

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

**INTERIM APPLICATION NO.2731 OF 2022
IN
CRIMINAL APPEAL NO.827 OF 2022**

Niyamatulla @ Munna
Mohammad Shirgaonkar

.... Appellant

versus

State of Maharashtra

.... Respondent

.....

- Mr. Vinod Kashid, Advocate for Appellant.
- Smt. J. S. Lohokare, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 06th SEPTEMBER, 2022**

P.C. :

1. Leave to amend. Amendment to be carried out to correct the prayer. Amendment shall be carried out forthwith.

2. This is an application for suspension of sentence and consequent release of the Applicant on bail during pendency of Criminal Appeal No.827 of 22. The Applicant was the original accused No.8 in MCOC Special Case No.18 of 2019 before the

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Special Judge under MCOC/NIA/POTA Act, Greater Mumbai.

Vide the judgment and order dated 29/07/2022, the Applicant was convicted and sentenced as under :

- (i) He was convicted for the offence punishable u/s 387 r/w 120-B of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo rigorous imprisonment for three months.
- (ii) He was also convicted for the offence punishable u/s 506(II) r/w 120-B of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.3,000/- and in default of payment of fine to undergo rigorous imprisonment for one month.
- (iii) He was also convicted for the offence punishable u/s 3(2) of the MCOC Act and was sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.5,00,000/- and in default of payment of fine to undergo rigorous imprisonment for one year.

- (iv) He was also convicted for the offence punishable u/s 3(4) of the MCOC Act and was sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.5,00,000/- and in default of payment of fine to undergo rigorous imprisonment for one year.

All the substantive sentences were directed to run concurrently. The Applicant was granted set off u/s 428 of Cr.P.C. for the period of 3 years, one month and 22 days, which he had undergone as an under trial prisoner.

3. Heard Mr. Vinod Kashid, learned counsel for the Applicant and Smt. J. S. Lohokare, learned APP for the State.
4. Learned counsel for the Applicant submitted that he was subsequently arrested and the trial went on against the accused Nos.1 to 7. His trial was separated. However, allegations against him are much less serious than those against accused Nos.1 to 7 and in particular against accused No.3 Vijay Vasant Kedare. He submitted that all the accused were similarly

convicted and sentenced. They have preferred separate Appeals and all of them are granted bail during pendency of Appeals. He claimed parity for the present Applicant. He submitted that his role is much lesser.

5. Learned APP opposed the application. She submitted that the Applicant was absconding and therefore his trial had to be separated. The allegations against him are that he was one of the main conspirators and therefore considering the conviction under MCOC Act, he may not be granted bail.

6. I have considered these submissions and I have particularly perused the evidence of the victim. He was examined as PW.2. He has given the history behind the offence. It was a case arising out of one S.R.A. scheme. Originally his father was the president of one Sainath Rahivashi Sangh. After his death, PW.2's brother became the president. The accused and in particular accused No.3 Vijay Kedare did not want PW.2's brother to continue as president of the Sangh. They wanted their

own person to be incharge and president of that Sangh. Therefore P.W.2 and his brother were continuously threatened. There was demand of Rs.5 lakhs. There were instances mentioned in his deposition. Two main instances are dated 30/09/2012 and 04/10/2012. As far as the incident dated 30/09/2012 is concerned, the accused Nos.4, 6 and the present Applicant approached the P.W.2, demanded Rs.5 lakhs and told P.W.2 to settle the matter with the accused No.3. P.W.2 refused. Accused No.5 told accused No.4 to go to Nashik and take permission from accused No.3 to eliminate P.W.2 and his brother. The Applicant also threatened him with dire consequences.

7. On 04/10/2012 P.W.2 was assaulted by accused Nos.1, 2 and 7 with choppers. After that, the FIR was lodged and the investigation was continued.

8. Thus, it can be seen that the roles of the other accused are almost similar to that of the present Applicant. In fact, on 04/10/2012 when the incident of assault had taken place, the

Applicant was not present. In this background it is necessary to refer to various orders passed by different Benches of this Court in granting bail to the other accused in their respective Criminal Appeals. Accused No.3 Vijay Vasant Kedare was granted bail vide order dated 18/07/2019 in Criminal Application No.591 of 2019 in Criminal Appeal No.136 of 2019 by this Court (Coram : Dama Seshadri Naidu, J.).

9. Accused No.4 Chandrakant Dattaram Dhage, was granted bail by the same Bench on the same day by passing an order in Criminal Application No.194 of 2019 in Criminal Appeal No.136 of 2019.
10. Accused Nos.5 and 6 were granted bail by the same Bench on the same day in Criminal Application No.114 of 2019 in Criminal Appeal No.110 of 2019.
11. A Division Bench of this Court granted bail to accused Nos.1, 2 and 7 vide order dated 18/10/2019 passed in Criminal

Application No.1 of 2019 in Criminal Appeal No.293 of 2019.

12. There is no dispute that the subject matter of this Appeal is the same offence. Therefore on the ground of parity, the Applicant also deserves to be released on bail on similar conditions. Some of the accused were granted bail, but condition was imposed that those Applicants shall deposit 50% of the amount within two months after the order was uploaded. Same condition can be imposed on the Applicant.

13. Since the Applicant claims parity, same condition shall be imposed on him as well as mentioned in the aforesaid Criminal Application No.591 of 2019, Criminal Application No.194 of 2019 and Criminal Application No.114 of 2019.

14. Hence, the following order :

ORDER

(i) Application is allowed.

- (ii) During pendency of Criminal Appeal No.827 of 2022 substantive sentence imposed on the Applicant is suspended and he is directed to be released on bail on his executing P.R. Bond in the sum of Rs.30,000/- and his furnishing two sureties in the like amount.
- (iii) The Applicant shall not contact the first informant or victim, or any other witness, or any member of the victim's family in any manner, pending this Appeal.
- (iv) The Applicant's failure to abide by these conditions shall entail the prosecution to apply for cancellation of bail granted to the Applicant.
- (v) As the Applicant pleads his poverty to pay in full the fine amount imposed by the trial Court, this Court allows Applicant to deposit 50% fine amount in two months after this order is uploaded.
- (vi) Application is accordingly disposed of.

(SARANG V. KOTWAL, J.)