

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1229 OF 2024
IN
CRIMINAL APPEAL NO. 91 OF 2019

Mohd Amer Shakil Ahmed Shaikh . Applicant/Appellant
.
vs.
The State of Maharashtra . Respondent
.

Mr. Mubin Solkar a/w Mr. Tahir Hussain, Mr. Anas Shaikh, Mr. M. Solkar, Mr. Mateen Undre, Mr. Yakub Shaikh, Ms. Hemal Shah i/b. Tahera Qureshi, for the Applicant/Appellant.
Dr. Dhanalakshmi Krishnaiyer, APP for the Respondent-State.

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**CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.**

DATE : 21st OCTOBER 2026.

ORDER: (Per Shreeram V. Shirsat, J.)

1. This is an application filed by the Applicant/Appellant for suspension of substantive sentence pending the hearing and final disposal of the Criminal Appeal.

2. The Applicant is convicted by the Ld. Special Court (MCOCA) Mumbai in MCOC Special Case No. 16 of 2006 @ 18 of 2006 @ 20 of 207 @ 08 of 2009 @ 12 of 2012 vide judgment and order dated

28.07.2016 passed by Special Judge at Greater Mumbai for the offences under Sections 10(a), 13, 18, 20, 23, 38, 39 of the Unlawful Activities (Prevention) Act, 1967 (UAPA) and is sentenced to suffer Rigorous Imprisonment (R.I.) for life for the offences under Sections 18, 20, and 23 of the UAPA; Section 25(1AA) of the Arms Act and Section 5(b) of the Explosive Substance Act. The Applicant is also sentenced to pay a fine of Rs. 20,000/- and in default, to undergo Simple Imprisonment (S.I.) for one year. However, in view of the imposition of the above sentence, no separate sentence is awarded for offences under Sections 10(a), 13, 38, 39 of the UAPA; Sections 25(1A), 25(1B)(a), 26 read with Section 7 of the Arms Act; Sections 4(b)(ii) of the Explosive Substance Act; Section 9(B)(a)(b) of the Explosives Act and Section 120 B of the IPC, though the Applicant is convicted for the same. The Applicant was acquitted of the offences under Section 3(2), 3(1)(ii) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOCA) and also under Section 27 of the Arms Act and Section 16 of the UAPA.

3. It is the case of the prosecution that the Anti-Terrorist Squad (ATS), Mumbai received an intelligence from a reliable source that some explosives and weapons were likely to be transported in a vehicle.

Therefore, on 09.05.2006, the ATS formed teams and they were deputed at Manmad- Yevala- Aurangabad Road as well as Aurangabad- Nashik Road. At about 4 p.m., a white colour Tata Sumo Jeep coming from Manmad and going towards Aurangabad was seen at Yevala junction on Yevala-Aurangabad road. The jeep was chased and finally intercepted at Guruneshwar temple, Taluka Aurangabad. It is further the case that the three occupants of the jeep got down and started running away, but one of them was apprehended by the police who then identified himself as Ameer Shakil Ahmed (A-1), the present Applicant. Upon preliminary enquiry, he revealed that the persons along with him in the car were Mohd. Zuber Sayyed Anwar (A-2) and Abdul Azim (A-4).

4. It is further the case of the prosecution that upon taking search of the vehicle, 10 AK rifles, 40 magazines, 200 live cartridges, 30 kg of explosive powder and 10 magazine pockets were found. Upon further enquiry with the Applicant, he informed the police that two of his other associates- Zabi Ansari (A-22) and Muzzafar Mohd. Tanveer (A-3) were also arriving behind them in a silver Indica Car No. MH 02 U 1240. The Indica Car was also suspected to carry a similar consignment of arms, ammunition and explosives. The car was found abandoned on the

highway near Malegaon and was taken into possession by the police.

5. Accordingly, an FIR came to be registered by LAC No. 3 of 2006 on 10.05.2006. It is the case of the prosecution that it being an organized crime syndicate, after obtaining sanction, the provisions of MCOCA came to be applied on 22.05.2006. After the completion of the investigation, the charge sheet was filed on 04.09.2006. During the course of the investigation, the other accused, whom the prosecution claimed to be connected with the crime in question also came to be arrested.

6. Heard Ld. Counsel Mr. Mubin Solkar for the Applicant and Ld. APP Dr. Dhanalakshmi S. Krishnaiyer for the Respondent- State.

