

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 399 OF 2015

Nityanand Tukaram Shirsat and others

.....Applicants

V/s.

The State of Maharashtra

....Respondent

Mr. A. S. Khandeparkar i/b Khandeparkar and Associates for applicant
Mr. Arfan Sait APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : OCTOBER 6, 2015.

PC :

Not on board. Upon production, taken on board.

Heard. This is an application seeking suspension of substantive sentence imposed upon the applicants by Sessions Judge, Sindhudurg in Criminal Appeal No. 6 of 2015 vide Judgment and Order dated 07/09/2015, by which applicants herein are convicted for offence punishable under sections 143, 186, 451, 506 r/w 149 of Indian Penal Code and have been sentenced to suffer rigorous imprisonment for one month on each of the count. Applicants were accused in R.C.C. No. 17 of 2014. Applicants were tried for offences punishable under sections 143, 452, 186, 504, 506 r/w 149 of Indian Penal Code and section 37 (1) (3) punishable under section 135 of Bombay Police Act.

2) Learned Judicial Magistrate First Class at Kudal was pleased to acquit the accused of all the charges vide Judgment and Order dated 31/10/2014. Being aggrieved by the said Judgment and Order, the State of Maharashtra had preferred an appeal before Sessions Judge, Sindhudurg which was registered as Criminal Appeal No. 6 of 2015. Learned Sessions Judge vide Judgment and Order dated 07/09/2015 has been pleased to reverse the Judgment of acquittal and has convicted the applicants for the above mentioned charges.

3) Learned counsel for the applicants submits that applicants were on bail during the pendency of trial as well as during the pendency of appeal and have not committed breach of any conditions imposed upon them. It is further submitted that in fact, the court of first instance, i.e. Judicial Magistrate First Class, Kudal after recording of evidence adduced by the prosecution was pleased to acquit the accused of all the charges. That the learned Appellate Court has not considered the aspect that when two views are possible, the view in favour of accused should be considered and has reversed the Judgment of acquittal. It is further submitted that today, applicants have surrendered before court of Judicial Magistrate First Class, Kudal and prays

for suspension of substantive sentence.

4) Taking into consideration the fact that applicants were on bail during the pendency of trial as well as appeal, coupled with the fact that they were acquitted by the court of first instance, this Court is inclined to suspend the substantive sentence imposed upon the applicants. Hence, following order is passed.

ORDER

- (i) Application is allowed
- (ii) The substantive sentence imposed upon the applicants is hereby suspended. Applicants be enlarged on same bail, fresh bonds.
- (iii) Applicants shall report to court of Judicial Magistrate First Class, Kudal, as directed by the concerned court, once in six months till the conclusion of revision application.
- (iv) Upon failure to attend any two consecutive dates, the prosecution would be at liberty to file an application cancellation of bail.
- (v) Application stands disposed of.
- (vi) Parties to act on authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.