

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1332 OF 2016
IN
CRIMINAL APPEAL NO.736 OF 2016**

Dnyaneshwar A. Ambhore)...Appellant/Applicant

**V/s.
State Of Maharashtra**)...Respondent

Mr. Kaustubh Marathi, Advocate for the Appellant/Applicant.

Mr. S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 24th April, 2017.

P.C. :

This is an application by the applicant Dnyaneshwar Ambhore-Original Accused No.4 for releasing him on bail during the pendency of the appeal filed by him before this Court. By the impugned judgment and order dated 30.6.2016, the learned Special Judge, Pune was pleased to convict him along with co-accused for the offence punishable under Sections 307, 392, 397, 398, 401 read with Section 34 of the IPC, apart from the offences punishable under Sections 3(1)(ii) and 3(4) of the Maharashtra

Control of Organised Crime Act, 1999 (For the sake of brevity 'MCOC Act,1999'). He is sentenced to suffer rigorous imprisonment of different durations on each count, maximum of which is rigorous imprisonment for 10 years for the offences punishable under the MCOC Act, 1999. All substantive sentences are directed to run concurrently by the learned trial Court and, therefore, it is not necessary to mention sentences imposed on the applicant-original accused no.4 on each count.

2 Heard the learned advocate appearing for the applicant-original accused no.4. He argued that evidence against the present applicant is in respect of tracking by dog and identification by tracer dog. It is further argued that the learned trial Court has erred in convicting the applicant-original accused no.4 under the MCOC Act, 1999 as there is no evidence to demonstrate continuing unlawful activity. He argued that as involvement of the applicant-original accused no.4 in the offences punishable under sections of the IPC is under cloud if he is acquitted under the IPC offences then there is no question of his conviction under the MCOC Act, 1999. The learned APP opposed

the application by contending that the offences alleged against the applicant-original accused no.4 are serious and upon his conviction by one Court below, he cannot be released on bail considering the nature of offence.

3 I have carefully considered the rival submissions and also perused the record and proceedings including the impugned judgment and order as well as deposition of witnesses.

4 According to the case of the prosecution, 4 accused persons had indulged in robbery of the shop known as Solanki Jewellers situated at Bhosari, Pune and during the course of commission of the offence of robbery, robbers have used fire-arms and have caused grievous hurt to informant Ashok Solanki.

5 It is the case of the prosecution that two of accused persons were apprehended on the spot itself whereas two others were successful in fleeing from the spot of incident. The present applicant is stated to be one of the robbers, who was successful in fleeing from the scene of occurrence.

6 It is seen from the record made available that evidence against the present applicant-original accused no.4 is his

identification by the tracer dog. Conviction against the present applicant-original accused no.4 is mainly based on the evidence of the dog trainer PW.16-Nagnath Shankar Kate and panch witness-Khandu Shitole. Evidence is to the effect that police had seized one shirt and after smelling that shirt, tracer dog barked on the present applicant-original accused no.4 twice.

7 It is well settled that dog tracking evidence is the weakest form of evidence. Prima-facie, it does not appear that there is other corroborating evidence. From where the shirt alleged to be that of the applicant-original accused no.4 came to seized is also not properly explained in the evidence of the prosecution. It does not appear that the said shirt was left at the scene of occurrence by the applicant-original accused no.4.

8 Apart from this during the pendency of the trial, the applicant-original accused no.4 was on bail and there is nothing on record to suggest that he has misused his liberty.

9 In this view of the matter, the following order:

- (1) The application is allowed.
- (2) The substantive sentence of imprisonment

imposed on the applicant-original accused no.4 is suspended and he is directed to be released on bail on executing PR bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.

- (3) As condition of this order, the applicant-original accused no.4 should not commit any offence in future.

(A. M. BADAR, J.)