

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.3005 OF 2021
IN
CRIMINAL APPEAL NO. 1010 OF 2021

Vrushabh Pratap Chotaliya ... Applicant/Appellant

V/s.

The State of Maharashtra ... Respondent

Mr. Prathamesh Gaikwad I.by Mr. Edgar K. Braganza advocate for applicant.

Mr. S.V. Gavand-APP for the State.

CORAM : PRAKASH D. NAIK, J.

DATED : MARCH 21, 2022.

P.C. :

1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal No. 1010 of 2021 preferred by the applicant challenging the judgment and order dated 24th March 2021 passed by learned Additional Sessions Judge and Special Judge under MCOC/NIA/POTA Act, Greater Mumbai.

2. Applicant (accused no.2) has been convicted for the offence under section 392 of Indian Penal Code and sentenced to suffer imprisonment of six years and fine of Rs. 3000/-. He is also convicted for the offence under section 365 read with 34 of Indian Penal Code and sentenced to suffer imprisonment of five years and fine of Rs. 2000/-. He is further convicted for the offence under section 506(2)

read with 34 of Indian Penal Code and sentenced to suffer imprisonment of three years and fine of Rs. 1000/-. The applicant is also convicted for the offence under section 3(1) (ii) of MCOC Act and sentenced to suffer imprisonment of five years and fine of Rs. 5 lakh. He is also convicted for the offence under section 3(4) of MCOC Act and sentenced to suffer imprisonment of five years with fine of Rs. 5 lakh.

3. The case of the prosecution is that on 05/05/2017 at about 2.30a.m. the first informant was driving his Taxi's and was in search of passengers. Three accused occupied his Taxi to go to Mulund. On the way, the accused instructed him to go to Bhandup. After, reaching Bhandup, the informant was taken towards Mumbai. While returning towards Mumbai by Eastern Free Way one of the accused from rear seat pointed knife on the neck of informant and instructed him to take Taxi to the side of road. The informant was made to sit on the rear seat. Accused occupied driver's seat. One of the accused demanded money from informant. Informant gave amount of Rs.8,800/- from his pocket to the accused. The accused got down from Taxi and fled away from the spot. The F.I.R. was registered. MCOC Act provisions invoked.

4. Learned advocate for the applicant submitted that the applicant has not played any role in the crime. There is no evidence to convict for the offence under section 392, 365, 506 (2) of Indian Penal Code. The applicant is in custody for 5 years. The applicant is not in a position to deposit the fine amount as directed by the Court. He has no capacity to arrange the fine amount. The appeal may not come up for hearing within short period of time. The appeal would become

infructuous. Those specific role has been attributed to the applicant.

5. Learned APP submitted that the applicant has been convicted for various offences. The provisions of MCOC have evicted against him. The applicant is form of crime headed by the co-accused. There are 44 other cases were registered against the applicant.

6. The case of the prosecution is that the applicant was one of the accused with the company of other accused. The case of the prosecution is that the accused no.1 pointed knife on the neck of informant and made him sick. It is pertinent to note that maximum sentence of imprisonment imposed by the trial Court is 6 years. The applicant was in custody for a period of 6 years. The appeal may be come up for hearing within short period of time.

7. Considering the factual aspects, the sentence of imprisonment can be suspended. It also appears that the applicant is not in a position to deposit the fine amount on account of the financial condition. It is noted that from the date of arrest the applicant is in custody. Hence the following order.

ORDER

- i) Interim Application is allowed and disposed of;
- (ii) The sentence of imprisonment imposed vide judgment and order dated 24th March 2021 passed by learned Additional Sessions Judge and the Special Judge under MCOC/POTA Act in

MCOC Special Case No. 8 of 2017 is suspended and 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 ten weeks in lieu of sureties;

(iv) The applicant is directed to deposit the fine amount in respect of conviction under section 365, 392, 506(2) read with 34 of Indian Penal Code, 1860 within a period of 10 weeks from date of release.

(v) For conviction under section 3(1) (ii) of MCOC, Act, 1999 the applicant shall deposit the fine amount of Rs. 75,000/- within a period of 10 weeks from date of release.

(vi) For conviction under section 3 (4) of MCOC, Act, 1999 the applicant shall deposit the fine amount of Rs. 75,000/- within a period of 10 weeks from date of release.

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

(viii) In the event there are two consecutive defaults in attending the Trial Court, the Trial Court shall submit report to this Court;

(ix) 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.

8. It is clarified that the fine is reduced only for considering present application and it is subject to final decision of this appeal.

(PRAKASH D. NAIK, J)