

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

**INTERIM APPLICATION NO.805 OF 2022
IN
CRIMINAL APPEAL NO. 250 OF 2022**

Mohd. Noor Hasan Abdul Gafar Shaikh
@ Kanya Hasan ..Applicant
Versus
The State of Maharashtra ..Respondent

Ms. Anjali Patil, Advocate for Applicant.
Ms. P.N. Dabholkar, APP for the Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 23rd MARCH, 2022.

PC.

1. The Applicant (Accused No.2) is seeking suspension of sentence and grant of bail during pendency of Criminal Appeal No. 250 of 2022. The applicant is convicted for offence under Section 379 r/w Section 120-B and Section 34 of Indian penal code (for short "IPC"), also Section 427 r/w Section 120-B and Section 34 of IPC, Section 285 r/w Section 120-B and Section 34 of IPC, Section 461 r/w Section 120-B and Section 34 of IPC, Section 15(2) of Petroleum and Minerals Pipeline Act, 1962 r/w Sections 34 and Section 120-B of IPC, Section 3 of Prevention of Damage to Public

Property Act, 1984 r/w Section 120-B and Section 34 of IPC, and sentenced to suffer imprisonment for a period of three years, two years, three months, two months, seven years, three years. The applicant is acquitted for the offences under Sections 411 and 395 of IPC and under Sections 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crimes Act, 1999 (for short "MCOC Act").

2. Learned Advocate for the Applicant submitted that the Applicant is in custody for a period of five years and ten months. The Applicant is acquitted for the offences punishable under Sections 411 and 395 of IPC and under Sections 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crimes Act, 1999. The Co-accused Mohd. Firoz Mohd. Badruddin Shaikh and Shamiulla Abdul Rajjak Baig @ Shamim were granted bail by this Court suspending the sentence of imprisonment. It is further submitted that the maximum sentence imposed by the trial court is seven years and the Applicant is in custody almost for a period of six years.

3. Learned APP submitted that, there is sufficient evidence against the applicant and several other cases were registered against the applicant. The offence is of serious nature.

4. Learned Advocate for the Applicant in rejoinder submitted that, the applicant is on bail in all the other cases and about eight cases are pending in the Court and in a majority of the cases, the Applicant has pleaded guilty and sentenced to pay a fine of Rs.1,000/- (One Thousand Only). All the cases were registered for minor offences. There are discrepancies in this evidence in present case.

5. The sentence of imprisonment imposed against Accused Nos.1, 4 and 7 has been suspended by this Court and bail has been granted to them. The maximum sentence imposed by the trial court is seven years for the conviction under Section 15(2) of Petroleum and Minerals Pipeline Act, 1962. The Applicant has been acquitted under Section 395 IPC and under the provisions of MCOC Act. The Applicant has undergone substantial period of sentence. The appeal may not come up for hearing within short span of time. Considering this aspects, the sentence of imprisonment can be suspended and the applicant can be released on bail.

6. Hence, I pass the following order:-

ORDER

- i. Interim Application No. 805 of 2022 is allowed;
- ii. During the pendency of Criminal Appeal No.250 of 2022, the sentence of imprisonment imposed vide Judgment and Order dated 29th January, 2022 passed by learned Additional Sessions Judge & Special Judge under MCOC/NIA/POTA Act, Greater Mumbai in MCOC Special Case No.10 of 2016 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 applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.
- iv. The applicant shall attend the trial Court once in six months on first Saturday of the month till the final disposal of the appeal;
- v. In the event, there are two consecutive defaults in attending the trial Court, the said fact may be brought to the notice of this court and in such eventuality, the prosecution will be at liberty to prefer an application for cancellation of bail.
- vi. Interim Application stands disposed of accordingly.

[PRAKASH D. NAIK, J.]