

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 94 OF 2024**

Akshay Ashok Shivale

... Appellant

V/s.

The State of Maharashtra

... Respondent

Mr. Karma Vivan a/w Mr. Tejas Kothalikar and Mr. Anvay Pawar for Appellant.

Mr. J.P. Yagnik, A.P.P. for Respondent-State.

PSI K.S. Shinde, attached to Mhalunge Police Station present.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 12th February 2024

P.C. :

1) This is an Appeal under Section 12 of the Maharashtra Control of Organized Crime Act, 1999, impugning the Order dated 26th December 2023 passed below Exhibit 37, framing charge against Appellant (Accused No.1) in Special MCOCA Case No. 863 of 2021.

2) Perusal of record clearly indicates that, on 26th December 2023, Appellant had filed an application for adjournment. As per submission of the learned Advocate for the Appellant that, Appellant was intending to file an application for discharge as contemplated Section 227 of Criminal Procedure Code and therefore the said application for adjournment was filed.

2.1) That, the learned Judge of trial Court rejected the said application and immediately proceeded to frame charge/charges below Exhibit 37 against Appellant and other accused persons.

3) There is no denial to the fact by the prosecution that, an opportunity of being heard to Appellant under Section 227 of Cr. P.C. was not afforded to him before proceeding to adopt the stage under Section 228 of Cr. P.C. by the trial Court. It is not only the mandate of law, but the said mandate has further been explained and elaborated by the Hon'ble Supreme Court in a catena of decisions. By not affording an opportunity to the Appellant to be heard at the stage of Section 227 of Cr. P.C., impedes his statutory right.

4) In view of the above, we set aside the impugned Order dated 26th December 2023, passed below Exhibit 37 by the trial Court, *qua* the Appellant herein only. We direct the learned Judge of the trial Court to hear the Appellant on his application for discharge.

5) Learned counsel appearing for the Appellant submitted that, Appellant will file an application for discharge as contemplated under Section 227 of Cr. P.C. before the trial Court within a period of one week from the date of uploading of the present Order on the official website of Bombay High Court. The said statement is accepted.

6) Learned Judge of the trial Court is requested to decide said application on its own merits by affording an opportunity of being heard to

the Appellant i.e his Advocate and the prosecution, within a period of three weeks thereafter.

7) Appeal is allowed in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

RAJESH
VASANT
CHITTEWAN

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RAJESH VASANT
CHITTEWAN
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