

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

**INTERIM APPLICATION NO. 923 OF 2022
WITH
INTERIM APPLICATION NO. 924 OF 2022
IN
CRIMINAL APPEAL NO. 273 OF 2022**

Somnath @ Soma Sadashiv Gaikwad ...Applicant/Appellant
Versus
State Of Maharashtra ...Respondent

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Ms. Sana Shaikh, Advocate for the Applicant/Appellant

Mr. S. V. Gavand, APP for the Respondent – State.

**CORAM : PRAKASH D. NAIK, J.
DATE : 21st APRIL, 2022.**

PER COURT:

1. These applications are preferred for suspension of sentence and grant of bail during the pendency of Criminal Appeal No.273 of 2022. Vide judgment and order dated, 4th February, 2022, the applicant is convicted for offences punishable under Sections 394, 341 & 452 r/w Section 34 of Indian Penal Code (for short “IPC”). He is further convicted for offences under Sections 3(1)(ii) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short “MCOC Act”). He is also convicted for the offences under Sections 427 & 506 of IPC and Section 3(2) of MCOC Act. For conviction under Section 394 r/w Section 34 of IPC

he has been sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.1,000/-. For conviction under Section 341 r/w Section 34 he has been sentenced to pay fine of Rs.500/-. For the conviction under Section 452 r/w Section 34 of IPC, the applicant has been sentenced to suffer imprisonment for three years and to pay fine of Rs.1,000/-. The applicant is sentenced to suffer imprisonment of 7 years and to pay fine of Rs.5,00,000/- for the offence under Section 3(1)(ii) of MCOC Act and also sentenced to suffer imprisonment of 7 years and to pay fine of Rs.5,00,000/- for conviction under Section 3(4) of MCOC Act. It was directed that the sentences shall run concurrently.

2. Learned Advocate for the applicant submits that the applicant was in custody for a period of about 12 months. Thereafter, he was granted bail by the Special Court under the MCOC Act vide order dated 15th July, 2021. The applicant has not misused the facility of bail. The prosecution has relied upon three other cases registered against the applicant vide C.R. Nos. 533 of 2017, 111 of 2018 and 139 of 2018 for minor offences under Sections 325, 323, 326, 327, 452, 427, 504 & 506 r/w Section 34 of IPC etc. Those cases were arising out of the family dispute. The applicant is not involved in any other case along with gang leader.

The complainant has not identified the applicant in the Court. The complainant (PW-1) has categorically stated that the person named Soma, who assaulted him in the incident and Somnath Gaikwad present before the Court is not the same person. No case is made out to invoke the provisions of MCOC act. The applicant is in financial constraints to deposit huge fine amount imposed by the trial Court. In the absence of any cogent evidence, the applicant need not be compelled to deposit the fine amount.

3. Learned APP submitted that there is sufficient evidence against the applicant. The complainant (PW-1) in examination-in-chief has stated that the accused Somnath is present before the Court. In the cross examination, the complainant has created discrepancy. However, in the light of the registration of FIR naming the applicant/accused and the confessional statement recorded during the course of investigation, the prosecution has established that the applicant is involved in the crime. The confessional statement has proved in evidence by the Investigating Officer. There are five cases registered against the applicant. Hence, substantive sentence may not be suspended and bail may not be granted to the applicant.

4. In the deposition of PW-1 (complainant) it is stated that the accused Somnath is present before the Court. From the examination-in-chief however, it appears that the complainant did not specifically stated that the applicant is the person, who is involved in the crime. During his cross examination, he stated that he knows Somnath – accused No.3, who is present before the Court. He was knowing accused No.3 – Somnath by his name. Soma, who assaulted him in the incident and Somnath Gaikwad present before the Court is not the same person. It is pertinent to note that in the examination-in-chief he has referred to the names of the accused as Sonu More, Lakhan Pardeshi, Soma and others. The evidence before the Court creates discrepancy about the identity of the applicant as a person, who is involved in the crime. The applicant was granted bail during trial by the learned Additional Sessions Judge, Solapur vide order dated 15th July, 2021 on certain conditions. Learned Advocate for the applicant had submitted that the applicant has not misused the facility of bail. There is no adverse report about misuse the facility of bail granted to the applicant. The said order indicate that the complainant had filed an affidavit to the extent that the applicant is not concerned with the crime. The police report refers to five cases registered against the applicant. Three of them are referred in the impugned

judgment. Fourth case is relating to the offence under the Prevention of Gambling Act and fifth case is relates to the offences under Sections 188 & 336 of IPC & Section 51 of Disaster Management Act. Three cases registered against the applicant are for offences as stated herein above. The gang leader is not involved in these cases with the applicant. The applicant is not involved in any other case with gang leader. Learned counsel for the applicant has submitted that, it would be impossible to deposit the fine amount and in view of the nature of evidence the applicant be exempted from depositing the entire fine amount. The applicant has been convicted for offences under the provisions of IPC as well as under the provisions of MCOC Act. 100% waiver of deposit the fine amount cannot be granted to applicant.

5. Considering the aforesaid circumstances, I pass the following order :-

ORDER

- i.** Interim Application Nos. 923 of 2022 & 924 of 2022 are allowed;
- ii.** During the pendency of Criminal Appeal No.273 of , the sentence of imprisonment imposed vide Judgment and order dated 04th April, 2022 passed by learned Special Judge,

(MCOCA), Solapur in Special MCOCA Case No.60 of 2021 is suspended and the applicant is directed to be released on bail on executing PR. 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 deposit the fine amount of Rs.50,000/- towards the conviction under Section 3(1)(ii) of MCOC Act and 50,000/- towards the conviction under Section 3(4) of the MCOC Act.

v. The fine amount shall be deposited before the trial Court within a period of 12 weeks from date of release on bail.

vi. The applicant shall attend the trial Court once in six months on first Saturday of the month till the final disposal of the appeal;

vii. 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.

viii. The trial Court shall report the compliance about depositing the fine amount to this Court.

ix. Both Interim Applications are disposed off accordingly.

(PRAKASH D. NAIK, J.)