

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 370 OF 2015
IN
CRIMINAL REVISION APPLICATION NO. 423 OF 2015

Janardan Dada Dere. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Mangesh M. Deshmukh, advocate for Applicant.

Mrs. A. A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 29, 2015

P.C.:

1 Not on board. Upon production taken on board.

2 Heard the learned Counsel for the applicant and the learned
APP for State.

3 This is an application seeking suspension of substantive
sentence imposed upon the applicant. The Applicant herein is

convicted for offence punishable under Section 279, 338 of the Indian Penal Code and is sentenced to suffer R.I. for 3 months by the learned Additional Chief Metropolitan Magistrate's 31st Court, Vikhroli, Mumbai vide Judgment and Order dated 4/8/2014. The applicant has also been sentenced to pay fine of Rs. 50,000/-.

4 Being aggrieved by the said Judgment and order the applicant filed Criminal Appeal No. 756 of 2014. The Appellate Court vide judgment and Order dated 17/8/2015 has been pleased to dismiss the appeal. Hence, this Revision Application.

5 The learned Counsel for the applicant submits that the applicant has surrendered before the Additional Chief Metropolitan Magistrate today i.e. on 29/10/2015 and has placed on record the order passed by the Additional Chief Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai taking the applicant in custody.

6 The learned Counsel for the applicant submits that the applicant has been sentenced to a short term sentence. The Revision Application may not be heard in the near future. That the applicant was on bail during the pendency of the trial as well as during the pendency of the appeal and has not committed breach of any conditions imposed upon him. Hence, according to the learned Counsel, the applicant deserves to be enlarged on bail during the pendency of the revision application which is admitted.

7 The learned APP submits that it prima facie appears from the record that the applicant herein has not deposited the fine amount.

8 It is made clear that the Appellate Court has not suspended the sentence of fine on 25/8/2014 at the time of admission of the appeal and hearing of the application under Section 389 of the Code of Criminal Procedure, 1973. The Appellate Court has passed an order that the substantive sentence of imprisonment in C.C. No.

582/PS/2012 is suspended till decision in appeal on depositing the fine amount.

9 Taking into consideration the facts of the case and the submissions advanced across the bar, this Court is of the opinion that the substantive sentence imposed upon the applicant vide Judgment and Order dated 4/8/2014 passed by the learned Additional Chief Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai deserves to be suspended during the pendency of the revision application and the applicant deserves to be enlarged on bail.

10 Hence, following order is passed:

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence imposed upon the applicant vide Judgment and Order dated 4/8/2014 by the learned Additional Chief Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai in C.C. No. 582/PS/2012, confirmed in Criminal Appeal No. 756 of 2014 by the

learned City Civil & Sessions Court, Gr. Mumbai vide Judgment and Order dated 17/8/2015 is hereby suspended.

(iii) The applicant be enlarged on bail subject to the condition that the fine of Rs. 50,000/- is paid before being enlarged on bail. Same bail, fresh bond. The applicant to pay the fine amount in the Court of the Additional Chief Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai.

(iv) The applicant shall attend the Court of the Additional Chief Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai once in six months on the date scheduled by that Court.

(v) In case of failure to attend the said Court on any two consecutive dates, the prosecution shall be at liberty to move for cancellation of bail.

(vi) Parties to act on an authenticated copy of this order.

11 Application stands disposed of.

(SMT. SADHANA S. JADHAV,J)