

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1150 OF 2018
WITH
CRIMINAL APPLICATION NO.1151 OF 2018
IN
CRIMINAL APPEAL NO.1154 OF 2018**

1) ISHRAT BADSHAH SHAIKH @ RAJA)
2) MOHAMED HASNAT HAKIKULLAH)
3) AAZIM NASIM KHAN)
4) ASHFAK ABDUL RASHID SAYYED @)
BACHKANA)
5) SHAHNAWAZ SHARIF SHAIKH @ SHANU)
6) FIROZ ABDUL KADAR SAYYED)
7) SHABBIR AMIR SHAIKH)
8) RAHIM ADAM KHAN)
9) MOHAMED ANIS ABDUL RASHID)..APPLICANTS
V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Nazneen Adil, Advocate for the Applicants.

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

CORAM : A. M. BADAR, J.

DATE : 15th OCTOBER 2018

P.C. :

1 These are applications for suspension of sentence and releasing applicants/accused on bail during pendency of the appeals filed by them. Applicants/accused were prosecuted for offences punishable under Sections 120B read with 302 read with 511 of the Indian Penal Code, under Sections 115, 465, 468, 471, 302 read with 511 of the Indian Penal Code, under Sections 115, 302 read with 511, under Sections 115, 465, 468 and 471 of the Indian Penal Code, under Sections 25 read with 3 of the Arms Act as well as under Section 3(2) read with 3(i)(ii) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999. After trial, ultimately, they were convicted of offences punishable under Sections 120B read with 302 read with 511 of the Indian Penal Code and under Section 115 of the Indian Penal Code. Original accused nos.1 to 6 and 10 came to be convicted for the offence punishable under Sections 25(1-B)(a) of the Arms Act. Original accused nos.3 and 4 came to be convicted for the offence punishable under Sections 465, 468, 471 of the Indian Penal

Code. Different sentences are imposed on them and the learned trial court directed that all substantive sentences of imprisonment shall run concurrently. Therefore, it is not necessary to mention all sentences imposed on applicants/accused. Suffice to state that the highest sentence of imprisonment imposed on applicants/accused is one under Section 115 of the Indian Penal Code. On this count, they are sentenced to suffer rigorous imprisonment for 5 years apart from direction to pay fine of Rs.5,000/- and in default to undergo simple imprisonment for a period of 6 months.

2 Heard the learned counsel appearing for applicants/accused. She argued that applicants/accused have almost undergone sentence of 4 years of rigorous imprisonment out of 5 years term imposed on them. It is further argued that evidence adduced by the prosecution is not sufficient to bring home the guilt to applicants/accused. Evidence of PW45 Mahesh Bhatt shows that he was not present at the house when the accused persons came to be apprehended.

3 The learned APP opposed the applications by contending that the crime in question is serious and applicants/accused are not entitled for bail. The learned APP submitted that except the applicant/accused no.3, Aazim Khan, rest of the applicants/accused have undergone rigorous imprisonment for more than 4 years.

4 I have considered the submissions so advanced and also perused the impugned judgment and order of conviction as well as the resultant sentence. I have also perused the deposition of prosecution witnesses.

5 Police Inspector Jagdish Sai had received secret information that absconding accused Ravi Poojary had given contract to kill PW45 Mahesh Bhatt and applicants/accused persons were making preparations for executing the contract killing. Ultimately, the police team had succeeded in apprehending some of the accused persons on 15th November 2015. Some firearms were recovered from them.

6 After due trial, applicants/accused persons are acquitted of major offence alleged against them. Maximum sentence of imprisonment imposed on them is that of 5 years. It appears that applicants/accused have not deposited the fine amount as yet.

7 Considering the fact that short sentence of imprisonment for 5 years has been imposed on applicants/accused persons and except applicant/accused no.3, all applicants/accused persons have undergone rigorous imprisonment for more than 4 years, they deserve to be released on bail. So far as applicant/accused no.3 is concerned, he was already on bail during pendency of the trial and as such, there is no reason to deny bail to him, considering the short sentence of imprisonment imposed on him as well as the proved offence. Hence, the order :

ORDER

i) The applications are allowed.

- ii) Substantive sentence of imprisonment imposed on the applicants/accused is suspended and the applicants/accused are directed to be released on bail on their executing P.R.Bond in the sum of Rs.25,000/- each and on furnishing surety in like amount, by each of them.
- iii) Applicants/accused should not indulge in commission of any crime during pendency of the appeal filed by them.
- iv) Applicants/accused to deposit fine amount forthwith and this order shall become operative only after payment of entire fine amount by the applicants/accused persons.
- v) The applications are disposed of.

(A. M. BADAR, J.)