

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1013 OF 2025
IN
CRIMINAL APPEAL NO. 395 OF 2021

Kaushik Baldev Rajgour ... Applicant
versus
The State of Maharashtra Respondent

WITH
INTERIM APPLICATION NO. 2342 OF 2024
IN
CRIMINAL APPEAL NO. 394 OF 2021

Arvind @ Arvya Pandurang Shinde ... Applicant
versus
The State of Maharashtra & Anr. Respondents

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Adv. Tahera Qureshi a/w. Umar Nizami, for Applicant in IA/1013/2025
and in IA/2342/2024.
Mr. Hitendra J. Dedhia, APP for the State.
Mr. Pradip Gharat, Special PP for CBI.

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CORAM : R. M. JOSHI, J.
DATED : 11th NOVEMBER, 2025.

P.C. :

1. By consent of both the sides these applications are heard and decided by this common order.
2. The appellants / applicants are seeking suspension of substantive sentence of 10 years imposed against them by Judgment and Order dated

16.03.2021 passed in MCOC Special Case No. 16 of 2013 along with MCOC Special Case No. 6 of 2014, MCOC Special Case No. 19 of 2014 and MCOC Special Case No.5 of 2018 and under Arms Act.

3. On 28.08.2013 victim Ajay along with his bodyguard had been to Infinity Mall, Link Road, Malad (West), Mumbai at about 3 p.m. At about 4 p.m. when he came out of the mall to take auto rickshaw near footpath gate, three unknown persons having firearms in their hands aimed towards him and fired shots. The bodyguard of Ajay tried to intervene and hence bullets were fired at him too. In the said assault Ajay sustained injuries and tried to flee away but could only go to some distance and fell down. The assailants again fired at him. In this incident, Ajay sustained grievous injuries. Investigation into the said crime was conducted and it was found to be case of criminal conspiracy. On conclusion of investigation chargesheet came to be filed.

4. Learned Special Court under Maharashtra Control of Organized Crime Act, 1999 (for short "MCOC Act") tried the said case. The prosecution led oral as well as documentary evidence to bring home guilt of the accused. Undeniably one of the accused became an approver and was examined as first witness of the prosecution. Apart from him, 49 other witnesses were examined. Learned Trial Court held accused guilty for the offences charged against them under section 307 of Indian Penal Code,

1860 (for short “IPC”), Section 3(1)(ii) of MCOC Act and under section 3,5,25,27 of Arms Act and sentenced them to suffer rigorous imprisonment for a period of 10 years.

5. Learned counsel for the applicants submits that the approver has criminal history behind him and that he ought not to have been allowed to become approver in the case. It is her submission that in any case the conviction cannot be based upon the testimony of the approver without corroboration and more particularly when there are inconsistencies in his statement and owing to omissions/contradictions his testimony is not wholly reliable. It is argued that except for the evidence of approver there is absolutely no evidence in order to connect present applicants with the crime. He further contended that rest of the accused have already undergone the entire sentence and considering the fact that the appeal is not likely to be heard in short period of time, if the applicants are not enlarged on bail by suspending substantive sentence the appeal shall become infructuous. To support her submission, she placed reliance on the Judgment of the Hon’ble Supreme Court in the case of ***Narcotic Control Bureau Vs. Lakhwinder Singh*** in Criminal Appeal No.(s) 475 of 2025 and ***Sitaram Sao Alias Mungeri Vs. State of Jharkhand***¹.

6. Learned Special P.P. for respondent opposed the application by contending that there is no embargo on accepting the one of the accused as

¹ (2007) 12 SCC 630

approver and at this stage the evidence of the said approver cannot be assailed by the applicants. It is his submission that there is corroboration to the evidence of approver and having regard to the observations made and findings recorded by the learned Trial Court, this is not the case for enlargement of the applicants on bail. It is his further submission that the nature and seriousness of the crime also needs to be taken into account while deciding this issue.

7. The law on the point of suspension of sentence and enlargement of the convict on bail is fairly settled to say that merely because some period is spent by the convict in the jail that itself does not become a ground for his enlargement on bail. Applicant / convict will have to make out a case of fair chance of success in the final hearing of the appeal. Similarly, while deciding such claim the Court is required to see the nature of offence and circumstances in which the same has been committed.

