



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

CRIMINAL APPEAL NO. 873 OF 2023

Gurudev Ramesh Marathe ... Appellant

vs.

The State of Maharashtra ... Respondent

Mr. Karma Vivan, for the Appellant

Mrs. P.P. Shinde, A.P.P for the State.

Mr Sameer Wagh, API, Talegaon Dabade Police Station is present.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATED : 8th SEPTEMBER, 2023

ORDER :-

1. Heard learned counsel for the appellant and learned APP for the respondent-State.
2. Rule. Rule is made returnable forthwith with the consent of the parties and the Appeal is heard finally at the stage of admission.
3. The appellant has impugned the order dated 20th August 2022 passed by the learned Special Judge under MCOC Act, in

Special MCOCA Case No. 10 of 2017, by which the learned Judge framed charge as against the appellant and other co-accused.

4. The principal ground on which quashing of the charge framed against the appellant is sought, is that the learned Judge framed charge only having regard to the statement made by Advocate Dushing, on behalf of some of the co-accused on 20th August 2022 i.e. that the accused had no objection for framing of charge. He submits that the appellant had never given his Vakalatnama to any Advocate nor had engaged any Advocate to represent him on the said date, when the charge was framed. He submits thus, the appellant was denied his legitimate right to file an application seeking his discharge from the said case under section 227 of the Cr. PC.

5. Learned APP does not dispute the aforesaid facts in particular, the fact, that the appellant had not engaged any lawyer on 20th August 2022.

6. Perused the papers. A co-ordinate bench of this Court

(*Coram: A.S. Gadkari and P.D. Naik, JJ.*) vide order dated 27th January 2023, passed in Criminal Appeal (St.) No. 18710 of 2022 had allowed the appeal filed by the appellant therein, also a co-accused in the present case, on the same ground as sought for by the appellant in the present appeal. The said order is at page 55, Exhibit-G of the appeal. This Court held that the appellant therein, had not engaged a lawyer on 20th August 2022 and that the statement made by Advocate Dushing on behalf of some of the co-accused on 20th August 2023 could not bind the appellant therein. Same is the case in the present Appeal. Thus, the appellant's legitimate right to file an application seeking his discharge under section 227 of the Cr. PC before framing of the charge, has been denied to him.

7. In view of the aforesaid and having regard to the order passed by the co-ordinate bench dated 27th January 2023, we set aside the order dated 20th August 2022 passed below Exhibit No. 360 in Special MCOCA Case No. 10 of 2017 i.e. Order framing charge, qua the appellant.

8. Learned counsel for the appellant states that the appellant

will file an application seeking his discharge under section 227 of the Cr. PC within one week, from the date of uploading of this order. Statement accepted.

9. Accordingly, the learned Judge seized with the MCOCA Case No. 10 of 2017 to hear the parties and pass appropriate orders, in accordance with law, on the said application and thereafter, proceed with the next stage, depending on the outcome of the application.

10. Appeal is allowed and disposed of in the aforesaid terms.

11. We make it clear that we have not heard the appeal on merits and as such all contentions of all parties are kept open.

12. All parties to act on the authenticated copy of this order.

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)