



**IN THE SUPREME COURT OF INDIA**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO...../2025**  
**(@SLP(CRL.) NO. /2025 D.NO.5707/2025)**

**CENTRAL BUREAU OF INVESTIGATION ...APPELLANT(S)**

**VERSUS**

**RAJENDRA SADASHIV NIKALJE**

**ALIAS CHHOTA RAJAN @**

**NANA SHETH @ SIR & ANR.**

**...RESPONDENT(S)**

**ORDER**

1. Leave granted.
2. This appeal on behalf of appellant-agency assails order dated 23<sup>rd</sup> October, 2024, passed by the High Court of Judicature at Bombay in Interim Application No. 3073 of 2024 in Criminal Appeal No. 661 of 2024, whereby the Division Bench has allowed the application, filed by the respondent no. 1 (“respondent-accused”), seeking suspension of sentence awarded by the MCOC Special

Judge at Greater Mumbai (“Special Court”), *vide* order dated 30<sup>th</sup> May, 2024.

3. Brief facts, essential for the disposal of the present appeal, are as follows: -

3.1. On 4<sup>th</sup> May, 2001 Mohan Narayan Shetty (“complainant”) lodged a written complaint with Gamdevi Police Station. Pursuant thereto, FIR No. 188 of 2001 came to be registered against four named accused, including respondent-accused under Sections 302, 120-B, 506 (ii) of Indian Penal Code, 1860 (“IPC”) and Sections 3, 25 and 27 of Arms Act, 1959. It was alleged, *inter alia*, that earlier that day at about 01:10 P.M., complainant’s employer Jaya Shetty (“deceased”), a hotelier had been shot dead by Ajay Suresh Mohite (accused no. 1) in the deceased’s Golden Crown Hotel.

3.2. Upon investigation, it was revealed that the deceased and his family members had been constantly receiving extortion calls from the members of the organized crime syndicate headed by respondent-accused. As the

deceased had failed to meet the demand for extortion money, he had therefore been eliminated by the said gang.

3.3. Meanwhile on 25<sup>th</sup> September, 2001 chargesheet was submitted against the other co-accused persons and the trial proceeded in the absence of respondent-accused. The Special Court, *vide* order dated 6<sup>th</sup> April, 2004, convicted all the co-accused persons in MCOC Special Case No. 13 of 2001.

3.4. Subsequent thereto, on 6<sup>th</sup> November, 2015, the respondent-accused was arrested by the appellant-agency in Indonesia and he was deported to India. *Vide* notification dated 13<sup>th</sup> November, 2015, the Home Department transferred the investigation of murder of the deceased to the appellant-agency with the consent of respondent no. 2 (Government of Maharashtra). Upon submission of chargesheet on 28<sup>th</sup> February, 2019 the accused was tried by Special Court in MCOC Special Case No. 6 of 2019.

3.5. During trial, the prosecution examined 32 witnesses and one witness was examined by the defense. The Special Court, *vide* order dated 30<sup>th</sup> May, 2024, returned a finding of guilt against respondent-accused and sentenced him in the following manner: -

| <b>Sr.No.</b> | <b>Sections</b>                                                                                | <b>Status/Order</b>                                                                                                                     |
|---------------|------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| 1.            | Sections 302 r/w 120B of IPC.                                                                  | Convicted- Rigorous Imprisonment (R.I.) for Life + Fine of Rs. 1,00,000/-, in default to undergo Simple Imprisonment (S.I.) for 1-year. |
| 2.            | Sections 3(1)(i), 3(2) and 3(4) of Maharashtra Control of Organised Crime Act, 1999 (MCOC Act) | Convicted- R.I. for Life + Fine of Rs. 5,00,000/-, in default to undergo S.I. for 1-year, for each.                                     |
| 3.            | Sections 3, 25 and 27 of Arms Act.                                                             | Acquitted.                                                                                                                              |

3.6. Aggrieved by the order of conviction, the respondent-accused filed Criminal Appeal No. 661 of 2024 before the High Court. Subsequently, in the said appeal, accused-respondent filed an application under Section 389 of Code of Criminal Procedure, 1973 (“CrPC”) seeking suspension of sentence as awarded (*supra*) by the Special Court.

3.7. The High Court, *vide* order dated 23<sup>rd</sup> October, 2024, has allowed the application filed by respondent-accused and

suspended the sentence as awarded by Special Court during the pendency of the criminal appeal. Against that order, the appellant-agency is before us.

4. We have heard learned counsel for the parties and have gone through the material placed on record.
5. At the outset, we express our inability to side with the reasoning and final decision reached by the High Court for the reasons discussed hereinafter.
  - 5.1. The High Court in the impugned order has partially dealt with the appeal on its merit, completely ignoring that the limited question at that stage being whether the respondent-accused's case is fit enough that deserves the leniency of suspending his sentence.
  - 5.2. While allowing the respondent-accused's application under Section 389 CrPC, the High Court in the impugned order has given the following reasons:
    - a. Prosecution has failed to examine the complainant (Mohan Narayan Shetty) in the trial before the Special Court.