7. The Ld. Counsel for the Applicant submitted that the entire case is based on the confessional statements of the Applicant and the co-accused persons. The confessional statements were recorded under Section 18 of the MCOCA and since the Applicant and the co-accused persons have been acquitted of all the charges under MCOCA, these confessional statements pale into insignificance. It was also submitted that the confessions were recorded after prolonged custody and therefore, it casts a doubt about the voluntariness of the same. It was

further submitted by the Ld. Counsel for the Applicant, on the issue of confessions, that the Applicant did not volunteer any confession whilst in police custody for a month, however, after MCOCA was invoked, the Applicant showed his willingness to give confession. The Ld. Counsel for the Applicant argued that the very ingredient of knowledge on the part of the Applicant of the arms, ammunition and explosives is missing in the entire evidence led by the prosecution. It was further argued that no motive, *mens rea* or intention is attributable to the Applicant for the alleged commission of the offence. The Ld. Counsel, without prejudice to the above, also submitted that the Applicant is in custody for a period of over 20 years and on this count itself the Applicant deserves to be released on bail.

8. The Learned Counsel for the Applicant has relied upon the following judgments:

- a. ***Saudan Singh v/s State of Uttar Pradesh***¹
- b. ***Suleman v/s The State of Uttar Pradesh***²
- c. ***Dinesh @ Paul Daniel Khajekar v/s The State of Maharashtra***³
- d. ***Akash Vittal Shinde v/s The State of Maharashtra***⁴
- e. ***Dev Parmanand Chawadi v/s The State of Maharashtra***⁵
- f. ***Salman Salim Naje v/s The State of Maharashtra***⁶

¹ 2022 SCC OnLine 679

² Cri Appeal No. 491 of 2022

³ Cri Appeal No. 2987 of 2023

⁴ Cri Appeal No. 1186 of 2023

⁵ Cri Appeal No. 156 of 2017

⁶ Cri I.A. No. 1413 of 2025 in Cri Appeal No. 739 of 2019

- g. *Gangaram @ Gangya Atmaram Linge v/s The State of Maharashtra*⁷
- h. *Yogesh Narayan Raut v/s The State of Maharashtra*⁸

9. *Per Contra*, the Ld. APP for the Respondent- State vehemently opposed the plea of the Applicant for suspending his sentence during the pendency of appeal. The prosecution argued that the Special Court after considering about 100 prosecution witnesses, 16 defence witnesses, in addition to other oral, documentary, circumstantial, technical and other evidence, arrived at the conclusion of conviction and therefore it cannot be said that the evidence was not adequately looked into. Further, on the issue of admissibility of confessional statement made by the Applicant, the Ld. APP stated that the Applicant was produced before the Chief Metropolitan Magistrate, Mumbai and no such complaints regarding pressure or involuntariness were made by the Applicant at that stage, although the confessional statement was retracted later on. It was further contended by the Ld. APP that the case against the Applicant is not restricted to the confessional statements. The prosecution argued that they relied upon the Call Detail Records (CDRs) and the evidence of the concerned Nodal Officer. The CDR evidence indicated communication between the

⁷ Cri I.A. No. 2709 of 2025 in Cri Appeal No. 757 of 2025

⁸ Cri I.A. No. 278 of 2026 in Cri Appeal No. 756 of 2025

Applicant and the co-accused person immediately preceding the interception of the vehicle carrying the arms, ammunition and explosives. The Ld. APP also pointed out that the Trial Court took into consideration, the association of the Applicant with the members of SIMI which is an unlawful association and Lashkar-e-Toiba, a banned terrorist organisation. It was further argued that the essential ingredient of knowledge or *mensrea* was considered while arriving at the findings concerning his knowledge, participation and involvement in the offences. It was submitted by the Ld. APP that the mere fact that the Applicant has undergone substantial imprisonment by itself cannot be a reason for the Court to grant suspension of sentence. The nature and gravity of the offence, along with the evidence on record, and the role attributed to the Applicant need to be taken into consideration. It was lastly argued that if the Applicant is released on bail, he may abscond during the final hearing of the appeal since he is a flight risk. In the light of the above contentions, the prosecution submitted that the Applicant has failed to make out a case warranting suspension of sentence and release on bail pending the appeal.

10. The Ld. APP for the Respondent-State relied upon the following judgments to buttress her arguments:

- a. *Anwar Rashid v/s The Union Bank Of India Through NIA*⁹
- b. *State of Maharashtra v/s Kamal Ahmed Mohammed Vakil Ansari and Ors.*¹⁰
- c. *Zakir Abdul Mirajkar v/s State of Maharashtra and Others*¹¹

11. We have gone through the evidence brought on record and the authorities relied upon by the rival parties to prima facie satisfy ourselves while considering the application for bail and suspension of sentence pending the appeal.

