

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Interim Application No.2517 of 2024

In

Criminal Appeal No.666 of 2024

Vijay Jagannath Posa

Age: 23 years, Occ: Labour,

R/o. Gavali Aali, Mundhwa

Chowk, Dist. Pune

... Applicant

Versus

State of Maharashtra

... Respondent

Mr Ritesh Thobde i/by Changdev Shingade, for the applicant.

Ms Manisha Tidke, APP, for the respondent/ State.

Coram: R.N. Laddha, J.

Date: 14 February 2025

P.C.:

The applicant (accused No.2) faced trial in Special (MCOCA) Case No.102 of 2023 before the Special Judge (MCOCA Court), Solapur, for the offences punishable under Sections 392 and 411 of the Indian Penal Code ('IPC') and Sections 3(1)(ii), 3(2), 3(4), and 3(5) of the Maharashtra Control of Organised Crime Act, 1999 ('MCOC Act'). By a judgment and order dated 3 May 2024, the trial Court convicted the applicant for offences punishable under Section 392 IPC and Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act,

and acquitted him for the offence punishable under Section 3(5) of MCOC Act. The applicant was sentenced as follows: (i) rigorous imprisonment of five years and a fine of Rs.500/- for the offence punishable under Section 392 IPC, (ii) rigorous imprisonment of five years and a fine of Rs.5,00,000/- for the offence punishable under Section 3(1)(ii) of the MCOC Act, (iii) rigorous imprisonment of five years and a fine of Rs.5,00,000/- for the offence punishable under Section 3(1)(2) of the MCOC Act, and (iv) rigorous imprisonment of five years and a fine of Rs.5,00,000/- for the offence punishable under Section 3(1)(4) of the MCOC Act. These sentences were to run concurrently.

2. Aggrieved, the applicant filed an appeal before this Court, and by the present applicant seeks suspension of sentence and release on bail.

3. Mr Ritesh Thobde, the learned Counsel appearing on behalf of the applicant, pointing out the alleged deficiencies in the prosecution's case, particularly noting the testimonies of PW-3 and PW-4, submits that their evidence lack credibility and fails to inspire confidence. PW-4 did not identify the applicant in the TI Parade, and the testimony of PW-3 indicates that the applicant came in high speed and ran away and as such the

applicant could not have been identified. Moreover, no description of the accused was given. The learned Counsel further submits that the applicant was arrested on 15 November 2022 and has been languishing in jail since then, and is ready to abide by any conditions this Court imposes. The applicant is willing to cooperate fully with the appeal proceedings, and prays for his release on bail pending the outcome of the appeal.

4. Ms Manisha Tidke, the learned Additional Public Prosecutor representing the respondent/ State, opposing the applicant's request, refers to the gravity of the offence on which the applicant has been convicted and argues that the applicant has criminal antecedents, and the evidence on record strongly supports the prosecution's case.

5. This Court has given anxious consideration to the rival submissions canvassed across the Bar and perused the records.

6. In ***Bhagwan Rama Shinde Gosai v. State of Gujarat***, (1999) 4 SCC 421, the Hon'ble Supreme Court observed as follows:

“3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional

circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted.”

7. Similarly, in ***Atul Vs State of M.P., (2024) 3 SCC 663***, the Hon’ble Supreme Court observed as follows:

“4. Before parting with order, we must note here that notwithstanding several decisions of this Court holding that when there is a fixed term sentence and especially when the appeal is not likely to be heard before completing entire period of sentence, normally suspension of sentence and bail should be granted, we find that in several deserving cases, bail is being denied. Such cases should never be required to be brought before this Court.”

8. In the present case, the applicant is required to undergo

maximum imprisonment for five years. The applicant has already served twenty-seven months of imprisonment. Given that the appeal was filed in 2024 and is unlikely to be heard in the near future due to the pendency of the older appeals, a *prima facie* case is made out for granting the applicant the relief of suspension of sentence and his release on bail pending the appeal. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide the judgment and order dated 3 May 2024 passed by the the Special Judge (MCOCA Court), Solapur, in Special (MCOCA) Case No.102 of 2023, is suspended during the pendency of the appeal and the applicant shall be released on bail upon executing a PR Bond of Rs.25,000/- and furnishing one or more sureties in the like amount.

9. The interim application stands disposed of accordingly.

[R.N. Laddha, J.]