



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.4520 OF 2022
IN
CRIMINAL APPEAL NO.808 OF 2023**

Raju Satyanarayan Zha @Raju Hamal ...Applicant

Versus

State of Maharashtra ...Respondent

Mr. Anshul i/b. Mr. Prabhakar Jadhav for the Applicant.

Ms. P. P. Shinde, APP for the State.

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

DATE : 20th OCTOBER 2023

P. C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.
3. The applicant vide judgment and order dated 11th April 2022 passed by the Special Judge, MCOCA, City Civil and

Sessions Court for Greater Mumbai in MCOCA Special Case No. 3 of 2013 alongwith other co-accused has been convicted and sentenced as under :

— for the offence punishable under section 120-B of the Indian Penal Code to suffer life imprisonment and to pay fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for three months;

— for the offence punishable under Section 394 read with Section 120-B of the Indian Penal Code to suffer life imprisonment and to pay fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for three months;

— for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code to suffer life imprisonment and to pay fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for three months;

— for the offence punishable under Section 333 read with Section 34 of the Indian Penal Code to suffer rigorous imprisonment for ten years and to pay fine of Rs.10,000/-,

in default, to suffer rigorous imprisonment for three months;

— for the offence punishable under Section 3(1)(i) of the Maharashtra Control of Organised Crime Act, 1999 to suffer life imprisonment and to pay fine of Rs.1,00,000/-, in default, to suffer rigorous imprisonment for one year;

— for the offence punishable under Section 3(1)(ii) of the Maharashtra Control of Organised Crime Act, 1999 to suffer life imprisonment and to pay fine of Rs.5,00,000/-, in default, to suffer rigorous imprisonment for three years;

— for the offence punishable under Section 3(2) of the Maharashtra Control of Organised Crime Act, 1999 to suffer rigorous imprisonment for ten years and to pay fine of Rs.5,00,000/-, in default, to suffer rigorous imprisonment for three years;

— for the offence punishable under Section 3(4) of the Maharashtra Control of Organised Crime Act, 1999 to suffer rigorous imprisonment for ten years and to pay fine

of Rs.5,00,000/-,in default, to suffer rigorous imprisonment for three years.

All the sentences have been directed to run concurrently.

4. Perused the papers. The prosecution case rests essentially on direct evidence i.e. evidence of PW-3 Chandrakant Janba Shinde, PW-4 Prakash Ganpat Barve and PW-6 Kaushil Bechan Tiwari. According to the prosecution the incident took place on 31st August 2012. It appears that the deceased – ASI Mr. Sarnobat, alongwith others attached to Kherwadi Police Station, were on patrolling duty on the said date.

5. It is the prosecution case that whilst on patrolling duty they noticed a white coloured Tata Indica Car standing on the bridge towards the Kalanagar road, near the highway and ahead of the said car there was Swift Desire car; being suspicious of the said cars, ASI Mr. Sarnobat asked PW-3 Chandrakant Janba Shinde, the driver to take the patrolling car towards the said cars. According to the witnesses, ASI Mr. Sarnobat alighted from the van and proceeded towards the red car; after which, the driver of

the red colour car set the car in motion and took it in the direction of Mr Sarnobat and gave him a dash; pursuant to which ASI Mr. Sarnobat fell on the road and lost consciousness.

6. The aforesaid evidence has been deposed to by PW-3 Chandrakant Janba Shinde; PW-4 Prakash Ganpat Barve and PW-6 Kaushil Bechan Tiwari. Admittedly, the prosecution has not been able to pin point who was driving the swift car at the relevant time.

7. Learned counsel for the applicant submits that not only has the prosecution not been able to identify the person driving the vehicle, but even otherwise, taking the prosecution case as it stands, no offence as alleged under section 302 is disclosed qua the applicant/accused. It is submitted that the applicant is in custody since 31st August 2012 i.e. for about 11 years.

8. Learned APP submits that the applicant has antecedents and that all the offences are registered in Mumbai. She submits that the applicant be directed not to enter Mumbai and Thane City except for attending his cases.

9. Learned counsel for the applicant states that the applicant has no objection, if such a condition is imposed.

10. Considering what is stated aforesaid, and the fact, that the applicant is in incarceration for about 11 years and also keeping in mind that the appeal is of the year 2023 and the same is not likely to come up for hearing in the immediate future, the application is allowed and applicant's sentence is suspended and he is enlarged on bail, on the following terms and conditions:

ORDER

- i) The applicant be enlarged on bail on furnishing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- ii) The applicant shall not enter Mumbai and Thane City, except for the purpose of attending the court cases and for reporting to the trial Court as directed vide clause (iii);
- iii) The applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till the appeal is finally disposed of;

iv) The applicant shall keep the Kherwadi Police Station as well as the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

v) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

11. The Application is allowed in the aforesaid terms and is accordingly disposed.

All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.