

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

***INTERIM APPLICATION NO.5129 OF 2024
(For Bail / Suspension of Sentence)
IN
CRIMINAL APPEAL NO. 1279 OF 2024***

Akash Sunil Mahadik

Age-33 Years, Occ. Agriculturist,
R/o.-Uruli Kanchan, Tal. Haveli,
Dist. Pune

... Applicant
Accused No.4

Versus

The State of Maharashtra

... Respondents

Mr. Priyal Sarda a/w Ms. Seema Dighe, Mr. Shubham Sane, Mr.
Rajesh Ranglani and Mr. Abhishek Jore for the Applicant

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

**CORAM : REVATI MOHITE DERE &
DR. NEELA GOKHALE, JJ.**

WEDNESDAY, 26th MARCH 2025

ORAL ORDER (Per Revati Mohite Dere, J.) :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks suspension of
his sentence and enlargement on bail, pending the hearing and
final disposal of the aforesaid appeal.

3 The applicant, vide judgment and order dated 5th May 2022 passed by learned Additional Sessions Judge and Additional Special Judge under MCOC Act, Pune, in MCOCA Case No.19/2015, 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 alongwith other co-accused 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. Both the aforesaid substantive sentences were directed to run concurrently.

4 As far as the offences punishable under the Maharashtra Control of Organized Crime Act ('MCOC Act') are concerned, the applicant alongwith other co-accused has been acquitted of the said offences.

5 Perused the papers. The prosecution case essentially

rests on a confession made by the applicant and co-accused Nagesh Zhadkar under Section 18 of the MCOC Act. Apart from the said confession, there is no other material adduced by the prosecution *qua* the applicant. Admittedly, there is no recovery of any weapon at the instance of the applicant.

6 Learned counsel for the applicant seeks bail on the ground of parity with co-accused, Nagesh Zhadkar, whose sentence was suspended and who was enlarged on bail by this Court (Coram : Revati Mohite Dere and Prithviraj K. Chavan, JJ.) vide order dated 19th December 2024.

7 Learned A.P.P does not dispute that the role of the applicant is similar to that of co-accused, Nagesh Zhadkar.

8 As noted aforesaid, the applicant along with other co-accused have been acquitted of the offences punishable under the MCOCA. Having regard to the judgment of the Apex Court in the case of *State, Through Superintendent of Police, CBI/SIT vs.*

*Nalini & Ors.*¹, a confession made under Section 18 of the MCOCA can be relied upon, provided there is some corroboration to the same, even if there is an acquittal under the MCOCA. As far as the applicant is concerned, the only evidence *qua* him, is the confession made by him and by co-accused, Nagesh Zhadkar. There is no corroboration to the said confession made by the applicant. The applicant stands on a better footing than co-accused, Nagesh Zhadkar, who has been enlarged on bail. The applicant is in custody for about 10 years. The appeal is of the year 2022 and is not likely to be heard in the immediate near future.

9 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 the aforesaid appeal, on the following terms and conditions:

ORDER

- (i) The applicant be enlarged on bail on furnishing

1 (1999) 5 Supreme Court Cases 253

P.R. Bond in the sum of Rs.50,000/- with one or two local 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) The applicant shall not contact the complainant, witnesses or any person concerned with the case;

(v) The applicant to reside outside Pune Rural, for a period of 12 months, from the date of his release;

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) 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.

10 The application is disposed of in the aforesaid terms.

11 All concerned to act on the authenticated copy of this order.

DR. NEELA GOKHALE, J.

REVATI MOHITE DERE, J.