

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.6908 OF 2014

IN

CRIMINAL APPEAL NO.779 OF 2014

Vyankatesh s/o Krushnarao Deshpande,
Age-34 years, R/o-Dhavani Mohalla,
Aurangabad.

...APPLICANT
(Ori. Accused No.1)

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Nilesh S. Ghanekar Advocate for Applicant.
Mr. B.L. Dhas, A.P.P. for Respondent.

...

CORAM: A.I.S. CHEEMA, J.

DATE : 22ND JANUARY, 2015

ORDER :

1. Heard learned counsel for the Applicant -
Appellant - original accused No.1 and learned
A.P.P. for Respondent.

2. The learned counsel for the Applicant has submitted that the accused No.1 Vyankatesh has been convicted by the trial Court for offence punishable under Section 489-B and Section 489-C of the Indian Penal Code (for short "I.P.C."). The other accused No.3 - Shaikh Karim has been convicted only for offence punishable under Section 489-C of I.P.C., which offence is bailable. It is submitted, after pronouncement of the sentence, the trial Court itself suspended his sentence of imprisonment. He submits that the sentence of imprisonment of Applicant- original accused No.1 was not suspended as Section 489-B of I.P.C. is non-bailable.

3. Learned counsel for the Applicant referred to the observations of the trial Court in Para 18 of the Judgment where the trial Court observed that accused No.1 Vyankatesh had paid the amount towards collie charges to the accused No.3

Shaikh Karim. The submissions are that in the record there is no material or legally acceptable evidence to show that accused No.1 Vyankatesh had indeed paid any such charges, using counterfeit currency notes. The counsel argued that under Section 489-B of I.P.C. using as genuine, forged or counterfeit currency notes is the offence while under Section 489-C of I.P.C. mere possession of forged or counterfeit currency notes is also an offence.

4. In view of such submissions, learned A.P.P. took time to go through the evidence. Copies of the evidence have been filed on record, by the Applicant. The learned A.P.P. inspite of taking time, has not been able to show as to what is the basis on which the trial Court has made above observations in Para 18, that accused Vyankatesh used the counterfeit currency notes to pay the collie charges.

5. The learned counsel for the Applicant submitted that only because accused No.3 Shaikh Karim in his statement under Section 313 of the Code of Criminal Procedure stated that accused No.1 Vyankatesh has given the counterfeit currency notes to him which were seized from him, does not amount to legal evidence on the basis of which conviction could be maintained. Learned counsel submitted copies of various documents to support his submission that the Applicant- original accused No.1 Vyankatesh has firm roots in Aurangabad. The documents are taken on record of the Application. Learned counsel submitted that Applicant-accused No.1 has arguable case as far as regards offence under Section 489-B of I.P.C. is concerned, and bail may be approved.

6. Learned A.P.P. opposed the Application for bail but is unable to counter the submissions made by learned counsel for Applicant.

7. There is substance in the arguments of counsel for Applicant. This matter is of 2014. It will take time to dispose. Applicant was on Bail during trial. He has roots at Aurangabad. Comparing case of co-accused with Applicant, it would be appropriate to suspend the sentence of imprisonment of accused No.1 Vyankatesh also and to grant him bail.

8. For reasons mentioned above, I pass following order:

O R D E R

(A) The Criminal Application is allowed.

(B) The sentence of imprisonment of the Applicant-appellant- original accused No.1 Vyankatesh Krushnarao Deshpande imposed in Sessions Case No.91 of 2007 by Additional Sessions Judge, Aurangabad on 10th December 2014, is

suspended pending decision of the Appeal, subject to his furnishing P.R.B. and S.B. of Rs.20,000/- (Rupees Twenty Thousand) before the trial Court.

[A.I.S.CHEEMA, J.]

asb/JAN15