



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**921 CRIMINAL APPLICATION NO. 2129 OF 2025
IN CRIMINAL APPEAL/41/2025**

**BABARKHAN GULMOHMMADKHAN PATHAN
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr.N.S.Ghanekar
APP for Respondent-State : Mrs.P.V.Diggikar

...
**WITH
CRIMINAL APPEAL NO. 41 OF 2025**

...
**CORAM : ARUN R. PEDNEKER, J.
DATE : 30.07.2025**

P.C. :

1] The present application is filed by the applicant for suspension of substantive sentence imposed on the applicant in MCOC Special Case No.51/2020, by order dated 13.12.2024, by learned Special Judge [MCOCA], Beed. The applicant has been convicted thus:

The applicant-accused no.17 Babarkhan Gulmohammadkhan Pathan is convicted for the offences punishable under Section 212 of the Indian Penal Code, 1860, read with Section 3 (3) of the Maharashtra Control of Organized Crime Act, 199, as per Section 235 (2) of the Code of Criminal Procedure Code and sentenced to undergo

rigorous imprisonment for 5 years and shall pay a fine of Rs.5 Lac. In default of payment of fine, accused shall undergo rigorous imprisonment for 3 years.

2] The learned counsel for the applicant submits that the maximum punishment awarded to the applicant is of 5 years and the applicant has undergone 18 months. He relies upon the judgment of the Supreme Court in the case of **Kalpna Rai Vs. State [through CBI]** in Criminal Appeals No.311 of 1997, decided on 06.11.1997 at para nos.56 and 57 as under :

56. If Section 3 (4) is understood as imposing harsh punishment on a person who gives shelter to a terrorist without knowing that he was a terrorist such an understanding would lead to calamitous consequences. Many an innocent person, habituated to offer hospitality to friends and relatives or disposed to zeal of charity, giving accommodation and shelter to others without knowing that their guests were involved in terrorist acts, would then be exposed to incarceration for a long period.

57. For all the above reasons we hold that mens rea is an essential ingredient for the offence envisaged in Section 3 (4) of TADA.

He further submits that in the instant case the applicant has provided taxi for travel. He further submits that neither any case is filed against the applicant invoking MCOC Act, so also, there is no evidence on record to indicate that the applicant was aware about the co-accused being member of a gang.

3] Considering the submissions of the applicant, so also, considering that the applicant is in custody from 18 months and maximum punishment awarded to the applicant is of 5 years and the appeal may take substantial time to heard. Considering the same, I pass the following order :

ORDER

i] Criminal Application is allowed.

ii] The substantive sentence imposed on the applicant in MCOC Special Case No.51/2020, by order dated 13.12.2024, by learned Special Judge [MCOCA], Beed, stands suspended till the final hearing and disposal of Criminal Appeal.

iii] Subject to deposit of fine amount of Rs.50,000/- before the trial Court, the applicant be released on bail on furnishing P.R.bond of Rs.20,000/-, with two sureties in the like amount. Bail before the trial Court.

iv] Criminal Application is disposed of accordingly.

v] It is also clarified that the observations made in this order are limited only for the purpose of deciding the present Application.

vi] Appeal is **admitted**. On admission, the learned APP waives notice for respondent-State.

[ARUN R. PEDNEKER]
JUDGE

DDC