

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

***INTERIM APPLICATION NO.2242 OF 2022
IN
CRIMINAL APPEAL NO.692 OF 2022***

Rajendra Vijay Gaikwad
Versus

...Applicant

The State of Maharashtra

...Respondent

Mr. Nitin Gaware Patil a/w Mr. Anandmay Dhorde, Mr. Shantanu Kolhe, Mr. Shubham Vadne for the Applicant.

Ms. P. P. Shinde, A.P.P for the Respondent – State.

***CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.***

DATE : 7th FEBRUARY 2024

P.C. :

1. Heard learned counsel for the parties.
2. By this interim application, the applicant (original accused No.3) seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.

3. The applicant alongwith other co-accused vide Judgment and Order dated 5th May 2022, passed by learned Additional Sessions Judge & Additional Special Judge under MCOC Act, Pune, in MCOCA Case No. 19 of 2015, has been convicted alongwith other co-accused for the offences punishable under Sections 120B r/w 302 and 302 r/w 34 of the Indian Penal Code ('IPC'). For the aforesaid offences, the applicant has been sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.1,000/- in default, to suffer further rigorous imprisonment for 3 months.

4. As far as the offences under the Maharashtra Control of Organized Crime Act ('MCOC Act') are concerned and other IPC offences and offences under the Arms Act are concerned, the applicant has been acquitted of all the said offences and no appeal has been filed either by the State or by the complainant, as against the acquittal from the said offences.

5. Learned counsel for the applicant submits that the said confession made by the co-accused also suffers from serious infirmities, inasmuch as, the mandatory 24 hours was not given to the co-accused, inasmuch as, the confession was recorded within 17 hours. He further submits that there is no corroboration to the said confession made by the co-accused *qua* the applicant. He submits that the applicant is in custody for about 6 ½ years and that the applicant has no antecedents.

6. Perused the papers. The prosecution case rests entirely on circumstantial evidence. As far as evidence of conspiracy is concerned, the learned Judge has disbelieved the said evidence and as such has discarded the same. There is no recovery of any article at the instance of the said accused. Even the evidence of CDR, has been disbelieved and discarded by the learned Judge. Thus, what remains is only a confession made by a co-accused under Section 18 of the MCOC Act. In the said confession, the role assigned to the applicant is that of confirming the travel movements of the deceased. The only evidence

on which the applicant has been convicted is evidence of confession made by co-accused under Section 18 of the MCOC Act. There is no corroboration whatsoever to the said confession made by the co-accused. The applicant is in custody for about 6 ½ years. Admittedly, as noted above, the applicant has been acquitted of the offences punishable under the MCOC Act, Arms Act and some of the offences under the IPC. The appeal is of the year 2022 and the same is not likely to come up for hearing in the immediate near future.

7. Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his aforesaid appeal, on the following terms and conditions:-

ORDER

i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

ii) The Applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till his Appeal is finally disposed of;

iii) The Applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

All concerned to act on the authenticated copy of this order.

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.