

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

**INTERIM APPLICATION NO. 2890 OF 2024
IN
CRIMINAL APPEAL NO. 854 OF 2024**

1. Gulabsaheb Appasaheb Multani,
2. Mehabub Babalal Multani
3. Iryya Chandyya Matpati ..Applicants.

Versus

The State of Maharashtra ..Respondent

Mr. Vipin Bidkar (appeared through V.C.) for Applicants.
Ms. Sangita D. Shinde, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 27 AUGUST 2024**

PC :

1. The Applicants were the original accused in Special (MCOCA) Case No.16 of 2020 before the Special Judge, Gadhinglaj, Kolhapur. The Applicant No.1 Gulabsaheb Multani was the original Accused No.3, the Applicant No.2 Mehabub Multani was the original Accused No.6 and the Applicant No.3 Iryya Matpati was the original Accused No.2. At the conclusion of the trial, the applicants were convicted and sentenced as follows:

- i) The applicants were convicted for commission of offence punishable under section 395 r/w. 34 of the I.P.C. and were sentenced to suffer R.I. for 7 years each and to pay a fine of Rs.5000/- each and in default to suffer R.I. for one month each.
- ii) The applicants were convicted for commission of offence punishable under section 397 r/w. 34 of the I.P.C. and were sentenced to suffer R.I. for 7 years each and to pay a fine of Rs.5000/- each and in default to suffer R.I. for one month each.
- iii) The Applicants were convicted for commission of offence punishable u/s 120-B r/w 34 of the I.P.C. and were sentenced to suffer R.I. for 7 years each and to pay a fine of Rs.5,000/- each and in default to suffer R.I. for one month each.
- iv) The Applicants were convicted for commission of offence punishable u/s 3(1)(ii) of MCOC Act and were sentenced to suffer R.I. for 7 years each and to pay a fine of Rs.5,00,000/- each and in default to suffer R.I. for 2 years each.
- v) The Applicants were convicted for commission of offence punishable u/s 3(2) of MCOC Act and were sentenced to suffer R.I. for 7 years each and to pay a fine of Rs.5,00,000/- each and in default to suffer R.I. for 2 years each.
- vi) The Applicants were convicted for commission of offence punishable u/s 3(4) of MCOC Act and were sentenced to suffer R.I. for 7 years each and to pay a fine of Rs.5,00,000/- each and in default to suffer R.I. for 2 years each.

The substantive sentences were directed to run

concurrently. They were given set off U/s.428 of the Cr.p.c.

2. The Accused No.4 was convicted and sentenced U/s.120B r/w. 34 of the I.P.C. and under sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act, similar to the present applicants. His sentence was also similar.

3. The prosecution case is that on 22.12.2017, PW-3 Rajgole and PW-4 Dattu Patil, working with two milk associations, had withdrawn Rs.70000/- and Rs.3 lakhs respectively from the Bank of India, Hebbal branch. They were travelling on a motorcycle. They reached a temple near Mungurwadi village. The two motorcycles followed them. There were four accused on those two motorcycles. They intercepted PW-3 and PW-4. One of them was carrying a sickle. He chased these two witnesses. All of them had snatched the bag containing the money. PW-4 suffered head injury. The accused went away. The local people helped PW-3 and 4 and took them to a dispensary at Nesari. Thereafter, PW-3 lodged this complaint. According to the prosecution case, the present applicants and the accused No.4 Bassapa were the four persons

who had committed this offence. During the trial, the main witnesses were the PW-3 and PW-4. According to the prosecution case, these witnesses had identified the accused in the test identification parade and also in the Court.

4. Learned counsel for the applicants submitted that the co-accused Bassapa, who was the accused No.4 has filed separate Criminal Appeal No.145 of 2024. He was granted bail by a co-ordinate bench of this Court (Coram: Kishore C. Sant, J.) on certain conditions. He was directed to deposit 50% of the fine amount. The said condition was subsequently modified vide the order dated 13.08.2024 passed in I.A.No.3072 of 2024. Learned counsel submitted that the present applicants' case is similar to that of Bassapa and, therefore, on the grounds of parity, the present applicants also deserve to be released on bail. He submitted that, on merits, the prosecution has failed to prove its case. Allegedly, the accused had covered their faces with scarf and, therefore, it was not possible for the witnesses to identify them. Learned counsel submitted that the applicants have already completed more than six years of the actual imprisonment. The

Applicant No.1 was arrested on 05.03.2018, the Applicant No.2 was arrested on 21.03.2018 and the Applicant No.3 was arrested on 24.01.2018. Thus, more than six years and a few months have passed. The substantive sentence is almost over and the applicants at present are required to undergo the 'in default' sentence.

5. Learned APP opposed these submissions. According to her, the evidence shows that the witnesses could see the accused as their faces were unmasked for some time and, therefore, it was possible to identify them. Besides that identification, there was recovery of an amount of Rs.5000/- each from the Applicant Nos.1 and 2 and Rs.10000/- from the Applicant No.3. A sickle was also recovered at the instance of the Applicant No.1.

6. I have considered these submissions. Though, PW-3 has stated that for some time the scarves on the applicants' faces were removed and during that period he could see them clearly, it appears to be little doubtful; because this explanation was not given by him earlier. The recovery from all the applicants is comparatively of small amounts which cannot be termed as

incriminating. The co-accused i.e. the Accused No.4 Bassapa was granted bail vide the order dated 17.04.2024 by the co-ordinate bench. It was mentioned that the main consideration for granting bail to him was that, more than six years of sentence out of the total sentence of seven years was over. The same reason applies to the present applicants, as well. Therefore, the applicants have made out a case for grant of bail, on this consideration, as well as, on merits. The principle of parity also applies as their case is similar to that of the Accused No.4 Bassapa. Therefore, I am inclined to grant bail to the present applicants on similar conditions.

7. Learned counsel for the applicants invited my attention to the order dated 13.08.2024 wherein the said accused Bassapa was directed to deposit Rs.50000/- from his fine amount, instead of 50% of the fine amount. As directed by the order dated 13.08.2024, similar consideration can be shown for the present applicants.

8. Hence, the following order:

O R D E R

- i) The Applicants shall deposit Rs.50,000/- each by way of part payment of the fine amount before the Trial Court.
- ii) On such deposit, during the pendency and final disposal of Criminal Appeal No.854 of 2024, the Applicants are directed to be released on bail on their furnishing P. R. bonds in the sum of Rs.30000/- each with one or two sureties each in the like amount.
- iii) The Applicant shall report to the concerned police station on first Sunday of every month between 11:00a.m. to 1:00p.m.
- iv) The Applicants shall furnish their residential addresses and contact numbers to the concerned police station.
- v) They shall inform the police officers in case of change in the address or change in the contact details.
- vi) With these observations, the Application is disposed of.

(SARANG V. KOTWAL, J.)