12. At the outset, it would be apposite to refer to the observations made by the High Court of Kerala in the case of *Midlaj @ Abu Mis' Ab v. Union of India*¹², which relates to a case involving offences of terrorism, wherein it was held as under:

“17. Terrorism is an evil affecting the life and liberty of people. It affects the growth of the nation in all respects. In fact, no religion propagates terrorism or hatred. But, unfortunately, some fanatics or religious fundamentalists have distorted the views of religion, for spreading messages of terrorism and hatred, without realising the amount of damage it is doing to the society as well as to the country as a whole. Innocent youth attracted by the call of terrorist organisations fall prey to violence and anti national activities, destroying the tranquility in society, unmindful of the freedom, liberty, and safety of their fellow beings, and the integrity of the nation.

18. Going by the guidelines given by the Apex Court in Preet Pal Singh's case and Kalyan Chandra Sarkar's case cited supra, while suspending the sentence pending appeal and releasing the convict on bail, discretion has to be exercised judicially and not in a casual manner. Though detailed examination of merits of the case may not be required, exercise of jurisdiction has to be based on well-settled principles and in a

⁹ Cr. (App). DB 310/2025.

¹⁰ 2013 Cri.L.J. 2069

¹¹ (2023) 20 SCC 408.

¹² 2023 Supreme (Ker) 98.

judicious manner and not as a matter of course. Though detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding, why bail was being granted particularly where the accused is charged of having committed a serious offence. In considering an application for suspension of sentence, the appellate court has to examine if there is any patent illegality in the order of conviction, which renders the order prima facie erroneous. Where there is evidence that has been considered by the trial court, it is not open to a court considering application under Section 389 to reassess and/or re-analyse the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail.”

13. We have perused the evidence of relevant witnesses relied upon by the prosecution viz- P.W. 3- Panch witness to the search and seizure of the Tata Sumo vehicle, P.W. 7- eye witness to the chase of Tata Sumo vehicle and who helped the ATS team nab the present Applicant, P.W. 8- Sayyed Asif (Police Officer at Khultabad Police Station), P.W. 9- ACP Kisan Shengal (the First Informant), P.W. 51- Santosh Rammurti Rastogi (DCP who recorded the confession of A-1), P.W. 60- Nodal Officer of Vodafone company (affirmed sending of CDRs in respect of mobile phone number 9823775295 used by A-1 to the police authority), P.W. 85- PI Sunil Deshmukh (one of the members of the team headed by ACP Shengal) and P.W. 87- ACP Dhawale. We have also gone through the Defence Witnesses.

14. In the present case the prosecution is primarily relying upon the

confessional statements of the Applicant himself as well as of the other co-accused persons. It needs to be emphasized that all the co-accused have specifically named the present Applicant as the one who played a pivotal role in the criminal conspiracy. It has come on record that the involvement of the Applicant as a member of SIMI (an unlawful association), his intent and motive to strike terror against India and his object of Jihad, while staying in close contact with one Juned- a Pakistani national and a member of LeT, have all been carved out from the confessions of the co-accused and due consideration has been given to the same by the Special MCOCA Judge. Upon a perusal of the impugned judgment, the learned Special Judge has analyzed the confessional statement of the Applicant (A-1) and made detailed observations regarding the following facts as proved. While convicting the Applicant, the following observations were made:

“As per settled law, confession under Section 18 of MCOCA is a substantive evidence. Keeping open, whether it is sufficient in the facts of the case, following facts are proved from the said confession:

- i) It is proved that accused Mohd. Amer, Aslam Kashmiri, Sayyed Jabiuddin @ Zabiuddin @ Jabi @ Jabi, Sayyed Aakif and Afroz Khan and wanted accused Faiyaz Kagzi were members of SIMI (a declared unlawful association) and used to attend the programmes of SIMI;*
- ii) Since 1996-97, he along with accused Aslam Kashmiri started sharing common thought process to strike terror Jihad. Accused Sayyed Jabiuddin @ Zabiuddin @ Jabi @ Jabi, Sayyed Aakif and Afroz Khan and wanted accused started sharing their common thought process for striking Jihad since 1999 and all of them were deeply involved in larger*

conspiracy to strike terror against India and Hindus and were calling and propagating it as Jihad;

iii) Said accused had support of LeT in the form of men, arms, ammunition and explosives as well as funds, for that, they were in constant contact with wanted accused Juned, a Pakistani national and member of LeT as well as militants, Abdul Rehman and Hanzala;

iv) Accused Jabiuddin @ Zabiuddin @Jabi, Faiyaz Kagzi and Aakif had been to Katmandu, Nepal and met said Juned who trained them in use of internet and to establish contact using internet.

