

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

**INTERIM APPLICATION NO. 477 OF 2024
IN
CRIMINAL APPEAL NO. 503 OF 2023**

Akshay Rajesh Naik And Anr.

... Applicants

IN THE MATTER BETWEEN

Abdul Gani Khan and Ors.

... Appellants

Vs.

The State of Maharashtra

... Respondents

TALLE
SHUBHAM
ASHOKRAO

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TALLE SHUBHAM
ASHOKRAO
Date: 2024.02.16
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Adv. Bhushan Raut a/w Adv. Vaibhav Lavande i/by Dnyaneshwar Kale, for
the Applicants.

Mr. A. R. Patil, APP for Respondent/State.

CORAM : KISHORE C. SANT, J.

DATE : 15th FEBRUARY, 2024

PC.:-

1. Heard the learned Advocate for the Applicants and Learned
APP for State.

2. This Application is filed seeking suspension of sentence of the
Applicants and for release on bail. The Applicants are convicted by the
Learned Additional Sessions Judge, Pune by Judgment and Order dated 13th
March 2023 for the offences punishable under Section 386, 387, 506(2)
r/w 34 of the IPC, 3(1) (ii), 3(2) & 3(4) of MCOC Act. The maximum

sentence is of 6 years for the offences under MCOC Act with fine. The earlier Bail Applications of the Applicants are already rejected.

3. The present Application is mainly pressed on the ground that the Applicants have already suffered the sentence of 6 years. However as they are not in a position to deposit Rs. 5,00,000/- (Rs. Five lakh only) each for the MCOC offence i.e. Rs. 15,00,000/- total is not paid. They are now suffering that default sentence. The default sentence is 18 months, out of 18 months they have suffered more than 7 months i.e. more than 40%. The Application is therefore for suspension of sentence.

4. It is specific case of the Applicants that they do not have financial capacity to pay the amount of fine. The Applicants are ready to pay fine imposed for the offences under IPC sections which comes to total Rs. 10,000/-. This Court finds that when substantive sentence is suffered and even default sentence is suffered for more than for 40%. This Court needs to consider the Application sympathetically. The fact that they are still suffering the default sentence shows that the Applicants are not in a position to pay the amount of fine. Further it needs to be considered that the Appeal is still pending and there is always chance of acquittal in the Appeal. In case there is dismissal of Appeal, fine can certainly be recovered from them. Keeping them behind the bars even after suffering substantive sentence is not proper.

5. In support of submission, the Learned Advocate relied upon the

Judgment of the Madhya Pradesh High Court in the case of ***Mohan Raikwar Vs. State of M.P. reported in (1999) SCC online MP 104***, in para 7 has considered that in the second bail petition court does not lose its jurisdiction to grant bail. Each day's confined, each day's delay and each day's detention for the Petitioner be taken as relevant consideration while considering the second Application. He further relied upon the Order passed by this Court in the case of ***Pravin Borate Vs. State of Goa and Anr reported in 2023 SCC OnLine Bom 547***, where the Application for seeking bail on ground that the Applicant has suffered sometime in jail and there was no progress in the trial. The third order relied is in the case of ***Puru Vs. Sr. Inspector of Police and Another reported-2022 SCC online Bom page 6036*** in that case also this Court had granted bail though earlier Bail Application was rejected.

6. Considering the fact that the Applicant was in custody for more than 5 years. In that case, there were also offences under MCOC Act. This Court finds that the main consideration for the Court is that the Applicants have already suffered substantive sentence and some part of default sentence.

ORDER

- a) The Application is allowed. Substantive sentence as imposed by the learned Additional Sessions Judge Pune in Special Case (MCOC) No. 28/2017 stands suspended.

- b) The Applicants be released on bail upon furnishing P R. Bond in the sum of Rs. 25,000/- with one or more surety/sureties in the like amount to the satisfaction of the Trial Court.
 - c) The Applicants shall pay the fine amount of Rs.10,000/- imposed under the IPC Sections.
 - d) The Applicants shall attend the concerned police station on every 2nd and 4th Saturday of the month at 11.00 a.m.
 - e) The Applicants shall furnish details of residential address and other contact details such as mobile number etc. to the police station. If there is any change in the contact details the same will be immediately informed to the concerned police station.
 - f) The Applicants shall not enter into pune city except for attendance to police station. The Applicants shall not indulge in any similar activities, if they are found indulging into similar activities their bail shall be liable to be canceled.
7. The Application stands disposed of in the aforesaid terms.

(KISHORE C. SANT, J.)