

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 927 OF 2018
IN
CRIMINAL APPEAL NO. 761 OF 2018**

Dinesh Bhawarlal Bhandari @ Lalji ... Applicant

vs.

The State of Maharashtra ... Respondent

Mr. Kuldeep S. Patil a/w. A.R. Takla, Advocate for the applicant.
Mrs. M.M. Deshmukh, APP for the respondent/State.

**CORAM: Mr.S.S. SHINDE &
Mrs.MRIDULA BHATKAR, JJ..
DATED: 17th September, 2018**

P.C. :

1. Heard the learned counsel for the applicant and the learned APP appearing for the respondent/State.

2. The learned counsel appearing for the applicant submitted that the applicant is original accused no. 11. The role assigned to him is similar to that of accused nos. 6, 7 and 9, who have been released on bail by order dated 6th August, 2018 passed by the Division Bench of this Court (Coram : Ranjit More & Smt. Anuja Prabhudessai, JJ.). Therefore, on merits as well as on the ground of parity, he prays that the applicant be released on bail during the pendency of the appeal. He submitted that the applicant

has undergone around 7 years of sentence.

3. On the other hand, learned APP appearing for the State, relying upon the confessional statement and other material, submitted that the role of appellant viz-a-viz other co-accused nos. 6, 7 and 9 is different. It is submitted that other co-accused have undergone 9 years of sentence.

4. We have given careful consideration to the submissions of the learned counsel appearing for the applicant and the learned APP appearing for the respondent-State. We have carefully perused the Notes of evidence and also the order dated 6th August, 2018 passed by the Division Bench of this Court in the case of co-accused Vishwanath Maranna Shetty in Criminal Application no. 910 of 2018 and co-accused Dattatraya Yashwant Bhakare in Criminal Application No. 978 of 2018. It appears that the allegations against the applicant is that he called accused no. 6 and told that Bharat Nepali and Vijay Shetty asked to give Rs.1,00,000/- to him and called at Raunka house, Mirza Street, Zaveri Bazar, Kalbadevi. Accused no. 6 met accused no. 11 and accused no. 11 has given Rs.1,00,000/-. While considering the Bail Application of other co-accused, namely Vishwanath Maranna

Shetty and Dattatraya Yashwant Bhakare, the Division Bench of this Court (Coram : Ranjit More & Smt. Anuja Prabhudessai, JJ.) in paragraphs 3 and 4 observed thus:

“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. It is to be noted that the accused is convicted under section 3(1)(i) of the M.C.O.C. Act, wherein the maximum punishment of life imprisonment and minimum punishment of five years is prescribed. Thus, even if the conviction of the applicant-accused under M.C.O.C. Act is upheld, as on today he has already undergone the period of minimum sentence.

6. We have also carefully perused the statement of co-accused Mohd. Rafiq Abdul Samad Shaikh (accused no. 6), and we are of the *prima facie* opinion that the role assigned to present applicant is similar to those of co-accused, namely, Vishwanath Maranna Shetty and Dattatraya Yashwant Bhakare, who are released on bail by this Court. In the light of discussion in

foregoing paragraphs, we pass the following order:

- (a) The applicant is directed to be released on bail on his furnishing fresh bail bond of Rs.50,000/- with one or more solvent sureties 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 applicant shall furnish his permanent as well as temporary address, if any, as well as his contact number. The applicant shall not change his address without prior permission of the Court;
- (c) The applicant is directed to report to the Crime Branch on first Monday of every month until further orders.
- (d) The applicant shall not leave the country without prior permission of the Court and, in the event , he has been issued passport, he shall deposit the same with the Crime Branch.

7. Criminal Application is disposed of.

(MRIDULA BHATKAR, J.)

(S.S. SHINDE, J.)