v) Accused Mohd. Amer, Aslam Kashmiri, Sayyed Jabiuddin @ Zabiuddin @ Jabi @ Jabi, and Afroz Khan to achieve their object of Jihad, (what they propagated), conspired to procure arms, ammunitions and explosives via Pakistan, with the active aid of Pakistani National Juned a member of LeT;

vi) With active role of accused Jabiuddin @ Zabiuddin @ Jabi @ Jabi and Mohd. Amer, the consignment of arms, ammunition and explosives was unloaded at Pimpalgaon on Manmad Highway from Eicher Tempo. 10 and 5 boxes, each containing AK-47 rifles, its cartridges, magazines, pouches and RDX (a highly explosive material) were then loaded in Tata Sumo vehicle and Tata Indica Car respectively. Accused Amer, Juber were taking the consignment in Tata Sumo, driven by accused Azim, whereas accused Sayyed Jabiuddin @ Zabiuddin @ Jabi was carrying it in Tata Indica car, driven by accused Mujaffar;

vii) The said consignment was to be taken to Aurangabad and Beed, for its use, to achieve the object of Jihad;

viii) The arms, ammunition and explosives were to be further used to kill the then Chief Minister of Gujarat, Shri Narendra Modi and Hindu leader Shri Pravin Togdiya of Vishwa Hindu Parishad;

ix) In February 2006, accused Jabiuddin @ Zabiuddin @ Jabi @ Jabi prepared a bomb, which was planted at Ahmedabad Railway station. Due to explosion of the same there was huge damage;

x) Accused Jabiuddin @ Zabiuddin @ Jabi @Jabi was using mobile phone having number 9890986742. Accused Mohd. Amer obtained mobile number 9823775295 for use;

xi) On their way to Aurangabad, the Tata Sumo in which the consignment was being taken by accused Amer, was obstructed by the ATS team headed by Shri. Shengal. On failure of the driver to stop the same, they started to chase the Sumo;

xii) The fact of chase was informed by accused Amer to accused Jabiuddin @ Zabiuddin @Jabi @Jabi on mobile phone;

xiii) The Tata Sumo containing the consignment of arms, ammunition and explosives was intercepted near Ghrushneshwar Temple within

Khultabad and accused Amer and Mujaffar were caught by ATS team with the help of local residents, whereas accused Azim was successful in his escape; and

xiv) On search of the said Sumo at Khultabad police station, AK-47 rifles, cartridges, magazines, pouches and RDX was seized from the said boxes.”

15. The Learned Counsel for the Applicant also argued that the confessional statement of the Applicant and the co-accused persons which have been heavily relied upon are later retracted and thus, are not admissible. In order to deal with the said issue, a useful reference can be made to the judgment in the case of ***State Of Maharashtra v/s Bharat Chaganlal Raghan***¹³ which explicitly states that a confessional statement though retracted, cannot be held to be inadmissible provided the Court is convinced that it is made voluntarily and is believable. The relevant portion is extracted below:

“There is no denial of the fact that the judicial confessions made are usually retracted. Retracted confessions are good confessions if held to have been made voluntarily and in accordance with the provisions of law, as A5 and A6 are proved to have made. Corroboration of the confessional statement is not a rule of law but a rule of prudence. Whether in a given case corroboration is sufficient would depend upon the facts and circumstances of that case. In order to sustain a conviction on the basis of a confessional statement, it is sufficient that there is its general corroboration. Dealing with the scope of Section 15 of the TADA Act and referring to its earlier judgments this Court in S.N. Dube v. N.B. Bhoir & Ors.[2000 (2) SCC 254] held that confession of the accused recorded under Section 15 of TADA Act is a substantive piece of evidence which can be used even against the co-accused if held to be inadmissible voluntarily and believable.... ”

¹³ (2001) 9 SCC 1.

Thus, it is made abundantly clear by the Hon'ble Supreme Court that the confessional statements though retracted, can be said to be admissible and used against the makers as well as the co-accused persons as long as the court is assured of the truthfulness and voluntariness of the confession.

16. In the light of the above guidelines laid down by the Hon'ble Apex Court regarding admissibility of the retracted confession, we find it pertinent to note the chronology in relation to the confessional statement made by the Applicant. It is to be seen that the Applicant expressed his willingness to make a confessional statement on 05.06.2006. The confessional statement was recorded by the CMM in two parts- Part-I and Part-II on 06.06.2006 and 08.06.2006, respectively. What is further important to note is that the Applicant did not make any grievances or application regarding the retraction of confessional statements until 17.07.2006. Thus, prima facie we hold that the belated retraction of the confessional statement despite availability of ample opportunity is nothing but an after-thought.

