

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

Criminal Application No.1884/2015.

**In
Criminal Appeal No. 344 Of 2015.**

**BHIVRYA @ ARJUN PAPA KALE & ANR.
VERSUS
THE STATE Of MAHARASHTRA.**

Appearance =>

Mr. D.M. Pingale, Advocate h/for Mr. Ganesh Kore, Advocate for the Appellants.

Mr. A.V. Deshmukh, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. Deshpande, J.

DATE : 13th April, 2015.

Per Court :-

Heard Mr. D.M. Pingale, Advocate h/for Mr. Ganesh Kore, Advocate for the Appellants and Mr. A.V. Deshmukh, Additional Public Prosecutor for the State of Maharashtra.

[2] This is an application for suspension of substantive jail sentence, imposed upon the applicants-accused by the learned Additional Sessions Judge, Bhoom, District – Osmanabad vide Judgment and Order dated 17th March, 2015 passed in Sessions Case No.46/2014 (Old Sessions Case No.77/2002), where-by the applicants (Original Accused NoS. 2 and 5) were held guilty for the offence punishable under Section 399 of the Indian Penal Code and

sentenced them to undergo Rigorous Imprisonment for five years and to pay fine of Rs.5000/- each, and in default of payment of fine amount, to undergo Rigorous Imprisonment for three months.

[3] The learned counsel for the applicants submitted that, the applicants have deposited fine amount. Statement is accepted.

[4] During the trial, the applicants were on bail and at no point of time, they have misused the liberty granted to them.

[5] Looking to the limited duration of sentence and looking to the fact that this court is taking the Criminal Appeal of year 2000 and onwards, in near future, final hearing of present Criminal Appeal is not likely to be taken place.

[6] Looking to the quality of evidence adduced before the court, this court is of view of that, substantive jail sentence imposed upon the present applicants, can be suspended during pendency of present Criminal Appeal. Hence, I pass the following order :-

ORDER

(i) Criminal Application is allowed.

(ii) Substantive jail sentence as imposed upon the applicants by the learned Additional Sessions Judge, Bhoom, District – Osmanabad vide Judgment and Order dated 17th March, 2015 passed in Sessions Case

No.46/2014 (Old Sessions Case No.77/2002), is hereby suspended during pendency of present Criminal Appeal.

(iii) Applicant No.1 – BHIVRYA @ ARJUN PAPA KALE and Applicant No.2 – LALA SARJERAO @ KARKUNYA PAWAR shall be released on bail on they executing PR. Bond of Rs. 5,000/- [Rs. Five Thousand.] each with one solvent surety in the like amount.

(iv) Bail before Trial Court.

(v) The applicants-appellants shall remain present before this court, at the time of final hearing of present Criminal Appeal.

(vi) With this, Criminal Application is disposed of.

(V.M. DESHPANDE, J.)