

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.154 OF 2018

IN

CRIMINAL APPEAL NO.95 OF 2018

1) LAXMAN @ LAKKHAN NAIK)
2) NIRANJAN KRISHNA PUJARI)
3) SURESH DATTARAM CHAUDHARI)
4) VIJAY JADHAV @ ZAMBORA)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

AND

CRIMINAL APPLICATION NO.209 OF 2018

IN

CRIMINAL APPEAL NO.95 OF 2018

PRAKASH @ PAPPA DHONDU SURVE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Pankaj Kavale, Advocate for the Applicants.

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

CORAM : A. M. BADAR, J.

DATE : 20th FEBRUARY 2018

P.C. :

1 By these applications, applicants/accused in M.C.O.C. Case No.4 of 2008 are seeking suspension of sentence imposed on them and their release on bail during pendency of the appeals filed by them before this court.

2 All applicants/accused are convicted by the learned Special Judge under the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as MCOC Act for the sake of brevity), Thane, on 22nd December 2017 in MCOC Case No.4 of 2008 for offences punishable under Sections 307 read with 120B, 387 read with 120B, 120B, 506 read with 120B of the Indian Penal Code as well as under Section 3(1)(ii) of the MCOC Act, 1999. In addition, applicant/original accused no.1 Laxman @ Lakkhan Naik came to be convicted for offences punishable under Section 3 read with 25 of the Indian Arms Act, for which he is sentenced to suffer rigorous imprisonment for 3 years apart from payment of fine of Rs.1,000/- and default sentence of rigorous

imprisonment for 3 months. So far as the offence punishable under Section 3(1)(ii) of the MCOC Act is concerned, all applicants/accused are sentenced to suffer rigorous imprisonment for 5 years apart from directing each of them to pay fine of Rs.5 lakh, and in default, to undergo rigorous imprisonment for 2 years. For the offence punishable under Section 307 read with 120B of the Indian Penal Code, they all are sentenced to suffer rigorous imprisonment for 5 years apart from payment of fine of Rs.1,000/- by each of them and in default, to undergo rigorous imprisonment for 3 months by each of them. Lesser sentences are imposed on them on other counts and it is not necessary to mention all those sentences because all substantive sentences are directed to run concurrently by the learned Special Judge.

3 I have heard the learned advocate appearing for applicants/accused. He submitted that applicants/original accused nos.1, 2 and 5 have undergone substantive sentence as well as default sentence for a term of about 6 years and 9 months, whereas, the applicant/original accused no.3 has undergone such

sentence for a period of 5 years and 9 months. So far as the applicant/original accused no.4 is concerned, he has undergone the substantive sentence of about 3 years and 8 months and about 20 days as of now. With this, the learned advocate placed reliance on order of the Honourable Apex Court in the matter of **Vinod Ghogale vs. The State of Maharashtra in Special Leave to Appeal (Crl.) No.6660 of 2017 passed on 3rd October 2017,** whereby, during pendency of the appeal before this court, the Honourable Apex Court had suspended the sentence and released the accused therein on bail, considering the fact that he had served sentence of more than 7 years. My attention is also drawn on order dated 31st October 2017 passed on Criminal Application No.1244 of 2015 Sanjit Krishna Shetty vs. The State of Maharashtra by co-ordinate Bench of this court (Coram : Smt.Anuja PrabhuDessai, J.) whereby relying on the order dated 3rd October 2017 passed by the Honourable Apex Court, the co-accused in that case was also released on bail as he had also undergone substantial part of the substantive sentence.

4 The learned advocate further argued that accused no.4 Prakash Surve was not even identified by PW20 Channawadu and he was not present on the spot of the incident. PW11 Balkrishna had described accused no.5 Vijay Jadhav as an unknown accused, but infact, PW11 Balkrishna had filed First Information Report (FIR) against this accused on 12th March 2008. The learned advocate further argued that so far as accused no.3 Suresh Chaudhari is concerned, nobody had identified him. The learned advocate further argued that, evidence in respect of prior approval and previous sanction as contemplated under Section 23 of the MCOC Act is totally discrepant and the concerned officers have candidly accepted the fact that they were not aware whether the competent court had taken cognizance of the earlier charge-sheets filed against the accused persons. With this, the learned advocate submitted that all applicants/accused are entitled to be released on bail.

5 The learned APP opposed the application by contending that apart from ocular evidence adduced by the

prosecution, forensic evidence is supporting the case of the prosecution, as human blood stains were detected on the seized weapons.

6 I have carefully considered the rival submissions and also perused the copies of deposition of prosecution witnesses. PW13 D.Kanakratnam, at the relevant time, was Additional Commissioner of Police of Thane region. This witness was cross-examined on the point of previous approval accorded by him. He has stated that he was not aware as to whether the Investigating Officer had placed before him any documents in respect of taking cognizance by the court about previous cases against the accused persons. PW34 D.Shivanandhan, at the relevant time, was the Commissioner of Police, Thane. This witness has admitted in cross-examination that he had not mentioned about previous cases against the accused persons in his sanction order.

7 It is not in dispute that accused no.1 Laxman @ Lakkhan Naik, accused no.2 Niranjana Pujari and accused no.5

Vijay Jadhav have undergone more than 6 years and 8 months jail sentence. Accused no.3 Suresh Chaudhari has undergone jail sentence of 5 years and 9 months duration whereas, accused no.4 Prakash Surve has undergone jail sentence of 3 years and about 9 months duration. The maximum sentence of imprisonment imposed on applicants/accused herein is that of 5 years. Infact, four of the applicants/accused have already undergone the entire substantive sentence and almost all default sentence. The remaining applicant/accused i.e. applicant/accused no.4 Prakash Surve has undergone more than half of the substantive sentence imposed on him. In the matter of **Vinod Ghogale vs. The State of Maharashtra in Special Leave to Appeal (Crl.) No.6660 of 2017**, in a similar situation, after completing more than half of the substantive sentence of imprisonment imposed on him, the Honourable Apex Court had released the appellant therein on bail, in the case arising out of conviction under MCOC Act.

8 In this view of the matter, I am of the considered opinion that, applicants/accused herein are also entitled for

similar treatment, considering the peculiar fact situation in the instant case, wherein applicant/accused no.3 Suresh Chaudhari was not at all identified by anybody else, applicant/accused no.4 Prakash Surve was not present on the spot and was not identified by PW20 Channawadu and that applicant/accused no.5 Vijay Jadhav came to be described as an unknown accused by PW11 Balkrishna, when infact, on earlier occasion, he had filed FIR against this applicant. In this view of the matter, the following order :

ORDER

- i) Both the applications are allowed.
- ii) Substantive sentence of imprisonment imposed on applicants/accused is suspended and they are directed to be released on bail on their executing P.R.Bond in the sum of Rs.25,000/- each, and on furnishing 1 or 2 solvent surety/sureties in like amount, by each of them, to the satisfaction of the learned Special Judge under the MCOC Act, 1999, Thane.

- iii) Applicants/accused shall furnish their permanent as well as temporary address if any, and their contact numbers and shall intimate change of their address and contact numbers, if any, to the Police Officer of the concerned Police Station.
- iv) Applicants/accused to attend the concerned Police Station once in three months on every first Sunday, in between 11.00 a.m. to 1.00 p.m., till conclusion of the appeal before this court.
- v) The applications stand disposed of in above terms.

(A. M. BADAR, J.)