17. We have also gone through the findings rendered by the Learned Special Judge in para 957 to para 959 of the impugned judgment in the light of the arguments made regarding the admissibility and

voluntariness of the confessional statements made by the Applicant before P.W. 51, in order to prima facie satisfy ourselves as to whether the trial Court had applied the requirements mandated by the Hon'ble Apex Court. The findings are as follows:

“957. In the light of aforesaid assessment of the material on record, Shri. Rastogi (PW 51) who has followed the Rules made under Section 18 of MCOCA and recorded the confession of accused no.1 Mohd. Amer, after giving sufficient time for its reflection, the same is recorded in the language of the accused, it was read over to him and signed by the accused. There is mandatory certification below the confession with satisfaction of its recording authority that it was made voluntarily.

958. On careful reading of different authorities referred above, most important factual variance is production of accused before this court on 06/06/2006 and 08/06/2006. On these days Part-I and Part-II respectively, of the confession, were recorded. The accused has not made any grievance till 17/07/2006 either before CMM or before this court. During all this time, the accused was represented by Advocate of his choice. With this distinction between facts in various authorities and the case at hand, the said pronouncements, with great respect, cannot be applied.

959. As discussed above, the defence could not point out any iota of material to make it 'appear' that the said confession had not been made voluntarily. Hence, I have no hesitation to conclude that confession of accused no.1 Mohd. Amer has passed the second test that it is voluntarily made.”

Upon perusing the above, we are of the opinion that prima facie, the Learned Special Judge rightly held that the confession was admissible and it was voluntarily made before the relevant authorities.

18. Further, it was also argued that the Applicant has been acquitted of the offences under the MCOCA, and therefore the confessions

recorded under Section 18 of the MCOCA cannot be taken into consideration.

19. The Hon'ble Supreme Court in the case of ***Prakash Kumar @ Prakash Bhutto v/s State of Gujarat***¹⁴ has held as follows:

".....The issue, therefore, is whether the confessional statement would continue to hold good even if the accused is acquitted under TADA offences and there is a clear finding that TADA Act has been wrongly taken recourse to or the confession loses its legal efficacy under the Act and thus rendering itself to an ordinary confessional statement before the Police under the general law of the land. Nalini (supra) , however , answers this as noticed above, in positive terms but we have some doubts pertaining thereto since the entire justice delivery system is dependent upon the concept of fairness : It is the interest of justice which has a pre-dominant role in the criminal jurisprudence of the country....."

39. The Act, as noticed above, is a special provision for special purpose. It is a departure from the ordinary procedural law. Plea of discriminatory treatment for want of availability of ordinary procedural law would not be available.

40. For the reasons aforesaid, we are of the view that the decision in Nalini's case has laid down correct law and we hold that the confessional statement duly recorded under Section 15 of TADA and Rules framed thereunder would continue to remain admissible for the offences under any other law which were tried along with TADA offences under Section 12 of the Act, notwithstanding that the accused was acquitted of offences under TADA in the same trial."

20. We are of the opinion that Section 15 of the TADA is *pari materia* with Section 18 of the MCOCA, which is noted in the case of ***Mohd. Farooq Abdul Gafur and Another v/s State of Maharashtra***¹⁵ and in the case of ***Shaikh Irshad Shaikh Ibrahim v/s State of Maharashtra***¹⁶. Thus,

¹⁴ (2005) 2 SCC 409.

¹⁵ (2010) 14 SCC 641.

¹⁶ Cri.Appln. No. 281 of 2019 a/w. Cr.Apel No. 68 of 2018.

the same principle would be applicable in the present case as well and therefore, even though the Applicant is acquitted under the provisions of MCOCA, we are of the opinion that the confessional statements can be considered in a case involving offences under UAPA.

21. Upon perusal of the order dated 22.06.2023 passed by this Court while considering the bail application of the co-accused Afroz Khan Shahid Khan (A-14), the judgment of *Prakash Kumar @ Prakash Bhutto* (supra) was cited, which finds place in para 5 of the said order. However, there is no explicit finding in the said order as to why the said ruling of the Hon'ble Apex Court was not applicable. We have perused the said judgment and we find that the same holds the field and the observations made therein are applicable to the facts of the present case.

