

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 402 OF 2015
IN
CRIMINAL REVISION APPLICATION NO. 462 OF 2015

Sayali Santosh Khandare. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Ramprasad V. Gupta, advocate for Applicant.

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

CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 27, 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 by the learned Metropolitan

Magistrate, 10th Court, Andheri vide Judgment and Order dated 24th June, 2014 and is sentenced to suffer R.I. for 6 months and to pay fine of Rs. 3,000/-. Being aggrieved by the said Judgment and Order, the applicant has filed Criminal Appeal No. 646 of 2014 before the Sessions Court at Mumbai. The learned Sessions Court vide Judgment and Order dated 7/9/2015 has been pleased to dismiss the appeal. The conviction and sentence is confirmed by the appellate court.

4 The applicant had then moved an application seeking suspension of the sentence. The learned Sessions Court vide order dated 7/9/2015 had suspended the substantive sentence of imprisonment till filing of the second appeal period is over and had directed that the earlier bail to continue.

5 It is pertinent to note that the learned Sessions Court has lost sight of the fact that in criminal proceedings there can be no second appeal. Judgment of the appellate court can only be challenged by

filing an application under section 397/401 of the Code of Criminal Procedure, 1973. In fact, the Sessions Court had become functuous officio and had no reason to suspend the substantive sentence. This was observed by this Court. On 17/10/2015 this Court had observed that the applicant has not surrendered before the trial court and therefore, there was no question of suspending the sentence.

6 The learned Counsel for the applicant has placed on record the certified copy of the application filed by the applicant for surrendering. The order shows that the accused has voluntarily surrendered before the Metropolitan Magistrate, 10th Court, Andheri, Mumbai and conviction warrant was prepared accordingly on 26.10.2015.

7 The learned Counsel for the applicant submits 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 her. It is further submitted that the

conviction of the applicant is unwarranted, as the Court has not appreciated the evidence in its proper perspective and therefore, the applicant has a good chance of acquittal on merits. That the revision application has been admitted and therefore, prayer for grant of bail has been pressed.

8 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 24/6/2014 deserves to be suspended during the pendency of the revision application. The sentence imposed upon him is a short term sentence and this Court would not be able to take up the matter for final hearing and therefore, the applicant deserves grant of bail.

9 Hence, following order is passed:

ORDER

(i) The application is allowed.

(ii) The substantive sentence imposed upon the applicant vide Judgment and Order dated 24/6/2014 by the Metropolitan Magistrate, 10th Court, Andheri, Mumbai in C.C. No. 1797/PW/2007, confirmed in Criminal Appeal No. 646 of 2014 by the Sessions Court, Mumbai vide Judgment and Order dated 7/9/2015 is hereby suspended.

(iii) The applicant be enlarged on bail. Same bail, fresh bond.

(iv) The applicant shall attend the Court of the Metropolitan Magistrate, 10th Court, Andheri, 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.

10 Application stands disposed of.

(SMT. SADHANA S. JADHAV,J)