

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

**INTERIM APPLICATION NO.2969 OF 2022
IN
CRIMINAL APPEAL NO.1045 OF 2022**

Sunil Kumar @ Piyush Gaurishankar Tiwari ..Applicant/Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

Ms. Vrushali Maindad a/w Shaheen Kapadia, for the Applicant/
Appellant.

Mrs. M. R. Tidke, APP for the Respondent/State.

Mr. Pradip D. Gharat, Spl. PP for the Respondent/State.

Mr. Kiran Jadhav a/w Alfiya Shaikh i/by Vishal Kolikar & Randhir
Kale, for the Accused No.1 in Appeal/395/2021.

CORAM : KISHORE C. SANT, J.

DATE : 22nd FEBRUARY, 2024

PC.

1. Heard the parties.

2. This Application is moved by original Accused No.5, namely Sunil Kumar @ Piyush Gaurishankar Tiwari, who is sentenced to suffer ten years imprisonment for the offence punishable under Sections 307 and 120(b) of the IPC and Sections 3(1)(ii), 3(2), 3(4) of the MCOC Act. Applicant is directed to suffer ten years rigorous imprisonment and fine of Rs.2,000/-, in default to suffer rigorous imprisonment for two months. Applicant is also sentenced to suffer rigorous imprisonment of ten years with fine of

Rs.5,00,000/-, in default to suffer rigorous imprisonment for six months for the offence under Section 3(1)(ii) of the MCOC Act. Applicant is acquitted for the offence punishable under Sections 3, 5 r/w 25 and 27 of the Indian Arms Act.

3. The Application is mainly pressed on the ground that during the trial the Applicant was on regular bail. He was arrested on 20.09.2013 and was released on 19.07.2014 by the Special Court on merits. It is submitted that the role of the Applicant was only that he was driving car, in which the main accused were sitting and reached near Infinity Mall i.e. spot of the incident. The other accused fired at victim by pistol, in which victim received injuries. Learned advocate pointed out that this Applicant went as a driver on a call from his friend, namely Suresh Shinde. On his say, this Applicant arranged for a vehicle. She further submits that Applicant was never part of conspiracy. He is convicted only on the basis of confession given by him. From the confession also, she submits that there is nothing to show that the Applicant had knowledge since beginning or he has participated in the preparation of the offence. On this ground, she prays for release of the Applicant on bail by suspending sentence.

4. Learned Special Public Prosecutor Mr. Pradip Gharat vehemently opposes the Application. He has also taken this Court through the contents of the confessional statement as reflected in the judgment. In his confessional statement itself, he stated that

after the incident, Applicant got frightened and even forgot to drive vehicle. He was slapped by another accused/Rohit on his back. Another accused Prakash stuck pistol to him and abused and told him to drive the car, therefore, he drove the vehicle. It further appears from the statement that he was threatened by other accused asking him not to disclose the incident otherwise he will face the consequences. He was also given hire fee of Rs.2000/-.

5. On going through the above, this Court *prima-facie* finds that no direct involvement of the Applicant is seen in the offence. Though learned Special Public Prosecutor submits that this Applicant is seen in the CCTV footage at the time of incident, presence of this Applicant is not at all doubted. The question before this Court at this *prima-facie* stage is only as to whether the Applicant was involved in the conspiracy or not. This Court finds that there seems to be arguable case about involvement of the present Applicant in the conspiracy. In view of the above, *prima-facie* case is made out to release the Applicant on bail by suspending sentence. Hence, the following order :-

- i) The Application stands allowed.
- ii) The sentence awarded to the present Applicant by learned Special Judge, Mumbai dated 16.03.2021 in MCOC Special Case No.16 of 2013 & connected matters stands suspended.

- iii) Pending the Appeal, Applicant be released on bail, subject to condition of depositing the fine amount as imposed by the Trial Court.
 - iv) Applicant shall attend the concerned Police Station at interval of every fifteen days in a month (twice in month) at a specific day and time to be decided by the concerned Police Station.
 - v) Applicant shall give contact details including mobile number etc. to the concerned Police Station.
 - vi) In case of any change in the above contact details, Applicant shall immediately inform the same to the concerned Police Station.
6. The Application stands disposed of.

[KISHORE C. SANT, J.]