

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.554 OF 2019
IN
CRIMINAL APPEAL NO.554 OF 2019**

Dilnawaj Shafiq Ilahi] Applicant

Vs.

The State of Maharashtra] Respondent

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Ms. Anjali Patil a/w Mr. Arun Rajput, for the Applicant.

Mr. A.A. Palkar, A.P.P, for Respondent-State.

**CORAM:
PRITHVIRAJ K. CHAVAN, J.**

RESERVED ON : 18TH FEBRUARY, 2020.

PRONOUNCED ON : 28TH FEBRUARY, 2020.

P.C:

This is an application under section 389 of the Criminal Procedure Code (for short 'Cr. P.C.') seeking release of the applicant-original accused No.1 on bail, pending the appeal.

2. The applicant-Dilnawaj Shafiq Ilahi has been convicted by the Special Judge under the Maharashtra Control of Organized Crime Act, Greater Bombay on 14th March, 2019 and sentenced as below;

The applicant has been convicted along with accused No.2 of an offence punishable under section 392 r/w 397 of the Indian Penal Code

(for short 'I.P.C') and sentenced to suffer Rigorous Imprisonment for seven years with fine of Rs.20,000/-, in default, Rigorous Imprisonment for six months.

The applicant has been convicted under section 394 of the I.P.C and has been sentenced to suffer Rigorous Imprisonment for 10 years with fine of Rs.20,000/-, in default Rigorous Imprisonment for six months.

The applicant has been further convicted under section 135 r/w section 37 (1) and (2) of the Maharashtra Police Act and sentenced to suffer Rigorous Imprisonment for six months with fine of Rs.1,000/-, in default, Rigorous Imprisonment for 15 days.

3. The applicant along with other accused has been acquitted of the offence punishable under section 120-B of the I.P.C and under sections 3 (i) (ii), 3 (2) 3 (3) and 3 (4) of the Maharashtra Control of Organized Crime Act, 1999. The maximum sentence as per the impugned judgment is seven years.

4. Heard the learned Counsel for the applicant who has taken me through the evidence of various prosecution witnesses in order to demonstrate as to how, even on merits, there is a good chance of the

applicant getting acquitted as the trial Court has failed to appreciate the evidence.

5. Learned Counsel drew my attention to a fact that the incident in question had occurred on 13th February, 2014 whereas Test Identification Parade came to be conducted on 25th March, 2014 and P.W.11 and 12 were put for the Test Identification Parade on 26th May, 2014. It is further submitted that no role has been attributed to the applicant. My attention is also drawn to the testimony of P.W.10 (whose name has been concealed) who appears to be an independent witness of the incident wherein it has come on record that while cleaning the road just ahead Chaniya House, some *gundas* arrived on the spot in two four wheeler and on a bike. There were eight to ten persons. The persons who got down from four wheelers and one motorbike were snatching the bags from the employees of Angadiya. There was also a firing on the spot resulting into hitting the bullet to the palm of one of the employees of Angadiya.

6. The Police arrived after some time and took the employee of Angadiya who had sustained injury on his palm. One of the accused was caught by the employees who had abused this witness by saying;

“bajume hat, rasta tumhare bap ka hai kya”

Rest of the accused fled away. This witness had identified the applicant in

Test Identification Parade. However, she did not attribute any role *qua* the applicant. This witness categorically admits that she did not tell the Tehsildar role played by the applicant to whom she had identified at the time of the incident.

7. The learned Counsel has also drawn my attention to the testimony of P.W.31- A.P.I-Archana Naresh Shirsat who was attached to V.P. Nagar Police Station at the relevant time as P.S.I. She has proved certain omissions from the testimony of P.W.11 to the effect that he did not state before the Police that two persons came from the side and two to three persons followed them and thereafter they asked them to hand over bag, else, they would kill them. She further testified that Informant-P.W.1 even did not state that one person was snatching a bag from the hand of his colleagues and he raised hue and cry to save them and thereafter those four persons escaped from the spot in a white Bolero Jeep.