22. The Ld. Counsel for the Applicant, in addition to the arguments on merits, sought suspension of sentence pending the appeal on the ground of parity. It was contended that other co-accused persons- Bilal Ahmed Abdul Razzaq @Bilal (A-10), Sayyed Aakif Zafiruddin Shaikh (A-11), Afroz Khan Shahid Khan Pathan (A-14) and Faisal Ataur Rehman Shaikh (A-19) have been granted bail pending appeal by this Court and therefore, the present Applicant also deserves to be released

on bail pending the appeal. Although it was argued that the case of the Applicant is identical to that of the co-accused persons, upon perusal of the material on record, we do not find that to be so. Upon closely examining the bail order of the co-accused persons, we find that the case of the Applicant does not stand on the same footing as that of the co-accused who have been granted bail. In fact, it is much graver and on a higher pedestal. The role attributed to the Applicant is considerably severe and thus, it cannot be equated to that of the other co-accused who have already been granted bail pending appeal by this Court. Before proceeding to distinguish the role of the present Applicant from the co-accused who have been granted bail, we find it pertinent to note the findings given by the Learned Special Judge on the role of the present Applicant in the impugned judgment. The relevant paragraphs are extracted hereinbelow:

“Accused Mohd. Amer :-

1584. Accused Mohd. Amer was front runner and played key role in larger conspiracy of jihad. He was active member of SIMI. He was associated with accused Aslam Kashmiri since 1996 and has played role in conceiving Jihad. He, due to his preaching, impressed upon other accused persons to strike Jihad. He convinced himself and others that to strike terror-Jihad, they require training in handling weapons. He also impressed upon the group to have sophisticated weapons to achieve the object of Jihad. He was actively supporting accused Aslam Kashmiri and Sayyed Jabiuddin to achieve the object of Jihad. Apart from it, his confession discloses his participation in the larger conspiracy of Jihad. He was found propagating Jihad since 1999 and for that purpose derived support from Pakistani national, Juned, a

LeT outfit. He accompanied Aslam Kashmiri to meet said Juned. After meeting militants like Abdul Rehman and Hanzala, he received huge amount from accused Aslam Kashmiri for the purpose of Jihad.

1585. He was caught while transporting huge consignment of prohibited arms, ammunition and explosives substance- RDX. The arrest of accused was in suspicious circumstances in which, he was caught after long chase. There is direct evidence of possession of huge quantity of arms, ammunitions and explosives by him. The same were procured by accused Sayyed Jabiuddin @ Zabiuddin @ Jabi. His confession would further establish his activities for Jihad which was ultimate object of the conspiracy.”

23. The above findings rendered by the trial court, clearly establish that the Applicant was a forerunner and played a significant role in hatching the criminal conspiracy. The role of the Applicant in actively preaching Jihad and the use of sophisticated weaponry to achieve the same and association with SIMI cannot be ignored. The ample direct evidence in the form of the huge consignment of arms and ammunition recovered from him, which were being transported by him, is significantly incriminating in itself.

24. Now coming to the orders passed by the coordinate bench of this court releasing the co-accused on bail. As far as Bilal Ahmed Abdul Razzaq @ Bilal (A-10) is considered, the court while allowing the application for grant of bail and suspension of sentence observed that the participation of the concerned accused i.e. A-10 was proved on the basis of a crucial phone call between himself and a co-accused. This

Court noted that the CDRs with respect to this phone call were not produced, but the Learned Special Judge still held that the conversation between the Accused No.10 and the co-accused was proved. Further, this Court also held that merely attending meetings or being exhorted to join Jihad cannot be viewed as readiness or willingness to take part in Jihad. In the light of the above, the Applicant was released. However, in the case of the present Applicant, there is ample evidence on record showing the constant communication between the Applicant and the co-accused in the form of CDRs and confessional statements. Further, there is material to show that Applicant was a part of the conspiracy meetings and he was regarded as the orchestrator of the same. Thus, the case of A-10 cannot be equated with that of the present Applicant.

25. Similarly, in the case of Afroz Khan Shahid Khan Pathan (A-14), this Court found no corroborative material to establish that the accused had ever gone to Bangladesh via Calcutta for the purpose of collecting funds. Additionally, prima facie, it could not be said to be proved that Accused No.14 had knowledge or reason to believe that the procurement of funds was for the purpose of executing a larger conspiracy. Additionally, this Court observed that there was no

corroboration of the confessional statements and no recoveries made at the instance of the accused. Keeping the aforementioned factors in mind, the accused was granted bail pending appeal. The case of Accused No. 14 is easily distinguishable from that of the present Applicant as the involvement of the applicant in the larger conspiracy stands well-established. The applicant is regarded as the mastermind of the criminal conspiracy and admitted the same in his confessional statement. Therefore, the role of the present Applicant is significantly much more grievous than that of A-14.

