

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

Cri.Revn.Appln.No. 2 Of 2015.

Alongwith

Cri.Appln.No.46/2015.

Bibishan s/o Arjun Munde.

Versus

The State Of Maharashtra.

Appearance =>

Mr. Bhagwan R.Sable, Advocate for the Applicant.

Mr. V.P. Kadam, Addl. Public Prosecutor for the State of Maha.

CORAM : V.M. DESHPANDE, J.

DATE : 14th JANUARY, 2015.

Per Court :-

Heard Mr. Sable, learned counsel for the applicant in detail and Mr. Kadam, learned Addl. Public Prosecutor for the State.

[2] After hearing the learned counsel for both the sides and after having gone through the impugned judgment, it is clear that the learned lower appellate court has disbelieved the recovery which is made in the evidence of P.W.No.5 Anil Vitthalrao Rakh, who was examined by the prosecution to prove recovery at the instance of present applicant Bibishan Arjun Munde, on memorandum Exh.No.21.

[3] On perusal of the impugned judgment, it is clear that the applicant has made out case for admission. Hence, '**Rule**'. Call for Record & Proceedings.

CRIMINAL APPLICATION NO.46 OF 2015.

[4] Present application is moved by the applicant for suspension of substantive jail sentence and for grant of bail.

[5] The applicant was convicted by the learned Judicial Magistrate, First Class, Parli Vaijinath in R.C.C. No.252/2005 on 29th December, 2007. Criminal Appeal No.3/2008 preferred by him was dismissed by the learned Addl. Sessions Judge, on 15th December, 2014.

[6] This court has already admitted the Cri.Revn.Application questioning the correctness of conviction of the present applicant. Looking to the pendency of the Cri.Revision Applications, it is clear that in near future, there is no possibility of this Cri.Revn.Appln. being taken up for final hearing. Further conviction is for limited duration i.e. one year. The applicant who was on bail throughout during the trial and before the Appellate Court and at any point of time, there is no complaint against him that he has misused the liberty. In that view of the matter, prima facie case is made out for suspension of substantive jail sentence during pendency of present Criminal Revision Application. Hence, following order :-

ORDER

(1) Criminal Application No.46/2014 is allowed.

(2) Substantive jail sentence imposed upon the applicant by the learned Judicial Magistrate, First Class, Parli Vaijinath, Dist. Beed in R.C.C. No.252/2005 and learned Addl. Sessions Judge, Ambajogai, Dist. Beed in Cri. Appeal No.3/2010 is

hereby suspended during pendency of present Cri.Revision Application.

(3) The applicant - Bibishan s/o Arjun Munde shall be released on bail on he executing P.R. Bond of Rs.5000/- [Rs.Five Thousand only] with two solvent sureties in the like amount, before the learned trial court.

(4) The applicant shall remain present before this court at the time of final hearing.

(5) Criminal Application is disposed of.

(V.M. DESHPANDE, J.)