

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

**CRIMINAL APPLICATION NO.1602 OF 2018
WITH
INTERIM APPLICATION NO. 2069 OF 2021
WITH
INTERIM APPLICATION NO. 606 OF 2019
IN
CRIMINAL APPEAL NO.161 OF 2018**

Umesh Dyanoba Ban

.. Applicant
(Orig. accused No.4)

Vs.

The State Of Maharashtra

.. Respondent

...

Mr.Mateen A. R. Shaikh, Advocate for Applicant/Appellant.
Mr. Y.Y. Dabake, A.P.P. for the State-Respondent.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 3rd SEPTEMBER, 2021**

PC.

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1. The applicant is convicted vide judgment and order dated 06.05.2017 passed by Learned Special Judge, Pune under Maharashtra Control of Organized Crimes Act, 1999 (for short "MCOC Act") in MCOC Case No.5 of 2008. He is convicted for the offence punishable under Section 395 of Indian Penal Code (for short "IPC") and sentenced to suffer imprisonment of 10 years and pay fine of Rs.5,000/-. He is further convicted for

the offence under Section 3(1)(ii), 3(2) and 3(4) of the MCOC Act and sentenced to suffer imprisonment for 10 years on each count and pay fine of Rs.5 lakhs on each count.

2. The applicant had challenged the impugned judgment and order of conviction by preferring Criminal Appeal No.161 of 2018 which has been admitted and pending for final disposal.

3. The applicant was arrayed as accused No.4. The case of the prosecution in short is that the accused were involved in committing dacoity in the house of the complainant. Pursuant to the information given by complainant, First Information Report (for short "FIR") was registered and investigation proceeded. The applicant was arrested on 10.04.2008. Provisions of MCOC Act were invoked.

4. The contention of the applicant is that during the pendency of trial he was in custody from 10.04.2008 to 14.01.2011. Subsequently he was granted bail and on the date of judgment of conviction he has been taken into custody.

Thus, from 06.05.2017 till date the applicant is in custody. It is submitted that the applicant has undergone sentence of almost 7 years. The applicant has good case on merits. The incident had occurred at 03:45 a.m. The identity of the applicant as one of the accused is doubtful as the complainant had no occasion to see the accused to enable him to identify subsequently in identification parade. It is further submitted that the provisions of MCOC Act are erroneously applied against the accused. The applicant was implicated in one case alongwith the gang leader. However, subsequently report under Section 169 of Cr.P.C. was filed in favour of the applicant. The applicant hails from poor family. He has no money to pay fine. In the event the sentence of imprisonment is not suspended, appeal would become infructuous. It is further submitted that sentence of fine amount ordered by trial Court for conviction for offences under MCOC Act may be suspended. The total fine amount for conviction under Section 3(1)(ii), 3(2) and 3(4) of MCOC Act is Rs.15 lakhs. In support of his submission, learned counsel for the applicant had relied

upon the decision of the Division Bench of this Court delivered in Criminal Application No.520 of 2018 in Criminal Appeal No.367 of 2018 and other connected matters on 20.02.2019. It is submitted that in the said case the appellants/accused therein were convicted for the offence under MCOC Act and they ordered to pay fine of Rs.5 lakhs. They had undergone sentence of 6 years and 4 months. Hence, it was contended that the fine imposed upon the appellant therein may be relaxed. It is submitted that the sentence was suspended. He also relied upon the order passed by Learned Single Judge of this Court in Interim Application No.1010 of 2021 in Criminal Appeal No. 268 of 2021 dated 24.03.2021 and submitted that similar view was taken by this Court. He also placed for consideration another order of learned Single Judge of this Court dated 30.04.2019 delivered in Criminal Application No. 548 of 2019 in Criminal Appeal No.646 of 2019 whereby the sentence of fine was suspended.

5. Learned APP submitted that the applicant has been convicted under the provisions of MCOC Act. The trial Court

has analyzed the evidence and came to the conclusion that the offences are proved against the applicant. The sentence of imprisonment may not be suspended and that the relaxation of payment of fine as prayed by the applicant may not be granted.