26. The suspension of sentence pending appeal of accused Sayyed Aakif Zafiruddin Shaikh (A-11) was granted primarily because the Court did not find any evidence that would establish his role directly in connection with the transportation of the subject arms, ammunition and explosives. Further, the 65 B certificate regarding the email correspondences was not exhibited by the prosecution and hence the same could not be relied upon. Additionally, even his confessional statement, which later came to be retracted, does not elaborate upon his awareness regarding when, where and how the subject arms and explosives were to be delivered and finally used to strike terror as per the larger conspiracy. However, in the case of the present Applicant,

such ignorance with respect to the transportation and usage of the arms, ammunition and explosives cannot be said to be the case. The present Applicant was found in possession of such arms, ammunition and explosives and therefore, it can be said without hesitation that he was well aware and to a large extent, in charge of the transportation of such arms. Thus, the role of the Applicant cannot be equated with that of Accused No. 11.

27. Accused Faisal Aatur Rehman Shaikh (A-19) was also granted bail pending appeal by this Court vide order dated 23.02.2026. The entire argument of the accused stood on the ground that the confessions were not admissible due to the non-compliance of Section 33 of the Indian Evidence Act. The sanctity of the confessional statements was called into question as the Court observed that none of the conditions under Section 33 of the Indian Evidence Act were fulfilled. However, in the case of the present Applicant, no such ground was raised by the Ld. Counsel for the Applicant and even otherwise, as per the recent judgments of the Hon'ble Apex Court we find the position of law is well settled in such cases.

28. The common plea of prolonged custody and incarceration for a period of more than 15 years was raised by all the aforementioned co-

accused persons. The same was also argued by the Learned Counsel for the Applicant, who also relied upon the judgment in the case of ***Saudan Singh (supra)*** and other allied judgments relying upon the same principle as laid down in Saudan Singh to buttress his submissions. There can be no doubt about the proposition laid down in the case of ***Saudan Singh (supra)***, and the other similar judgments, however in the peculiar facts of the present case, it will also be apposite to refer to and rely upon the observations made in the recent judgment of the Hon'ble Apex Court in the case of ***Shivani Tyagi v/s The State of U.P. & Anr.***¹⁷ with respect to the life sentence and to further substantiate that mere long incarceration and inordinate delay in the hearing of appeal would not imply that these could be taken as grounds to seek suspension of sentence. The same cannot be said to be the legislative intent of Section 389 Cr.P.C. The relevant portion is extracted as below:

“9. In the decision in State of Haryana v. Hasmat, this Court held that in an appeal against conviction involving serious offence like murder punishable under Section 302, IPC the prayer for suspension of sentence and grant of bail should be considered with reference to the relevant factors mentioned thereunder, though not exhaustively. On its perusal, we are of the opinion that factors like nature of the offence held to have committed, the manner of their commission, the gravity of the offence, and also the desirability of releasing the convict on bail are to be considered objectively and such consideration should reflect in the consequential order passed under Section 389, Cr.PC. It is also relevant to state that the mere factum of sufferance of

¹⁷ 2024 INSC 343.

incarceration for a particular period, in a case where life imprisonment is imposed, cannot be a reason for invocation of power under Section 389 Cr.PC without referring to the relevant factors. We say so because there cannot be any doubt with respect to the position that disposal of appeals against conviction, (especially in cases where life imprisonment is imposed for serious offences), within a short span of time may not be possible in view of the number of pending cases. In such circumstances if it is said that disregarding the other relevant factors and parameters for the exercise of power under Section 389, Cr. PC, likelihood of delay and incarceration for a particular period can be taken as a ground for suspension of sentence and to enlarge a convict on bail, then, in almost every such case, favourable invocation of said power would become inevitable. That certainly cannot be the legislative intention as can be seen from the phraseology in Section 389 Cr.PC. Such an interpretation would also go against public interest and social security. In such cases giving preference over appeals where sentence is suspended, in the matter of hearing or adopting such other methods making an early hearing possible could be resorted. We shall not be understood to have held that irrespective of inordinate delay in consideration of appeal and long incarceration undergone the power under the said provision cannot be invoked. In short, we are of the view that each case has to be examined on its own merits and based on the parameters, to find out whether the sentence imposed on the appellant(s) concerned should be suspended during the pendency of the appeal and the appellant(s) should be released on bail.”

29. This Court also finds it necessary to note that offences concerning national security and public order on one hand and personal liberty on the other need to be adequately balanced. Application of Article 21 of the Constitution without giving due importance to the security of the community would suffocate the very purpose of the same. This Court makes reference to the judgment in the case of ***Gulfisha Fatima & Ors. v/s State (Govt. of NCT of Delhi)***¹⁸. This Court is conscious of the fact that the observations in the case of ***Gulfisha Fatima (supra)*** have been

¹⁸ 2026 SCC OnLine SC 10.

made wherein the trial was pending, however, the observations seem to be relevant in the facts of the present case. This Court draws a useful reference to the following paras:

“51. There is a further constitutional aspect that warrants articulation. Article 21 protects individual liberty. It also, within the same guarantee of life, reflects the State’s obligation to protect the life and security of the community. In prosecutions alleging threats to public order and national security, the Court cannot be unmindful that both dimensions are engaged. The constitutional order is not served by an approach that treats liberty as the sole value and societal security as peripheral. Both must be accommodated through reasoned adjudication.

