

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION (ALS) NO. 17 OF 2021**

The Central Bureau of Investigation ...Applicant

Versus

Jagannath Balkaram Jaiswal @ Deshmukh

@ Jaggu and ors. ...Respondents

.....

Mr. Pradip D. Gharat Spl. PP for the Applicant.

Mr. D.S. Manerkar for Respondent No. 1.

Mr. Ayush Pasbola i/b Akash Pandey a/w S. Mishra for the
Respondent No. 2.

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**CORAM : PRASANNA B. VARALE &
N.R. BORKAR, JJ.**

DATED : 27 SEPTEMBER 2022

P.C. :-

Heard learned counsel for the applicant, learned counsel for
respondent No. 1 and learned counsel for respondent No. 2.

2. By the judgment and order dated 22.04.2021, the special Court
acquitted the respondent Nos. 1 and 2 for the offences punishable
under Sections 302, 449, 120-B read with 34 of the Indian Penal
Code, Sections 25(1-A) and 25(1-B) read with Sections 3 and 4 of the
Arms Act and Sections 3(1)(i), 3(2) and 3(4) of the MCOC Act.

3. By the present application leave is sought to file appeal against the aforesaid judgment and order of acquittal.

4. According to the prosecution on 07.02.2001 at about 12.20 hours the respondent No. 1 and other co-accused, who are members of the organized crime syndicate led by respondent No. 2 committed the murder of the deceased Hanif Kadawala. According to the prosecution on the day of incident respondent No. 1 and two more co-accused came to the office of the deceased and shot him dead. P.W.-10 Shakil Shaikh, who on the date of incident was present in the office of the deceased has identified the respondent No. 1 as one of the assailants in test identification as well as before the Court. Prima facie we find that the trial Court discarded the evidence of P.W.-10 for no valid reasons. As regards the respondent No. 2, the only finding is that there is no evidence of conspiracy hatched by the respondent No.2 with other accused. However, there is no finding in relation to charges framed for the offences punishable under the MCOC Act. Considering these facts and circumstances in our view the case is made out for grant of leave to file appeal. Accordingly, leave to file appeal is granted. Appeal is admitted.

5. Call record and proceedings.

6. Action under Section 390 of Code of Criminal Procedure

(CrPC) be taken only against respondent No.1, as we are informed that respondent No. 2 is in jail.

(N.R. BORKAR, J.)

(PRASANNA B. VARALE, J.)