8. Here in this case, the victim Ajay was assaulted on 28.08.2013 by firing bullets at him by three then unknown persons. During the course of the investigation it was found that the said incident of attack is outcome of a criminal conspiracy hatched and executed by all accused. One of the accused was accepted as approver and his evidence came to be recorded and relied upon by the Trial Court. In so far as the order of acceptance of one of the accused as approver is concerned, any exception thereto would

be taken into consideration at the time of the final hearing of the appeal and not at this stage.

9. Though, the uncorroborated testimony of an approver cannot become a sole ground for conviction of the accused, here in this case apart from the fact that the approver has given details in order to show involvement of the present appellants in the conspiracy and crime, there is corroborative evidence to support his oral testimony. It is argued on behalf of the learned counsel for the applicants that there are omissions and contradictions in the testimony of approver which makes the said testimony unreliable to be conviction of all the same, however existence of omissions/contradictions by itself would not be sufficient to discard his entire testimony. The nature of omissions and contradictions and its effect on the acceptability or otherwise of his evidence will have to be considered at the stage of the hearing of the appeal. At this stage, it would suffice to see whether the approver gives details with regard to the involvement of the applicants in the crime and there is corroboration thereto from independent material.

10. Apart from the fact that the evidence of the approver is in detail in so far as the role of the applicants in the crime is concerned, but it also gets corroboration from CDRs indicating exchange of calls between the applicants and approver. Thus it cannot be said that there is absolutely no

material on record in order to support / corroborate the version of approver. In this regard reference can be made to the observations of learned Trial Court in paragraph Nos. 181 to 171 of the Judgment. The Trial Court has held that the evidence on record and rendered detailed finding indicating the manner in which the applicants are connected with the crime and established their involvement therein. It is also relevant to take note of the observations of the learned Trial Court in paragraph No. 115 and 137 of the order impugned. The discussion which is prima facie supported by the material on record indicates about the financial transaction between the applicants and approver and considering overall evidence on record, it cannot be said that there is no supporting evidence to the oral testimony of approver to base conviction.

11. Though it is sought to be argued that CDRs were not proved, perusal of the record indicates that CDRs were proved through the investigating officer and no objection was raised by the defence for execution of the said document. Atleast at this stage, the contention of the learned counsel for the appellants taking exception to the CDRs cannot be entertained

12. The Hon'ble Supreme Court in the case of *Sitaram Sao Alias Mungeri (supra)* has dealt with corroboration must come from independent sources but the circumstances may be such that as to make it safe to dispense with necessity of corroboration and use in those special circumstances a

conviction so based would not be illegal. In the instant case, however, prima facie the evidence of approver gets support from independent material on record.

13. In so far as Judgment in the case of *Narcotic Control Bureau (supra)*, the Hon'ble Supreme Court has confirmed the order of grant of bail to convict for offence under NDPS Act, holding that bail could be granted even before completion of half of sentence. Learned counsel for the applicants placed reliance on the order passed by this Court in I.A.No. 2969 of 2022 in Criminal Appeal No. 1045 of 2022 wherein suspension of sentence of one of the convict was allowed. She seeks enlargement on bail on parity. Perusal of the said order indicates that the said convict was driving the vehicle at the time of incident. There was no other evidence connecting him with the crime except for his confession. As far as present applicants are concerned their role certainly defers from the role of the said convict. Here in this case the applicants have said to have conspired and also extended financial aid and other assistance in commission of the crime hence it is not the case to apply parity.

14. It is pertinent to note that in the instant case the crime in question has not been committed in spur of moment but is prima facie proved fact of a crime syndicate. Having regard to the nature of offence and the possibility of commission of similar crime by the organised crime syndicate,

this Court finds no reason or justification to suspend the sentence and enlarge the applicants on bail more particularly, when the applicants have failed to make out any prima facie case of success in the appeal.

15. It is clarified the observations made herein above are on prima facie consideration of material on record and the same shall not come in the way of either side during the course of the hearing of the appeal.

16. Appeals stand expedited.

(R. M. JOSHI, J.)