

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 759 OF 2022
IN
CRIMINAL APPEAL NO. 228 OF 2022

Iliyas Abdul Jabbar Choudhari ... Appellant/Applicant

V/s.

State of Maharashtra. ... Respondent

Mr. Abad Ponda Senior advocate i/by Mr. Karma Vivan for the applicant/appellant.

Mr. Arfan Sait -APP for the State.

Mr. V.S. Sawant, PSI, Sewree Police Station.

CORAM : PRAKASH D. NAIK, J.

DATED : MARCH 21, 2022.

P.C. :

1. This is an application for suspension of sentence and grant of bail pending appeal preferred by the applicant challenging the judgment and order dated 29th January 2022 passed by the learned Special Judge under the Maharashtra Control of Organised Crime Act, 1998 (for short 'MCOC') in MCOC Special Case No. 10/2016 @ 24/16 @ 03/17

2. The applicant (accused no.7) has been convicted for the offence under section 379 read with section 120(B) and 34 of Indian Penal Code and sentenced to suffer imprisonment of three years. He is further convicted for the offence under section 427 read with 120 (B)

and 34 of Indian Penal Code and sentenced to suffer imprisonment of two years. He is also convicted for the offence under section 285 read with 120-B and under section 461 read with 120(B) and 34 of Indian Penal Code and sentenced to suffer imprisonment for three months and two months respectively. The applicant is also convicted for the offence under section 15(2) of Petroleum and Minerals Pipeline Act, 1962 read with section 120(B) and 34 of Indian Penal Code and under section 3 of Prevention of Damage to Public Property Act, 1984 read with section 120 (B) and 34 of Indian Penal Code and sentence to suffer imprisonment for seven years and three years respectively. The applicant is convicted for the offence under section 411 of Indian Penal Code and sentence to suffer imprisonment for two years.

3. The case of the prosecution is that the BPCL oil pipeline was passing through the backside of Kasara Lane go-down. It was found that BPCL oil pipeline was connected to PVC pipeline. The PVC pipeline entered through go-down. The pipeline was freed in the tank and brass cocks were found in those tanks. The accused were found committing the theft of base oil. F.I.R. was registered. Accused were arrested. On completing investigation, Charge-sheet was filed.

4. Learned advocate for the applicant submitted as follows:

- i. The applicant was on bail during the trial. He has not misused the facility of bail.
- ii. There is no cogent evidence to convict the applicant for offences.

- iii. The maximum sentence imposed upon by the trial Court is of 7 years.
- iv. The sentence is of short term.
- v. The appeal may not come up for hearing during short period of time. In such cases the sentence of imprisonment is to be suspended.
- vi. Reliance is placed on decisions in the case of '*Kiran Kumar V/s. State of M.P.*¹ '*Bhagwan Rama Shinde Gosai and Others v/s. State of Gujarat*² and "*Raosaheb Balu Killedar V/s. State of Maharashtra*.³
- vii. The prosecution has relied upon the recovery of oil. The independent witnesses (Panchas) PW.12 and 14 have not supported the prosecution cases.
- viii. Statement of accused leading to recovery is admissible to the extent of discovery of article. Every part of the statement is not relevant and not admissible in the evidence.
- ix. The sentence is of short term. The appeal would not come up for hearing within short time.
- x. The co-accused were granted bail by suspending sentence of imprisonment.
- xi. The recovery oil was forwarded to FSL. The C.A. report dated 7th November 2015 in respect of oil found at spot refers to description of Article forwarded for examination as Yellowish liquid and Result of analysis indicate Petroleum hydrocarbon oil having density at 0.854, 30° C and flash point 173°C. The Report dated 13th April 2016 described the Article forwarded as Colourless liquid. The Result is Petroleum hydrocarbon oil.

1 (2001) 9 SCC 211

2 (1999) 4 SCC 421

3 (1995) Cri LJ 2632

5. Learned APP submit that the applicant has been convicted for various offences. Although the applicant was on bail during trial, based on the evidence, he has been convicted. The applicant is involved in one more case in the past registered with Wadala Police Station vide C.R. No. 149 of 2014 under section 379, 255 read with 34 of Indian Penal Code and Section 3, 7 and 8 of Essential Commodities Act as well as under section 3 of Prevention of Damage to Public Property Act, 1984. The second offence was committed while on bail. Co-accused was granted bail by this Court. They were in custody for a period about 6 years. The applicant cannot claim parity. There is no discrepancy in CA Report. The Result of Analysis is same.

6. The applicant was tried for the aforesaid offence which has resulted in conviction. The applicant has been acquitted for the offences under the provisions of MCOC Act. The maximum sentence imposed by the trial Court is upto 7 years. The applicant was on bail during trial. There is no adverse report of misuse of facility of bail. In the other case the applicant is on bail. The appeal challenging conviction is pending. The applicant has urged that there are discrepancies in evidence.

7. Considering the aforesaid circumstances, the sentence of imprisonment can be suspended. Hence, the following order :-

ORDER

- (i) Interim Application is allowed and disposed of;

(ii) The sentence of imprisonment imposed vide judgment and order dated 29th January 2022 passed by learned Additional Sessions Judge and Special Judge under MCOC/NIA/POTA Act, Greater Mumbai in MCOC Special Case No.10/16 @ 24/16 @03/17 is suspended and applicant is directed to be released on bail on executing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount;

(iii) The applicant is permitted to furnish cash bail in the sum of Rs.50,000/- for a period of eight weeks in lieu of sureties;

(iv) The applicant shall attend Trial Court once in six months on First Saturday of the month till disposal of the Criminal Appeal;

(v) In the event of two consecutive defaults in attending the Trial Court, the Trial Court shall submit report to this Court;

(vi) In the event of default committed by the applicant in attending the Trial Court, the prosecution will be at liberty to prefer application for cancellation of bail.

(PRAKASH D. NAIK, J)