6. It is pertinent to note that the applicant has been convicted for the offence punishable under Section 395 of IPC and sentenced to suffer imprisonment of 10 years. The applicant has undergone sentence of about 7 years. He was also convicted for the offence under the MCOC Act and sentenced to suffer imprisonment for 10 years each on three counts and directed to pay fine of Rs.5 lakhs for each offence. The total fine imposed upon the applicant for conviction under MCOC Act is to the tune of Rs.15 lakhs. All the sentences of imprisonment are directed to run concurrently. The appeal has been admitted by this Court. The said appeal may not come for hearing soon considering the pendency of previous appeals. The applicant was on bail during the trial. The total period of actual sentence undergone by the applicant is upto 7

years. The applicant had urged several grounds assailing the judgment of conviction. Thus, it is indeed that out of 10 years of imprisonment, the applicant has suffered actual sentence of about 7 years. The minimum sentences of imprisonment provided by law for all the aforesaid offences under MCOC Act is five years. In these circumstances, the case for suspension of sentence of imprisonment is made out. The second contention of the applicant is that in the event fine is not relaxed, the applicant would continue to be in custody. The period of custody suffered by the applicant be taken into consideration. He hails from poor family and he has no money to deposit the fine. The Division Bench of this Court in the decision referred to hereinabove had dealt with similar issue. The appellants therein were convicted for the offence under Sections 395 and 392 of IPC and for the offence under Section 3 (1) (ii) 3(2) and 3(4) of MCOC Act. They were directed to pay fine of Rs.5 lakhs each, and in default, of payment of fine further sentence of imprisonment was imposed. They have undergone sentence for a period of 6 years and 4 months.

They had not paid the fine amount. The Court had observed that the considering the pendency of old appeals and especially the number of appeals of the accused in jail who have already undergone sentence for more than 10 years, appeals are not likely to be listed for final hearing in the near future. The substantive sentence imposed upon them was suspended till the final disposal of the appeals and they were enlarged on bail. Learned Single Judge in the order dated 30.04.2019 (supra) has relied upon the aforesaid decision of the Division Bench of this Court and relaxed the payment of fine. The appellant therein was also convicted under the provisions of MCOC Act and sentenced to suffer imprisonment as well as to pay fine of Rs. 5 lakhs on each count and in default to suffer further rigorous imprisonment for 1 year. The applicant/appellant therein had undergone sentence of about 6 years and four months. Considering the decision of the Division Bench, the appellant therein was enlarged on bail and sentence was suspended pending appeal. In the order dated 24.03.2021 passed by Learned Single Judge of this Court,

which has been referred hereinabove, similar view was adopted. The accused therein were convicted under the MCOC Act and sentenced to suffer imprisonment of 8 years and to pay fine of Rs.5 lakhs. Out of 8 years, the applicants therein had undergone imprisonment of 6 years and 9 months. Reference was made to the decision of Apex Court in the case of Kiran Kumar Vs. State of M.P. (2001) 9 SCC 211.

7. In the present case, as noted hereinabove, the applicant has undergone the imprisonment of about 7 years. The maximum sentence of imprisonment is 10 years. Appeal challenging the judgment and order of conviction is pending for consideration. In the circumstances, I pass the following order.

ORDER

- (i) Criminal Application No.1602 of 2018 and Interim Application No. 2069 of 2021 are allowed;
- (ii) The sentence of imprisonment awarded vide judgment and order dated 06.05.2017 passed by Special Judge, Pune under the MCOC Act in MCOC case No.5 of 2008 is suspended and the

applicant is directed to be released on bail on executing P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount;

- (iii) The sentence of payment of fine of Rs.5 lakhs on each conviction under Section 3(1)(ii), 3(2) and 3(4) of MCOC Act is relaxed and the applicant is directed to deposit fine of Rs.50,000/- on each count within a period of 8 weeks from the date of his release.
- (iv) It is clarified that the relaxation for payment of fine is granted pending appeal and it is subject to the decision in the appeal challenging order of conviction.
- (v) The applicant shall pay fine of Rs.5,000/- for conviction under section 395 of IPC immediately before his release on bail.
- (vi) Criminal Application No.1602 of 2018, Interim Application No.2069 of 2021 and Interim Application No. 606 of 2019 are disposed of.

(PRAKASH D. NAIK, J.)