

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

CRIMINAL APPEAL NO.615 OF 2022

Mahesh Bhawanji Patel .. Appellant

Vs.

The State of Maharashtra,

Through DCB, CID, Mumbai and Anr. .. Respondents

Mr. Sudeep Pasbola, with Mr. Ayush Pasbola, i/by Mr. Bipin J. Joshi, for the Appellant.

Mr. Pradip D. Gharat, Special P.P. for the CBI.

Ms. M.H. Mhatre, APP for the State of Maharashtra.

CORAM : SUNIL B. SHUKRE & ABHAY S. WAGHWASE, JJ

DATE : 20TH MARCH, 2023.

ORAL JUDGMENT : { Per Sunil B. Shukre, J. }

1. Heard.
2. ADMIT
3. Heard finally by consent of learned counsel for the appellant and learned APP for the respondent-State of Maharashtra.
4. On going through the impugned order, what we find is that the learned trial judge has not addressed the ground of parity taken by the appellant. It was the case of the appellant that his case stands on the same footing as that of former co-accused Arun Patil, who has been discharged in this case by the same court, may be then presided over by a different Special Judge. But, the fact remains, according to learned counsel for the appellant, that the issue of parity

and equality between the present appellant and Arun Patil has not been properly dealt with by the trial court.

5. According to learned counsel for the CBI, there is no question of parity between the position of this appellant and former co-accused Arun Patil and even if there is some parity, it is not the requirement of law that there must be some direct evidence about the builder obtaining the work of redevelopment from the concerned society and also some corroboratory evidence to substantiate the statement of the Society witnesses to the effect that accused – builder has been awarded the work of redevelopment of the building of the society under the threats issued to the office bearers of the Housing Society and also to the erstwhile contractor threatening him to withdraw himself from the redevelopment work of the Housing Society. The aspect of parity, as seen from the impugned order, has been dealt with by the learned Special Judge in paragraph 17 of the impugned order dated 1st June 2022. It is seen therefrom that the former co-accused Arun Patil has been discharged by the same court on the ground that there was no evidence showing that Arun Patil indulged in some overt act to obtain the work of redevelopment and that there was no evidence showing that Arun Patil had directly or indirectly threatened the office bearers of the co-operative housing society for getting the work of redevelopment and for withdrawing the work of redevelopment of the building of the society already allotted to the other builder. The learned Special Judge, dismissing this ground, which was heavily relied upon by the same court for discharging Arun Patil, observed that there are specific allegations levelled

against the appellant that he is the man of accused – Chhota Rajan and that the statement of PW-1 shows that PW-1 abandoned the work of redevelopment of the co-operative housing society in favour of the partnership firm of the appellant and this act of the appellant was within the ambit of aiding, facilitating and abetting the organised crime syndicate in order to gain pecuniary benefits or undue economic advantage. These observations are sufficient to come to the conclusion that the learned Special Judge has not at all considered the material aspect of the case as to whether or not there was any overt act performed by the present appellant to obtain the work of redevelopment of the building of the society and as to whether or not there was any evidence to the effect that this appellant himself, directly or indirectly, threatened the office bearers of the co-operative housing society for procuring the work of redevelopment of the building of the society and also for compelling the society to withdraw the work of redevelopment of the building of the society allotted to other builders. The impugned order is completely silent upon this aspect of the matter and therefore, we are of the view that the impugned order has been passed in ignorance of the material and relevant aspects of the matter and as such cannot be sustained in the eye of law.

6. Now, the question is whether such kind of evidence, i.e. the evidence referred to above, is required or not required, which, according to the learned counsel for the CBI, has to be answered in the negative. But, with due respect to him, we must say that even this question would have to be appropriately decided by the MCOCA Court, as while discharging Arun Patil, same court

opined that there was necessity of having such evidence on record and that is why it said that there was no evidence to prima facie implicate Arun Patil.

7. Then there is also a question which has not been answered so far by the CBI. If the former co-accused has been let off the hook by the trial court on the ground that there was no evidence showing that Arun Patil had committed some overt act in procuring the work of redevelopment of the building of the society and that there was no evidence also disclosing that Arun Patil had, directly or indirectly, threatening the office bearers of the co-operative housing society for getting the work of redevelopment, which, in the opinion of the CBI, is really not required to be considered at this stage, the CBI has chosen not to challenge the order of discharge passed in favour of former co-accused Arun Patil. The CBI has also not indicated to this court that at-least now it intends to challenge the order of discharge of Arun Patil from the case pending before the trial court. This is additional reason for us to find that the matter needs reconsideration by the trial court.

8. In view of the above, we pass the following order :-

- (i) Appeal No.615 of 2022 is allowed. The impugned order dated 1st June 2022 passed by the learned Special Judge of the Court of MCOCA, Greater Mumbai below MCOCA OBE 611 in MCOC Special Case No.8 of 2006, is hereby quashed and set aside.
- (ii) The matter is remanded back to the trial court for

consideration of the Discharge Application filed by the appellant-Mahesh Bhawanji Patel afresh in accordance with law, after giving due opportunity of hearing to the CBI.

(iii) An appropriate decision in this regard shall be taken within a period of eight weeks from the date of receipt of writ of this court.

9. Appeal is allowed on the above terms.

[ABHAY S. WAGHWASE, J.]

[SUNIL B. SHUKRE, J.]