

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 CRIMINAL APPELLATE SIDE JURISDICTION
 CRIMINAL APPLICATION NO. 409 OF 2015
 IN
 CRIMINAL REVISION APPLICATION NO. 409 OF 2015

1. Karthik Anandraj HarijanApplicants

2. Mahesh Anandraj Harijan

V/s.

The State of Maharashtra

....Respondent

Mr. Ganesh Mohite for Applicant

Mr. D. R. More APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : OCTOBER 15, 2015.

PC :

Not on board. upon production, taken on board.

This is an application seeking suspension of substantive sentence imposed upon the applicants and for enlargement on bail. Applicants herein were convicted for offence punishable under section 323, 324 r/w 34 of Indian Penal Code by Judicial Magistrate First Class, Thane, Court No. 15 in R.C.C. No. 313 of 2012 and sentenced to suffer rigorous imprisonment for one month and three months respectively with fine of Rs. 500/- and Rs. 1000/- each in default to suffer simple imprisonment for 15 days.

2) Being aggrieved by the said Judgment and Order, applicants filed

Criminal Appeal No. 158 of 2014 before Additional Sessions Judge, Thane. Learned Additional Sessions Judge vide Judgment and Order dated 01/10/2015 has been pleased to dismiss the appeal. Applicants are sentenced to suffer rigorous imprisonment for three months and fine of Rs. 1000/- each. Appellants were directed to surrender to the bail bonds and appear before 15th Judicial Magistrate First Class, Thane within 15 days. In fact, learned Sessions Judge could not have suspended the substantive sentence as the appellants were being convicted in appeal.

3) Learned counsel for the applicants submits that today accused/applicants have surrendered before Judicial Magistrate First Class, Thane and therefore, learned counsel for the applicant seeks suspension of substantive sentence. Learned counsel for the applicant 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. That the applicants are sentenced to a short term sentence and therefore, it is prayed that substantive sentence to be suspended. It is also submitted that applicants have good case on merits since the prosecution has failed to establish the guilt of the accused beyond reasonable

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doubt and therefore, revision has been admitted.

4) Taking into consideration the material on record and the submissions advanced across the bar, following order is passed.

ORDER

- (i) Application is allowed.
- (ii) The substantive sentence imposed upon the applicants by Judicial Magistrate First Class, Thane in R.C.C. No. 313 of 2012, confirmed by Appellate Court vide Judgment and Order dated 01/10/2015 in Criminal Appeal No. 158 of 2015 is hereby suspended.
- (iii) Applicants be enlarged on bail. Same bail, fresh bonds.
- (iv) Applicants shall report to court of Judicial Magistrate First Class, Thane, once in six months, as directed by the concerned court, till the conclusion of trial.
- (v) Upon failure to attend any two consecutive dates, prosecution would be at liberty to file an application for cancellation of bail.
- (vi) Application is allowed and disposed of.
- (vi) Parties to act on authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J.)