

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 910 OF 2018
in
CRIMINAL APPEAL NO. 745 OF 2018

Vishwanath Maranna ShettyPetitioner
versus
The State of MaharashtraRespondent

with
CRIMINAL APPLICATION NO. 978 OF 2018
in
CRIMINAL APPEAL NO. 804 OF 2018

Dattatraya Yashwant BhakarePetitioner
versus
The State of MaharashtraRespondent

Mr. Sudeep Pasbola along with Mr. Ashwin Thool, Ms. Pooja Badekar and Mr. B. M. Thakur I/b. Reshma J. Mutha, advocate for the applicant in criminal application No.910 of 2018.

Mr. Avinash Rasal along with Mr. Akshay Salvi and Ms. Anushree Rasal I/b. Milin Dhande, advocate for the applicant in criminal application No. 978 of 2018.

Mrs. M. M. Deshmukh, APP for the State.

**CORAM : RANJIT MORE &
SMT.ANUJA PRABHUDESSAI, JJ.**

DATE : 6th AUGUST, 2018.

P. C. :

Heard learned counsel and learned APP appearing for the respective parties.

2. The present applicants along with 9 other persons were charged for the offences punishable under section 120-B, 302 read with 120-B, 452 read with 120-B of the Indian Penal Code, 1860, sections 25(1-A) read with 7, 25(1-B) read with 3 and 27 of the Arms Act 1959 and sections 3(1)(i), 3(2), 3(4) and 4 of the Maharashtra Control of Organized Crime Act, 1999 and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.5,00,000/- each and, in default, to suffer rigorous imprisonment for one year.

3. So far as the present applicants are concerned, the only evidence against them is the confessional statement of accused No.6. The confessional statement shows that the accused No.6 used to take money from accused No.9 - Vishwanath Shetty (applicant in criminal application No. 910 of 2018) and, in turn, give it to accused No.2- Raju @ Sakib. So far as the role of accused No.7 – Dattatraya Yashwant Bhakare (applicant in criminal application No.978 of 2018) is concerned, the confessional statement shows that accused No.6 collected an amount of Rs.15,00,000/- from accused No.7- Dattatraya Yashwant Bhakare at the instance of the absconding accused -Vijay Shetty. It further shows that the sim card bearing No.9594699924 which was given to accused No.7 - Dattatraya Yashwant Bhakare was earlier given to accused No.2-Raju @ Sakib.

4. Relying upon the said confessional statement, the learned Special Judge has made following observation in paragraph 379 of the impugned judgment, which reads as under :

“379. Though the reason for murder of Farid Tansasha is as stated by the prosecution but from the evidence on record there is very clinching evidence that all accused were in communication or association with Vijay Shetty. Moreover, accused No.7 to 9 were also rendering financial assistance to the organized crime syndicate. May be the reason is different. But considering the definition of “abet” with the definition of “organized crime” in absence of presumption applicable is rebutted only conclusion can be drawn that accused no.1 to 11 have committed offence of organized crime.”

It is to be noted that in paragraph 348, the learned Special Judge has observed as under :

“348. It has come on record that accused No.7 to 11 also provided amount from time to time as the instance of Vijay Shetty. But there is room of doubt to say that they were aware plan to eliminate Farid Tanasha. Further, there is no active or passive role to kill Farid Tanasha. Therefore, accused No.7 to 11 can not held guilty for hatching conspiracy along with accused no.1 to 6.”

5. In the light of the above observations and upon appreciating the evidence on record, the learned Special Judge has absolved the applicants of the charge of criminal conspiracy and consequently acquitted these applicants of offences under sections 120-B, 307 read 120-B of Indian Penal Code, 1860, sections 3(1)(i) and 3(4) and 4 of the Maharashtra Control of Organized Crime Act, 1999. The learned APP concedes that the State has not challenged the acquittal of these applicants in respect of the above offences. In the light of the specific findings that the applicants were not involved in the criminal conspiracy and that they had no knowledge of the conspiracy to cause death of Farid Tanasha, we are inclined to grant bail to the applicants. Furthermore, the maximum sentence awarded is of 10 years. The applicant – Vishwanath Shetty (accused No.9) is in custody since last 7 years. Whereas, the applicant - Dattatraya Yashwant Bhakare (accused No.7) is in custody since last more than 8 years. Considering all the above circumstances, we pass the following order:

- a) The applicants are directed to be released on bail on their furnishing fresh bail bonds of Rs.50,000/- each with one or more solvent securities in the like amount to the satisfaction of the learned Special Judge in MCOCA Special Case No.10 of 2010 if not required in any other case.

b) The applicants shall furnish their permanent as well as temporary address, if any, as well as their contact numbers. The applicants shall not change their address without prior permission of the Court.

c) The applicants are directed to report to the Crime Branch on first Monday of every month until further orders.

d) The applicants shall not leave the country without prior permission of the Court and, in the event they have been issued passports, they shall deposit the same with the Crime Branch.

7. The criminal applications are disposed of.

8. All concerned to act upon a copy of this order duly authenticated by the Registry of this Court.

[SMT.ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]