



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1367 OF 2024
IN
CRIMINAL APPEAL NO. 375 OF 2018

Gani Mehboob Sayyad

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

AND

CRIMINAL APPLICATION NO. 981 OF 2024
IN
CRIMINAL APPEAL NO. 389 OF 2018

Nilesh Devilal Chikse

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

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Mr. R.A. Jaiswal, Advocate for applicant in APPLN/1367/2024

Mr. N.S. Shah, Advocate h/f Mr. S.V. Natu, Advocate for applicant in
APPLN/981/2024

Ms. V.S. Chaudhary, A.P.P. for respondent - State

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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ

DATE : 16th APRIL, 2024

PER COURT :

1. Both these applications are filed for suspension of substantive sentence imposed upon the applicants vide judgment and order dated 03rd May, 2018 passed by Special Judge (MCOCA) and Additional Sessions Judge, Nashik in Special (MCOC) Case No. 1 of 2011

2. It is submitted by learned counsel for the applicants that the co-convict, who has filed the appeal against same judgment and order of conviction before the Principal Seat of this Court at Bombay, is released vide order dated 01st February, 2024 passed in Interim Application No. 3768 of 2022, on the ground of long incarceration. He submits that the present applicants are also similarly situated, and therefore, on the ground of parity, the sentence imposed on them requires to be suspended.

3. Learned A.P.P. strongly opposed the applications. She submits that the judgment relied upon by the Division Bench in order dated 01st February, 2024 while allowing the application of co-convict, would not be applicable in the case in hand. At the same time she submits that the said order, by which the co-convict has been released on bail, has not been challenged by the State Government/prosecution.

4. We have perused the order dated 01st February, 2024 passed in Interim Application No. 3768 of 2022 by the Division Bench of this Court at Principal Seat, by which the co-convict has been granted bail, by relying on the Apex Court judgment referred in paragraph no.4 of the said order. Said paragraph no.4 is reproduced below :-

“4) In view of the guidelines issued by the Hon’ble Supreme Court in the case of Saudan Singh Vs. The State of Uttar Pradesh in Criminal Appeal No.308 of 2022 [@ SLP (Crl.) No.4633 of

2021], dated 25th February, 2022 and the view expressed in cases of (i) Suleman Vs. The State of Uttar Pradesh, Criminal Appeal No. 491 of 2022 (Arising out of SLP (Crl) No.1451 of 2022) dated 25th March, 2022 and (ii) Dinesh @ Paul Daniel Khajekar Vs. State of Maharashtra & Anr. Criminal Appeal No. 2987 of 2023 (Arising out of S.L.P. (Crl.) No. 10320 of 2023) dated 25th September, 2023, the Applicant is entitled to be released on bail during the pendency of Appeal.”

5. It is not disputed that the applicants herein were also arrested on 16th June, 2011 and they are behind the bars and as on date has undergone more than twelve years of incarceration. Since the said order of Principal Seat has not been challenged, the applicants would be entitled for similar relief on the ground of parity. Hence, we propose to pass the following order :-

ORDER

- (i) Applicants shall be released on bail in Special MCOC Case No.1/2011 arising out of CR No. 113 of 2011 registered with Shirdi Police Station, on their furnishing P.R. bond of Rs.50,000/- (Rupees Fifty Thousand) each with one or two solvent local sureties in the like amount.
- (ii) After their release from jail and during the pendency of the present appeals, the applicants shall attend Shirdi Police Station, Dist. Ahmednagar on every first Monday of the month between 10.00 am and 12.00 noon initially for a period of one year.
After end of one year, the applicants shall attend Shirdi Police Station, District Ahmednagar on every first

Monday of every 3rd month between 10.00 am and 12.00 noon. The applicants thus shall attend Shridi Police Station, Dist. Ahmednagar, four times in a year during the pendency of the present appeals.

- (iii) In case of two consecutive defaults in complying with the aforesaid conditions, the prosecution is at liberty to file an application for cancellation of bail.
- (iv) Applicants shall inform their prospective residential addresses to the trial Court. Applicants shall keep informed the trial Court may change in his residential address and his mobile number, on which he can be contacted.
- (v) Applicants shall make themselves available at the time of final hearing of the appeals.
- (vi) Both the applications stand disposed of accordingly.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

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