

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3772 OF 2023
IN
CRIMINAL APPEAL NO. 881 OF 2022

Nilesh Khandu Solankar

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Vaibhav Kulkarni a/w Mr. Ajinkya Kamble & Mr. Ruturaj Bathe
for the Applicant.

Mrs. P.P.Shinde, A.P.P for the Respondent-State.

*CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.*
DATE : 19th APRIL, 2024

P.C. :

1. Heard learned counsel for the parties.
2. By this interim application, the applicant (original accused No.2) 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 seeks bail on the ground of parity. He submits that the evidence *qua* the applicant is similar to that of co-accused Rajendra Vijay Gaikwad, whose sentence has been suspended and who is enlarged on bail. He submits that admittedly, the applicant has not made any confession under Section 18 of the MCOC Act. He submits that since the applicant has been acquitted of the offences under the MCOC Act, it is necessary for the prosecution to show some corroboration to the confession made by the co-accused, which has not been done. He submits that the applicant is in custody for about eight years and that the applicant has no antecedents.

6. Learned APP as well as learned Counsel for the complainant opposed the application. They submitted that no ground has made out by the applicant for suspension of his sentence and enlargement on bail.

7. Perused the papers. Admittedly, the prosecution case rests entirely on circumstantial evidence. As noted earlier, the applicant

alongwith other co-accused has been acquitted of the offences punishable under the MCOC Act and no appeal has been preferred either by the State or by the complainant against the said acquittal. Admittedly, the trial Court has disbelieved the evidence of conspiracy and has discarded the same from consideration. Admittedly, even the recovery evidence *qua* the applicant i.e. recovery of sickle, blood stained clothes and motorcycle has been disbelieved by the trial Court. Thus, what remains is only a confession made by the co-accused under Section 18 of the MCOC Act. As per the Judgment of the Apex Court in the case of ***State, Through Superintendent of Police, CBI/SIT V/s Nalini and Ors.***¹ a confession made under Section 18 can be relied upon, provided there is some corroboration to the same, even if there is an acquittal of the MCOCA. In the said confession, no doubt a specific role has been attributed to the applicant i.e. of assault on the deceased, however, as noted above, there is no corroboration to the said confession made by the co-accused. The applicant is in custody for about 8 years. The appeal is of the year 2022 and is not likely to be heard in the immediate near future.

1 (1999) 5 Supreme Court Cases 253

8. 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.

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

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

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.