8. P.W.28-Ashok Sanap who is Nayab Tahasildar testified that he simply asked one Mancharam to identify the real suspect by touching the person. He did not ask anything else to said Mancharam. Mancharam had only identified accused-Irshad. He specifically testified that Mancharam did not identify the accused Dilnawaz and therefore, he sent back the witness.

9. Looking to the nature of the evidence coupled with the fact that ever since his arrest on 14th February, 2014, the accused has undergone around six years in Jail and, therefore, even on that count, his sentence needs to be suspended.

10. Learned Counsel for the applicant has, therefore, placed a useful reliance on a judgment of the Supreme Court in case of ***Hussain and another Vs. Union of India in Criminal Appeal No.509 of 2017 arising out of Special Leave Petition (Cri.) No.4437 of 2016***. It was a case under the Narcotics Drugs and Psychotropic Substances Act, 1985. A reference is made in the judgment to the decision of the Supreme Court dealing with an issue, more particularly relating to Section 436A of the Cr. P.C which provides for grant of bail when a person has undergone detention upto one half of maximum prescribed imprisonment. The Hon'ble Supreme Court referred to its earlier judgment in case of ***Akhtari Bi (Smt) v. State of M.P, (2001) 4 Supreme Court Cases 355 and Surinder Singh alias Shingara Singh Vs. State of Punjab, (2005) 7 Supreme Court Cases 387***. It has been observed in the case of ***Akhtari Bi (Smt)*** (supra) by the Hon'ble Supreme Court that if the appeal is not heard for five years, excluding the delay for which the accused himself is responsible, bail should normally be granted. The second case of ***Surinder Singh alias Shingara Singh*** (supra) was not covered by the said judgment as pending appeal in the High Court was of the year 2013.

11. The Hon'ble Supreme Court has also referred a well-known judgment of *Hussainara Khatoon and others (IV) v. Home Secretary, State of Bihar, Patna, 1980 1 SCC 90-para-10*.

12. Learned Counsel for the applicant has drawn my attention to an order passed by this Court (Coram: Dama Sheshadri Naidu, J.) in **Criminal Application No.1063 of 2019 in Criminal Appeal No.425 of 2016** wherein similar view has been echoed by the learned Single Judge.

13. A Division Bench of this Court in **Criminal Application No.1312 of 2018 in Criminal Appeal No.934 of 2018** in an order dated 20th February, 2019 (Coram: A.S. Oka and A.S. Gadkari, JJ) which was also a case under MCOC Act took a similar view while suspending the substantive sentence, pending the appeal.

14. Having considered the overall circumstances, the prayer of the applicant needs to be granted. Now, to the order.

: ORDER :

[1] Pending the hearing and final disposal of the appeal, execution of the substantive sentence inflicted upon the applicant shall stand suspended.

- [2] The applicant shall furnish a P.R. bond in the sum of Rs.25,000/- with one or two solvent local sureties in the like amount to the satisfaction of the learned Special Judge under MCOC, Mumbai.

- [3] The release of the applicant on bail is further granted on the condition that the applicant shall, on the first Monday commencing from 2nd March, 2020 and then July of every calendar year till disposal of the appeal shall report to the Special Judge at 11.00 a.m. In case, the aforesaid Mondays are Court holidays then the applicant shall report on the next working day of the Court.

- [4] In the event of any single default committed by the applicant, the learned Special Judge shall immediately submit a report to that effect to the Registrar (Judicial-1) of this Court who shall immediately place the report before the appropriate Bench for passing necessary orders.

- [5] The applicant is directed to deposit 50% of the fine amount in the trial Court, if not already deposited, within two months of passing of this order.

[6] The applicant shall not, in any manner, establish or attempt to contact the victim or his family members.

15. The applications stand disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]