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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1885 OF 2024
IN
CRIMINAL APPEAL NO. 692 OF 2022

Santosh Bhimrao Shinde ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Nitin Gaware Patil a/w Mr. Shantanu Kolhe for the Applicant.

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

CORAM : REVATI MOHITE DERE &
ARUN R. PEDNEKAR, JJ.
DATE : 18th JULY, 2024

P.C. :

1. Heard learned Counsel for the parties.
2. By this interim application, the applicant 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') and other IPC offences and offences under the Arms Act, 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 of the accused from the said offences.

5. Learned Counsel for the applicant seeks bail on the ground of parity. He submits that similarly placed co-accused – Nilesh Khandu Solankar has been enlarged on bail by this Court vide order dated 19th April, 2024. He submits that the evidence *qua* the applicant is similar to that of co-accused – Nilesh Solankar. He further submits that although there is a recovery of blood stained clothes and Koyata, at the instance of the applicant, the same has been disbelieved by the trial Court. He submits that thus, there is no corroboration to the confession made by the co-accused as far as the applicant is concerned and as such, the confession made by the co-accused under Section 18 of the MCOC Act cannot be relied upon. He further submits that the applicant is in custody for more than 9 years and has no antecedents.

6. Learned APP does not dispute the fact, that the role of the applicant is similar to that of co-accused - Nilesh Solankar who has been enlarged on bail by this Court.

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 and blood stained clothes 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 under 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

1 (1999) 5 Supreme Court Cases 253

said confession made by the co-accused. The applicant is in custody for about 9 years. The appeal is of the year 2022 and is not likely to be heard in the immediate near future.

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.

ARUN R. PEDNEKAR, J.

REVATI MOHITE DERE, J.