

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.1584 OF 2021
IN
CRIMINAL APPEAL NO.828 OF 2018**

Rohee Tangappan Joseph @ Rohi @ Satish
Kalya @ Sir ..Applicant
Versus
The Central Bureau of Investigation & Anr. ..Respondents

Mr. Shirish Gupte, Senior Advocate a/w Rajendra Rathod, Mustaba Shaikh, Sohail Ahmed, Harish Pandya, Aamir Koradia, Abdullah Maknojia, Zeeshan Sardar & Supriya Kak, for the Applicant.
Mr. Pradip D. Gharat, Special PP a/w Ms. S. S. Kaushik, APP for the Respondent/State.

**CORAM : NITIN W. SAMBRE &
N. R. BORKAR, JJ.**

DATE : 6th NOVEMBER, 2023

PC.

1. *Vide* judgment and order dated 2nd May, 2018 delivered by Special MCOC Court in MCOC Special Case Nos.19 of 2011, 7 of 2012 and 15 of 2016 the applicant/accused No.1 came to be convicted for an offence punishable under Sections 120-B and 302 of the IPC, Sections 3(1)(i), 3(2), 3(4) of the MCOC Act, Sections 3, 25 and 27 of the Arms Act and Sections 37(1-A) and 135 of the Maharashtra Police Act, 1951.

2. The applicant/accused No.1 is seeking regular bail in aforesaid matter.

3. We have heard Mr. Shirish Gupte, learned Senior

Counsel for the applicant and Special Public Prosecutor, Mr. Pradip Gharat along Ms. S. S. Kaushik, learned APP for the State.

4. According to Mr. Shirish Gupte, in Crime No.256 of 2011 registered with DCB, CID, Mumbai and Crime No.57 of 2011 in all 12 accused were arrested. According to him, the present applicant/accused No.1 was arrested on 26th June, 2011 and is in custody for last more than 13 years. He would claim that the appeal is pending since 2018 and same is not likely to be heard in recent future. As such, one of the ground which is pressed by him is long incarceration. Apart from above, he would invite our attention to the role played by the applicant/accused No.1 viz. collection of firearms from accused No.9 and accused No.1 firing five shots from illegally procured revolver on deceased so as to murder him.

5. Contentions of Mr. Shirish Gupte are, conviction of the applicant is based on circumstantial evidence as no eye witness is available in the case. According to him, circumstantial evidence which is taken into account is recovery of weapon, motive and confessions of accused Nos.5 and 9 and other incriminating circumstances as reflected in the evidence of total 155 witnesses.

6. As such, he would urge that in absence of direct evidence or the evidence of the eye witnesses, applicant after having suffered incarceration for about 14 years deserves to be released.

7. He would further invite our attention to the recovery

effected from the applicant/accused. He would claim that the testimony of PW-9, a Panch witness is not reliable. Apart from above, he would urge that the recovery is from the house of accused No.2 and not from the possession of applicant/accused No.1. According to him, the confessional statement of accused No.5 is non-voluntary as could be noticed from the statement made to the Magistrate on the very next day of recording of the confession i.e. on 18th July, 2011. He would further urge that similar is the story about confession given by accused No.9. Since the confessions are retracted, same cannot be taken into account.

8. While countering aforesaid submissions, Mr. Pradip Gharat, learned Special Public Prosecutor would urge that accused No.12/Rajendra Sadashiv Nikalje @ Chhota Rajan is the mastermind and head of the crime syndicate. According to him, the applicant/accused No.1 has executed the offence for and on behalf of the crime syndicate by active participation in the commission of crime and that being so, he would urge that the application is liable to be rejected.

9. We have considered the submissions.

10. Perusal of the material on record reveals the prosecution case as under :-

Accused No.12/Chhota Rajan is the head of the organized crime syndicate of which other persons including applicant were members. Jyoti Nipendra Kumar Dey @ J. Dey, a senior crime journalist attached to daily 'Mid Day' has reported

certain news items which the accused No.12 claimed to be offending. Accordingly, accused No.12 hatched a conspiracy along with accused persons so as to murder J. Dey as the deceased was publishing insulting material against accused No.12 before which he was also threatened. Accused No.12/ Chhota Rajan accordingly contacted applicant/accused No.1 who was given task along with accused Nos.2 to 7 to murder J. Dey. Accordingly, applicant collected an amount of Rs.2,00,000/-, one global roaming Sim Card and took delivery of two revolvers and cartridges from accused No.9. Applicant/accused No.1 accordingly did reiki and kept watch on J. Dey. On 11th June, 2011, applicant/accused No.1 was pillion rider on motorcycle driven by accused No.5/Arun Dake. The applicant/accused No.1 fired at J. Dey in all five rounds from his revolver resulting into his death.

11. From the evidence on record, it is established that J. Dey died a homicidal death having suffered firearm injury.

12. The fact remains that at the behest of applicant/accused No.1 there is recovery of weapon which was used in the commission of offence. The weapon was proved to be used in the commission of offence as could be inferred from the report of Forensic Science Laboratory viz. Ballistic Report.

13. Apart from above, a Test Identification Parade was also conducted. The evidence of PW-125/Ganesh Kharat and PW-112/Amit Chavan has sufficiently established that the applicant along with the other accused Nos.1 to 4 had been to Haldvani,

Nainital on 12th May, 2011 at “Hotel SV”. It further discloses that from the testimony of these witnesses there is procurement of two revolvers and 25 live cartridges from the accused No.9. Apart from above, the confession made by accused No.5/Arun Dake and accused No.9/Deepak Shisodia sufficiently establishes the involvement of the applicant in the offence in question.

14. Even if the applicant/accused No.1 has undergone more than 14 years of imprisonment, this Court needs to be sensitive to the earlier convictions of the accused persons. The applicant/accused is part of a underworld gang and in calculated manner executed the offence in question at the behest of syndicate head Chhota Rajan, who is presently lodged in Tihar jail. As such, even if the applicant has drawn support from the judgment of Apex Court in the matter of *Saudan Singh Vs. State of Uttar Pradesh* reported in *2022 SCC OnLine SC 697* and *Sonadhar Singh Vs. The State of Chhatisgarh* delivered in *Special Leave to Appeal (Criminal) No.529 of 2021 delivered on 9th February, 2022*.

15. For the reasons recorded herein-above, we are of the view that applicant does not deserve to be released on bail by suspending sentence.

16. That being so, the application stands rejected.

[N. R. BORKAR, J.]

[NITIN W. SAMBRE, J.]