 Meera Borwankar (Sanctioning Authority) demonstrates that there is serious doubt on the application of M.C.O.C. Act and, therefore, both the Applicants, who have undergone more than seven and half years of imprisonment are entitled for bail.

3 The learned Assistant Public Prosecutor opposes the Application.

4 I have considered the submissions that had advanced as well as record made available. According to the prosecution case, the incident in question took place on 12/03/2010 at about 2.30 p.m. in the jewellery shop named 'Solanki Jewellers' owned by P.W.No.1 Ashok Solanki. Three persons armed with pistols rushed inside the shop and attempted to loot gold and silver ornaments. After finishing their task of collecting gold and silver ornaments in gunny bag on the point of pistol, they went out of the shop where one of their associate was keeping watch. Then all accused persons tried to flee from the spot on motorcycle. At that point of time, P.W.No.1 Ashok Solanki pounced the motorcycle by

which accused persons were trying to flee from the spot. One of the accused persons then fired two rounds of bullet from the pistol on informant P.W.No.1 Ashok Solanki. One of the bullets hit on his back. Hearing shouts all inmates of the shop as well as that of the first informant P.W.No.1 Ashok Solanki lot of people gathered on the spot. One of the criminal was nabbed by P.W.No.2 Jeevan Phuge and another fearing the fury of mob took shelter inside room of complainant's jewellery shop itself. Ultimately, they were found to be both Applicants i.e. accused No.1 Vijay Dilip Charya and accused No.2 Prakash Shriram Bankar.

5 Evidence shows that P.W.No.1 Ashok Solanki and his relative P.W.No.21 Hasmukh Chopda could not identify the accused persons while in the dock. However, evidence of the prosecution shows that both Applicants were apprehended on the spot itself and they were initially taken in custody by P.W.No.3 Mahesh Khande, police constable and P.W.No.17 Arun Bhambure, police head constable. Whether one of them was inside and one of the them was outside the shop at the time of arrival of these police officials is of no consequences. What is relevant is apprehending of the culprit on the spot by the mob. Injuries on their persons caused of beating by the mob further corroborated the version of the prosecution case. Fire arms were recovered from them by the Investigating Officer as seen from the evidence of prosecution. While committing crime, accused persons had fired bullets on

P.W.No.1 Ashok Solanki causing injuries on him. At this stage, no importance can be given to the half hearted cross-examination of the Medical Officer to the effect that the injuries as seen on persons of both Applicants can be possible by some accident.

6 So far as observations of Honourable Shri.Justice A.M.Thipsay while deciding Criminal Bail Application No.68 of 2013 moved by accused Dnyaneshwar Ambhore is concerned, those observations are *prima facie* as they were recorded even when the trial was not commenced. It is seen that the said accused was granted bail only because the trial did not commence. However, now after recording of evidence of Sanctioning Authority, this is not a stage to conclude that there is no evidence to show that provisions of M.C.O.C. Act are not attracted. It is seen from the evidence on record that several charge sheets were placed on record of the Special Court which came to the conclusion that both Applicants were members of *Organized Crime Syndicate* and involved in *Organized Crimes*. *Prima facie*, it is seen that there is evidence to apply provisions of M.C.O.C.Act to the case in hand.

7 True it is that accused persons are behind bar for substantial period, but the degree of criminality shown by them and the mode and manner in which the offence was committed by them does not allow me to release them on bail during pendency

of Appeals filed by them merely because they had undergone seven and half years of sentence as argued by the their learned counsel. These Appeals are not pending before this Court for more than five years. Both these Appeals are of recent origin. In this view of the matter, the following order :

- (i) The Applications are rejected.
- (ii) Hearing of the Appeals is expedited.
- (iii) The learned Advocate appearing for Applicants is permitted to place on record private paper book in order enable expeditious hearing of Appeals.

(A.M.BADAR J.)