



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.50/2021 IN CRIMINAL APPEAL
NO.152/2019

Smt.Pushpa Umashankar Nikhare Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D.V.Chavan, Advocate for the applicant.

Mr. S.M. Ghodeswar, APP for the non-applicant/State.

CORAM : NITIN W. SAMBRE AND VALMIKI SA MENEZES JJ.

DATED : 14/09/2023

1. In MCOCA Case No.23/2016, the applicant/accused no.4 came to be convicted for offence punishable under Sections 3(1) (ii), 3(2) and Section 3(4) of the Maharashtra Control of Organized Crime Act with Sections 120-B, 342, 363, 386 and 420 of the Indian Penal Code.

2. Mr. Chavan, learned counsel for the applicant submits that the applicant at present is released on furlough. The applicant was arrested on April 4, 2016 and has also undergone 7½ years of imprisonment. The maximum punishment awarded according to him is 10 years. As such, he would urge that the applicant had already undergone more than half of the imprisonment. His contentions are that co-accused Raja @ Sumit Fulzele is already released on bail.

3. Mr. Ghodeswar, learned APP has opposed the prayer. According to him, the role attributed to co-accused Raja @ Sumit Fulzele is not at par that of accused no. 4. He has sought rejection.

4. We have considered the submissions. The maximum punishment awarded to the applicant for an offence punishable under Sections 3(1) (ii), 3(2) and Section 3(4) of the Maharashtra Control of Organized Crime Act, is 10 years.

5. It is not in dispute that the applicant had already undergone 7½ years of imprisonment. At present, the applicant is on furlough leave. The order granting furlough leave in favour of the petitioner is produced on record during the course of hearing. The order granting furlough sufficiently establishes good conduct during detention of the petitioner in the prison.

6. In this background, as the applicant had already undergone more than half of the sentence having regard to the law laid down by the Apex Court in the matter of **Saudan Singh Vs. The State of Uttar Pradesh in Petition (s) for Special Leave to Appeal (Crl.) No.4633/2021 decided on 5.10.2021**, we deem it appropriate to allow the present application. Needless to clarify that case of the applicant is not at par with that of accused Raja @ Sumit Fulzele and bail is not granted on the ground of parity.

7. The applicant be released on bail. For depositing fine amount of Rs. Three lakhs before the Trial Court, four weeks from today is granted with an understanding that no further extension whatsoever be granted for depositing the above amount of fine.

8. The applicant shall report to Mankapur police station in first week of every English calendar month and shall not contact the witnesses directly or indirectly. The applicant shall not tamper with the evidence.

9. The application stands allowed in the above terms.

(VALMIKI SA MENEZES, J.)

(NITIN W. SAMBRE, J.)