

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

**CRIMINAL APPLICATION NO. 548 OF 2019
IN
CRIMINAL APPEAL NO. 646 OF 2019**

Anil Pandit Aher

..Appellant/Applicant

v/s.

The State of Maharashtra

..Respondent

Mr. Tushar Narayan Sonawane for Appellant/Applicant.

Ms. Pallavi N. Dabholkar-APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 30th April 2019.

P.C.

1. Heard.

2. This is an application filed under Section 389 of Cr.P.C. The applicant herein is seeking suspension of substantive sentence imposed upon him by the Special Judge and Additional Sessions Judge, Nashik in Special (MCOCA) Case No. 1 of 2013, vide judgment and order dated 21st February 2018, thereby convicting the applicant i.e. original accused no. 4 for the offence punishable under sections 109, 120-B , 395 and 392 of Indian Penal Code and Section 3(1) (ii), 3(2) and 3(4) of Maharashtra Control of Organisation Crime Act, 1999 and sentencing him to suffer rigorous imprisonment for eight years and to pay fine of Rs. 5 lakh, each, in default to suffer further rigorous imprisonment for one year each. It is directed that

all sentences shall run concurrently. It is a matter of record that the applicant herein had undergone substantive sentence of six years and four months and more till today. Criminal Appeal No. 367 of 2018, Criminal Appeal No. 432 of 2018, Criminal Appeal No. 409 of 2018 and Criminal appeal No. 934 of 2018 were admitted by the Hon'ble Division Bench (Coram: A.S. Oka and A.S. Gadkari, JJ). In fact the said appeals were admitted before the Hon'ble Judge taking up the then assignment. The State has filed Criminal Appeals for enhancement of sentence. Hence, the matters were before the Hon'ble Division Bench for grant of appeals. Since the appeals were specially assigned to the Hon'ble Division Bench by an Administrative order dated 14th February 2019 by the then the Chief Justice.

3. The Hon'ble Division Bench in the order dated 20th February 2019 has observed as follows:

“The applicants were arrested on 4th October 2012. Thus, out of substantive sentences which are ordered to run concurrently, they have undergone sentence for a period of 6 years and four months and more. In case of offences under the MCOC Act, the applicants have been ordered to pay fine of Rs.5 lakh. Admittedly, the applicants have not paid the fine amount. However, the sentences in default are rigorous imprisonment for one year which are to run concurrently. Thus, it can be said that out of total sentence of nine years, the applicants have undergone sentence for six years and four months and more”.

4. Hence, the co-accused are enlarged on bail. In view of the observations of the Hon'ble Division Bench the present applicant would also be entitled to the same relief during the pendency of the appeals. Hence the following order:-

Order

- i) The Criminal Application is allowed.
- ii) The substantive sentence imposed upon the applicant by the Special Judge and Additional Sessions Judge, Nashik in Special (MCOCA) Case No. 1 of 2013, vide judgment and order dated 21st February 2018 is hereby suspended.
- iii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.25,000/- (Rupees Twenty-Five Thousand only) and one or more local sureties in the like amount.
- iv) The applicant shall cause his presence before the Special Judge and Additional Sessions Judge, Nashik once in six months i.e. on first day of January and July of every calendar year till the disposal of the appeal.
- v) Upon failure to attend any single date, the learned Special Judge and Additional Sessions Judge, Nashik shall immediately submit a report to the Registrar of this Court and the prosecution would be at liberty to seek cancellation of bail.

vi) Needless to say that in view of the order passed by the Hon'ble Division Bench the sentence of fine is suspended.

vii) The application stands disposed of.

The parties to act on an authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J)