.....

100. The gravity of the alleged act is unquestionably serious however, public interest and national security concerns may be engaged to a materially different degree depending on the role of each accused. The continued detention of those alleged to be the architects of the conspiracy may be required to safeguard broader security interests and deter future acts, whereas the rationale for continued incarceration of minor participants is comparatively attenuated once the investigative purpose is exhausted. The Court is therefore justified in calibrating its approach, ensuring that the pursuit of security does not eclipse the principle of proportionality.”

.....

426. The present batch of appeals has required the Court to engage with questions that lie at the intersection of personal liberty and collective security. The guarantee of liberty enshrined under Article 21 of the Constitution is of foundational importance, and no constitutional court can be unmindful of the gravity of restraining liberty before guilt is adjudicated. At the same time, the Constitution does not conceive liberty in isolation. The security of the community, the integrity of the trial process, and the preservation of public order are equally legitimate constitutional concerns. When bail is sought in prosecutions governed by a special statute, the Court is required to undertake a difficult and sensitive balancing exercise, conscious that neither liberty nor security admits of absolutism.

427. While undertaking this exercise, the Court cannot proceed on any consideration except restricting the contours of inquiry confining to law. Where Parliament has prescribed a distinct statutory threshold for the grant of bail, and where the prosecution places prima facie material suggesting organised and deliberate activity affecting public order and

security of the Nation, the Court cannot turn a Nelson's eye to such material merely because incarceration is prolonged or liberty is invoked in the abstract. Equally, where continued detention is not shown to be necessary to serve a legitimate purpose recognised by law, the Court must not hesitate to restore liberty, subject to stringent conditions that safeguard the larger public interest."

30. A profitable and useful reference can also be made to the judgment of the Supreme Court in the case of ***Om Prakash Sahni v/s Jai Shankar Chaudhary***¹⁹, wherein the court has clarified the scope of power under Section 389 Cr.P.C. by holding that suspension of sentence may be justified only where a palpable infirmity is apparent on the face of the record, indicating that the conviction may not ultimately withstand scrutiny. The relevant paragraphs are extracted hereunder:

*"25. In **Rajesh Ranjan Yadav alias Pappu Yadav v. CBI** reported in (2007) 1 SCC 70, it has been held under paras 8, 9 and 10, respectively, which are as follows:*

".....

10. In our opinion none of the aforesaid decisions can be said to have laid down any absolute and unconditional rule about when bail should be granted by the Court and when it should not. It all depends on the facts and circumstances of each case and it cannot be said that there is any absolute rule that because a long period of imprisonment has expired bail must necessarily be granted."

(Emphasis supplied)

*26. This Court in **Ash Mohammad v. Shiv Raj Singh alias Lalla Babu and Another**, reported in (2012) 9 SCC 446, has observed in para 30, as follows:*

19 (2023) 6 SCC 123.

“30. We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the Court becomes more pronounced and the burden is heavy. There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed. They are to be weighed in the scale of collective cry and desire. The societal concern has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter we are inclined to think that the social concern in the case at hand deserves to be given priority over lifting the restriction on liberty of the accused.”

31. Considering the overall conspectus of the case and the evidence on record, we are of the view that, prima facie, there are reasonable grounds for believing the accusations against the Applicant. It will also be pertinent to note that the State has challenged the acquittal of the Applicant and other co-accused under Section 3(2), 3(1)(ii) & 3(4) of the MCOCA and the same is pending before us. Therefore, keeping in mind the cross-appeals filed by the State and the aspects discussed above, we are not inclined to suspend the sentence pending appeal. Instead, we intend to set down the appeals for final hearing.

32. Before parting, we find it necessary to note that this Court has not examined the merits of the case beyond the limited nature of the present determination and it will not cause any prejudice to the

contentions of the appellant in the main appeal. This Court has refrained from commenting on the ultimate culpability or otherwise as that would be a matter of adjudication during the final hearing of the appeal.

Hence, the following order.

ORDER

- 1] The Interim Application stands rejected.
- 2] List Criminal Appeal No. 91/2019 along with all the connected Appeals of the co-accused and the Appeal filed by the Respondent-State on 7th December, 2026 at 3.00 pm.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)