



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.293 OF 2025
IN
CRIMINAL APPEAL (ST) NO.742 OF 2025

Shaikh Shakil S/o Shaikh Aref,
Age : 32 Years, Occu. : Auto Rikshaw Driver,
R/o Kasambari Dargah, Padegaon,
Tq. & Dist. Aurangabad. ... Applicant

Versus

The State of Maharashtra
Through Police Station, Chavni,
Cantonment, Tq. & Dist. Aurangabad. ... Respondent

.....
Mr. Sajed W. Khan, Advocate for Applicant
Mr. P. K. Lakhotiya, APP for Respondent - State
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CORAM : ABHAY S. WAGHWASE, J.

DATED : 24th FEBRUARY, 2025

PER COURT :-

1. Instant application is with prayers for suspension of sentence and grant of bail during pendency of appeal arising out of judgment and order dated 16.11.2021 passed by learned Special Judge (MCOCA), Aurangabad in Special (MCOC) Case No.4 of 2017.

2. Learned counsel for applicant pointed out that, applicant is falsely implicated in this case. That, informant, who was under the

influence of alcohol, neither stated that there was light at the place of occurrence nor disclosed that he saw faces of robbers in the light. That, there is delay of more than a month to conduct identification parade and there is no explanation in this regard. That, panchnama showing recovery of articles at the instance of accused is not admissible in evidence as it is not prepared under section 27 of Evidence Act. That, all the witnesses are inconsistent with each other. That, there are no eye witness to the incident. That, this court had granted bail to the original accused nos.2 and 3 and suspended their sentence by order dated 10.01.2022 and 02.03.2022.

3. Learned counsel for applicant further pointed out that, applicant was charge-sheeted and tried for above offences. By judgment and order dated 16.11.2021 he has been held guilty and sentenced to suffer 10 years imprisonment for commission of offence punishable under section 394 of Indian Penal Code and he has been acquitted from the offence punishable under sections 397 and 201 r/w 34 of IPC and under sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999. It is pointed out that, as on today, applicant has already spent behind the bars near about 7 years i.e. he has been spent more than half of the sentence. That, there is challenge to the judgment and conviction by filing

present appeal. It is submitted that, appeal being of 2025, it will take long time to be heard and decided and hence learned counsel prays for relief of suspension of sentence and grant of bail during pendency of appeal.

4. In answer to above, learned APP submitted that, on full-fledge trial, conviction is rendered. That, there are allegations of robbery. Learned trial court examined 10 witnesses and only thereafter rendered conviction and therefore offence being serious, he opposed the relief as prayed.

5. After considering the submissions and on going through the evidence, it seems from the papers and judgment that applicant Shaikh Shakil and two others were booked for commission of offence under sections 394, 397 and 201 r/w 34 of IPC and sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 199. On above charges, they have faced trial before learned Special Judge (MCOCA) Aurangabad, who conducted trial vide Special (MCOC) Case No.4 of 2017 and on evidence of 10 witnesses, by judgment and order dated 16.11.2021, present applicant and co-accused are convicted for offence punishable under sections 394 of IPC and are sentenced to suffer imprisonment for 10 years and to pay

fine. Original accused Nos.2 and 3 had already granted bail by this court. Therefore, there are points which need to be re-appreciated in appeal. Further, applicant is behind the bars since seven years and has already suffered more than half of the sentence and appeal being of 2025, there are no immediate prospects of hearing the appeal. In the light of above discussed circumstances, case is made out for grant of relief. Hence, the following order is passed.

ORDER

- I. Criminal Application stands allowed.
- II. The substantive sentence imposed on the applicant Shaikh Shakil S/o Shaikh Aref in Special (MCOC) Case No.4 of 2017 by learned Special Judge (MCOCA), Aurangabad on 16.11.2021 stands suspended till the final hearing and disposal of Criminal Appeal (St.) No. 742 of 2025.
- III. The applicant be released on P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with two solvent sureties in the like amount.
- IV. The applicant shall not commit any criminal activity.
- V. The applicant shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the trial Judge to fix dates for his subsequent appearances.

VI. In case of two consecutive defaults on the part of the applicant to remain present before the trial court, the trial court to inform this court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of bail granted to the applicant.

VII. Bail before the trial court.

[ABHAY S. WAGHWASE, J.]