

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 520 OF 2018
IN
CRIMINAL APPEAL NO. 367 OF 2018

Nagesh Bhagwat Sonawane. ... Applicant.
V/s.
The State of Maharashtra. ... Respondent.

AND
CRIMINAL APPLICATION NO. 596 OF 2018
IN
CRIMINAL APPEAL NO. 432 OF 2018

Sameer Nasir Pathan. ... Applicant.
V/s.
The State of Maharashtra. ... Respondent.

AND
CRIMINAL APPLICATION NO. 597 OF 2018
IN
CRIMINAL APPEAL NO. 432 OF 2018

Sameer Nasir Pathan. ... Applicant.
V/s.
The State of Maharashtra. ... Respondent.

AND
CRIMINAL APPLICATION NO. 945 OF 2018
IN
CRIMINAL APPEAL NO. 409 OF 2018

Sunil Daulatrao Khokale. ... Applicant.
V/s.
The State of Maharashtra. ... Respondent.

AND

CRIMINAL APPLICATION NO. 1312 OF 2018
IN
CRIMINAL APPEAL NO. 934 OF 2018

Nitin Balkrushna Kale @ Nitya Khichadya. ... Applicant.
V/s.
The State of Maharashtra. ... Respondent.

AND
CRIMINAL APPLICATION NO. 1550 OF 2018
IN
CRIMINAL APPEAL NO. 934 OF 2018

Nitin Balkrushna Kale @ Nitya Khichadya. ... Applicant.
V/s.
The State of Maharashtra. ... Respondent.

Mr.Aniket Vagal for the applicant in APPA-520/18.
Mr.Jayant J. Bardeskar for the applicants in APPA-596/18 & 597/18.
Mr.Ganesh Gole for the applicant in APPA-1312/18.
Mr.Tushar N. Sonawane for the applicant in APPA-945/18.
Mr.V.V.Gangurde, APP for the for the respondent- State.

CORAM : A.S.OKA AND A.S.GADKARI, JJ.

DATE : 20th February 2019.

P.C. :

Heard the learned counsel appearing for the applicants and the learned APP for the State. As per the administrative order dated 14th February 2019, the Hon'ble the Chief Justice has assigned the appeals out which these applications arise and connected appeals to this Bench.

2. The present applications are filed by accused Nos.1, 2, 3 and 5. Perusal of the impugned judgment shows that the applicants have been convicted for the offences punishable under sections 109 and 120B of Indian Penal Code (for short "IPC"), for the offences punishable under sections 395 and 392 of IPC, for the offence punishable under section 3(1)(ii) of the Maharashtra Control of Organized Crime Act of 1999 (for short "MCOC Act"), for the offence punishable under section 3(2) of the MCOC Act, for the offence punishable under section 3(4) of the MCOC Act as well as for the offence punishable under section 3/25 of the Arms Act, 1959. Except for the last offence, the substantive sentence imposed on the appellant is a rigorous imprisonment for eight years. For the three offences under the MCOC Act, the applicants have been ordered to pay fine of Rs.5 lakh each and, in default, to suffer further rigorous imprisonment for one year. For the last offence, the substantive sentence is rigorous imprisonment for year each. Except for the offences under the MCOC Act, the applicants have been ordered to pay fine of Rs.1,000/- and to suffer rigorous imprisonment for three months in default. All the substantive sentences are ordered to run concurrently as per clause- 8 of the operative part of the impugned judgment.

3. 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. Considering the pendency of very old appeals and, especially the number of appeals of the accused in jail who have already undergone sentence for more than 10 years, these appeals are not likely to be listed for final hearing in near future. As the applicants have undergone more than 2/3rd of substantive sentence, they will have to be enlarged on bail subject to stringent conditions.

4. Accordingly, we dispose of these applications by passing the following order:

ORDER

- (i) The substantive sentences imposed upon the applicants- the accused Nos.1, 2, 3 and 5 vide judgment and order dated 21st February 2018 passed by the learned Special Judge and Additional Sessions Judge, Nashik in Special (MCOC) Case No.1/2013 shall stand suspended till the final disposal of appeals and they shall be enlarged on bail in the sum of Rs.25,000/- each with one or two solvent local sureties in the like amount;
- (ii) The bail is granted subject to further condition that the applicants shall report to the concerned Special Judge on first Monday of January and July of every calender year till the disposal of appeals. They shall report to the Special Judge at 11.00 a.m. In case the aforesaid Mondays are Court Holidays,

the applicants shall report on the immediate next Court Working day;

- (iii) In the event any single default is committed by the applicants, the learned Special Judge shall immediately submit a report to that effect to the Registrar (Judicial-I) who shall immediately place the report before the appropriate Bench for passing necessary orders;
- (iv) The applications are accordingly disposed of.

(A.S.GADKARI, J.)

(A.S.OKA, J.)