- b. Special Court has placed reliance on the confessional statement of Pramod Dhonde (accused No. 2 in MCOC Special Case No. 13 of 2001) is incorrect as his evidence is inadmissible for the purpose of present trial.
  - c. Evidence of PW4-Mohan Shetty (son of the deceased) is hearsay in nature and thus cannot be relied upon.
  - d. Special Court has exhibited photocopies of letters written by deceased and PW4-Mohan Shetty to the police between 1999 to 2001, original of which has never been produced by the prosecution neither in the present trial nor in the earlier trial.
  - e. There existed no legal sanction to prosecute respondent-accused and subsequently his conviction under the stringent provisions of MCOC Act is bad in law.
6. This Court in the case of ***Sidhartha Vashisht v. State (NCT of Delhi)***,<sup>1</sup> had noted that the initial presumption of innocence in favour of an undertrial accused is no longer

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<sup>1</sup> (2008) 5 SCC 230.

available once the order of conviction is passed by Trial Court. The observations are reproduced hereinbelow: -

**“19.** We are conscious and mindful that the main matter (appeal) is admitted and is pending for final hearing. Observations on merits, one way or the other, therefore, are likely to prejudice one or the other party to the appeal. We are hence not entering into the correctness or otherwise of the evidence on record. **It, however, cannot be overlooked that as on today, the applicant has been found guilty and convicted by a competent criminal court. Initial presumption of innocence in favour of the accused, therefore, is no more available to the applicant.**”

**(emphasis supplied)**

Therefore, it is clear that the initial presumption of innocence available to an accused ceases to exist, once the Trial Court upon conclusion of trial returns a finding of guilt *qua* that accused. This is because the accusations levelled by the prosecution against the accused stand affirmed by the judicial body. Hence, the Courts in appeal must not accord their unfounded sympathies to the accused in complete ignorance of the law.

7. Further, the principle of law is well settled that the jurisdiction of the Appellate Court in dealing with the application for suspension of sentence is extremely

narrow and limited. Section 389 of CrPC is an appendage of the principle of restorative theory in Penology. The legislative intent behind the said provision is that if Appellate Courts, while entertaining an appeal against conviction, are *prima facie* of the opinion that Trial Court has manifestly erred in passing an order of conviction, then an order of suspension of sentence is warranted. In order to appreciate when the interference by Appellate Court is warranted to order suspension of sentence, it is apposite to refer to the decision of this Court in ***Omprakash Sahni v. Jai Shankar Chaudhary***,<sup>2</sup> wherein the Court held as follows: -

**“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal.** However, while undertaking

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<sup>2</sup> (2023) 6 SCC 123.

the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a *prima facie* satisfaction that the conviction may not be sustainable. **The appellate court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach.**”

(emphasis supplied)

Therefore, it is clear that the jurisdiction under Section 389 CrPC must be exercised when Appellate Court concludes that the convicted-appellant has a fair chance of succeeding in his pending appeal.

7.1. Furthermore, in ***Omprakash Sahni*** (*supra*), this Court has also cautioned that Appellate Court must resist the urge to suspend the sentence by meticulously reappreciating the evidence at the stage of Section 389 CrPC. Hence, it is an incorrect approach if Appellate Court picks up a few lacunae or loopholes here or there in the case of prosecution in order to allow the application under Section 389 CrPC.

8. In ***Sidhartha Vashisht*** (*supra*), this Court also had the occasion to discuss the scope of power to suspend sentence under Section 389 CrPC in a case involving serious offence like murder. The Court held that:

**“30. . . . It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in *Vijay Kumar* [(2002) 9 SCC 364] that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted.”**

**(emphasis supplied)**

Thus, it is clear that in considering prayer for suspension of sentence, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail.

9. The ambit of power under Section 389 CrPC is to protect rights of convicted-accused in those cases where the likelihood of success of his appeal against conviction is very high or in case, where a fixed term of imprisonment is ordered, the appeal is unlikely to be heard in the near future.
10. The respondent-accused in the present case is a notorious gang leader who is the master mind running the entire organised extortion syndicate. Not only is he accused but, in some cases, he already stands convicted of planning and staging murders of various victims, who have not bent down to his gang's extortion demands. The High Court also records that there are four cases where trial is pending against the respondent-accused and two cases where he is convicted for life imprisonment. This is over and above numerous other cases where he has already undergone the sentence. We are also informed that the respondent is already in judicial custody, serving sentence in other criminal cases.

11. Thus, in our opinion, the High Court has grossly erred in exercising its jurisdiction under Section 389 CrPC, without appreciating the nature of proven allegations against the respondent-accused and his huge history of criminal antecedents, by suspending the sentence awarded by the Special Court.
12. Therefore, the order dated 23<sup>rd</sup> October, 2024, passed by the High Court, is unsustainable and set aside.
13. Consequently, the present appeal is allowed. Thus, the bail bonds stand cancelled. Consequences to follow.
14. Pending application(s), if any, stand disposed of accordingly.

.....J.  
[VIKRAM NATH]

.....J.  
[SANDEEP MEHTA]

**NEW DELHI;  
SEPTEMBER 17, 2025**