

JPP

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

CRIMINAL APPLICATION NO. 1596 OF 2018

IN

CRIMINAL APPEAL NO. 851 OF 2018

Mohammad Ayub Alimuddin Shaikh

@ Ayub Chikana.

... Applicant/Appellant.

V/s.

The State of Maharashtra.

... Respondent.

With

CRIMINAL APPEAL NO. 1084 OF 2017

The State of Maharashtra.

... Appellant.

V/s.

Mohammad Ayub Alimuddin Shaikh

@ Ayub Chikana & Ors.

... Respondents.

Mr. Niteen Pradhan I/b. Shubhada D. Khot for the
Applicant/Appellant.

Ms. S.V. Sonavane, APP for the Respondent - State.

***CORAM : S.S. Shinde and
Mrs. Mridula Bhatkar, JJ.***

DATE : 18th September 2018.

P.C. :-

This is a second bail application during the pendency of the Appeal. The Appellant/Applicant is convicted for the offences punishable under Section 392 r/w. 34 of the Indian Penal Code and is sentenced to suffer R.I. for 9 years and fine of Rs.20,000/- in default S.I. for one year. He is also convicted under Section 342 r/w. 34 of the Indian Penal Code and sentence to suffer R.I. for 9 months and fine of Rs.500/- with S.I. for one month, by the judgment and order dated 18th December 2015 passed by the Special Judger under MCOC Act, 1999, Greater Mumbai. The Applicant/Accused has however, acquitted from the charges under Section 3(1)(ii), 3(2), 3(4) of the MCOC Act, 1999 and is also from the charge under Section 3,4, 25 of the Indian Arms Act r/w. 37(1)(a) of the Bombay Police Act. The Applicant/Accused has filed Criminal Appeal against the conviction and the State has also challenged the acquittal of the accused and charges under MCOC Act by filing Criminal Appeal under Section 378 of the Code of Criminal Procedure.

2. The incident of robbery has taken place on 19th December 2011 at night near Metro Junction, Mumbai when the Applicant/Accused alongwith co-accused intercepted taxi which was going towards the CST Railway Station and robbed the first informant PW-8 and a witness i.e. PW-6. The informant and

witness were robbed of gold ornaments collectively, worth of Rs.14,01,500/- at the point of a weapon like chopper by Accused No.1 and pistol by Accused No.2.

3. The main contention raised by the learned Counsel Mr. Pradhan that the Applicant/Accused is languishing in the prison since his arrest i.e. 26th December 2011. He is sentenced to suffer R.I. for 9 years. Till today, he has completed 6 years and 9 months. Thus, he has completed more than half the period of his conviction. Considering the year-wise pendency of the Appeals and the present Appeal is of the year 2016, there is no possibility of hearing of this Appeal in the near future. He has further submitted that the Applicant/Accused is acquitted from the MCOC charges and he is sentenced mainly for the offence of robbery for 9 years and if released on bail, he will abide by all the conditions. He is ready to give attendance in every week, even alternate day to the nearby Police Station. He further submitted that the learned Judge taken a legal view that no evidence is produced about the existence of Organized Crime Syndicate in the present case and hence the accused is rightly acquitted.

4. The learned APP, while opposing this application, has pointed out the earlier order dated 18th January 2017 passed by the Single Judge of this Court. She relied on the order of earlier bail

application which was rejected. She submitted that the State has filed the Appeal against Acquittal. There is a very good case for the State against the accused under the MCOC Act. She submitted that the Applicant/Accused is a headman of the syndicate and two previous charges in the name of the Applicant/Accused are submitted and produced at Exhibit 192 and 193 collectively. However, this evidence is not properly appreciated by the Trial Court. She further submitted that in the cases the Applicant/Accused has committed similar nature of offence of robbery and he has adopted a peculiar modus operandi in all these robbery cases. In view of this, she relied on the evidence of the eye witness – injured informant.

5. We have gone through the evidence and material produced before this Court by both the parties. The learned Single Judge, by order dated 18th January 2017 has passed a detailed order in the earlier Criminal Bail Application No. 1282 of 2016 and has rejected the same by observing that he did not feel it proper to release him on bail during the pendency of the Appeal particularly, when the State has chosen to challenge his acquittal in respect of other offences by filing Appeal. Considering the material before us and after due deliberation, we do not find a good ground to entertain this second Bail Application when the learned Single Judge has passed a reasoned order.

6. However, we appreciate the submissions of the learned Counsel that the Appeal is to be expedited in view of the conviction of the Applicant/Accused is only for 9 years and till today he has undergone nearly 6 years and 9 months. Hence, we pass the following order :-

- (i) The Application is rejected.
- (ii) Criminal Appeal No. 851 of 2018 is expedited and to be taken on the final hearing board commencing from 1st October 2018.
- (iv) If the Appeal is not heard within 9 months from 1st October 2018, then liberty granted to the Appellant to file another fresh application for bail.

7. Issue notice to Respondent Nos. 3 and 4 in Criminal Appeal No. 1084 of 2017.

(Mrs. Mridula Bhatkar, J.)

(S.S. Shinde, J.)

Jyoti
Prakash
Pawar

Digitally
signed by Jyoti
Prakash Pawar
Date:
2018.09.21
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