

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

**INTERIM APPLICATION NO. 3458 OF 2021
IN
CRIMINAL APPEAL NO. 161 OF 2018**

Tanaji Ratan Pawar	...Applicant/Appellant
Versus	
State Of Maharashtra	...Respondent

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Mr. Mateen Shaikh, Advocate for the Applicant/Appellant
Mr. Arfan Sait, APP for the Respondent – State.

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CORAM	:	PRAKASH D. NAIK, J.
DATE	:	23rd MARCH, 2022.

PER COURT:

1. The applicant is seeking suspension of sentence of imprisonment and grant of bail during the pendency of Criminal Appeal No.161 of 2018. The applicant is convicted vide judgment and order dated 6th May, 2017 passed by Special Judge, Pune under MCOC Act for offence punishable under Section 395 of Indian Penal Code (for short “IPC”) and sentenced to suffer imprisonment for 10 years. He is also convicted for the offence punishable under Sections 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crime Act, 1999 (for short "MCOC Act") and sentenced to suffer imprisonment for 10 years and to pay fine of Rs.5,00,000/- on each count.

2. The case of the prosecution is that the accused were involved in committing dacoity in the house of complainant. First Information Report (for short “FIR”) was registered and investigation proceeded. The applicant was arrested on 18th July, 2008. Provisions of MCOC Act were invoked.

3. Learned Advocate for the applicant submitted that the applicant was in custody from 18th July, 2008 to 29th July, 2011. Subsequently, he was granted bail and on the date of conviction, the applicant has been taken into custody. The applicant has undergone 8 years of imprisonment out of 10 years. There are discrepancies in the evidence of witnesses. The incident is dated 8th April, 2008. The identification parade was conducted on 29th July, 2008. The appeal may not reach for final hearing immediately. The appeal would become infructuous, if the sentence is not suspended. PW-1 is a star witness. The incident took place at about 3.15 a.m. It is difficult to believe that the he could identify the accused. The application for summoning Special Executive Magistrate as witness was rejected after the statement of the accused was recorded under Section 313 of Cr.P.C. The identity of the accused is doubtful. The test identification parade is not in consonance with criminal manual. The witnesses examined by the prosecution for recovery of cell phone and gold did not support the

prosecution. The sanction under MCOC Act was granted without sending the FIR, charge-sheet against the accused to the sanctioning authority. The co-accused Umesh Dnyanoba Ban has been granted bail by this Court by suspending the sentence of imprisonment vide order dated 3rd September, 2021. Accused Sachin Chandrakant Shinde was granted bail by this Court and the sentence of imprisonment was suspended by order dated 9th March, 2018. Applicant is not in a position to deposit the entire fine amount. Relaxation be granted to the applicant to deposit the fine amount. The applicant hails from poor family. He has no money to deposit the fine. In the event the fine is not relaxed, the applicant would continue to be in custody. The period of custody suffered by the applicant may be taken into consideration. The Division Bench of this Court had relaxed the condition, considering the fact that the convict had undergone the sentence of six years and four months in Criminal Application No.520 of 2018 in Criminal Appeal No. 367 of 2018.

4. Learned APP submitted that the offence is of serious nature. The applicant has been convicted under the provisions of MCOC Act. There is recovery of mobile from the applicant. Gold ornaments were melted. There is seizure from the applicant in other case. While the applicant was on bail he has committed

another offence. Twelve cases were registered in the past against the applicant. Learned APP tendered report forwarded by concerned Police Station about the incidents of the applicant.

5. The applicant has filed an affidavit affirmed in jail stating that he is serving conviction sentence. His name is not mentioned in cases registered in Pune and Mumbai which are at item Nos.10, 11 & 12 of the report filed by the prosecution. Cases at item Nos. 7 & 8 are pending. In C.R. No.46 of 2006 listed at item No.9, the applicant has not been arrested by Police, nor the applicant has received any summons or warrant from the Court.

6. The applicant is in custody almost for a period of 8 years. The maximum sentence imposed by the trial Court is of ten years. The fine of Rs.5,00,000/- has been imposed for conviction under the provisions of MCOC Act. The co-convict Umesh Dnyanoba Ban has been granted bail by this Court and the relaxation is also granted in respect to the deposit of fine.

7. Considering the aforesaid circumstances, case for suspension of sentence of imprisonment and reduction for depositing the fine amount can be granted during the pendency of appeal.

8. Hence, I pass the following order :-

ORDER

- i.** Interim Application No. 3458 of 2021 is allowed;
- ii.** During the pendency of Criminal Appeal No.161 of 2018, the sentence of imprisonment imposed vide Judgment and order dated 6th May, 2017 passed by learned Special Judge, Pune under MCOC Act, in Special MCOC Case No.5 of 2008 is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- iii.** The applicant is permitted to furnish cash bail in the sum of Rs.50,000/- for a period of eight weeks from the date of release in lieu of surety.
- iv.** The sentence of payment of fine of Rs.5 Lakhs on each conviction under Section 3(1)(ii), 3(2) and 3(4) is relaxed and the applicant is directed to deposit fine of Rs.50,000/- on each count within 8 weeks from date of release.
- v.** The applicant shall attend the trial Court once in six months on first Saturday of the month till the final disposal of the appeal;
- vi.** 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.
- vii.** It is clarified that the relaxation for payment of fine is granted pending appeal and it is subject to the decision in the appeal challenging judgment of conviction.

viii. Interim Application stands disposed accordingly.

(PRAKASH D. NAIK, J.)