

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 433 OF 2015
IN
CRIMINAL REVISION APPLICATION NO. 493 OF 2015

Devilal Kacharulal Choudhary. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Ms. Mallika Ingale i/b. Mr. Bhanudas Jagtap, advocate for Applicant.

Ms. R.M. Gadhvi, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 26, 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 Court of the Additional

Sessions Judge, Greater Bombay in Criminal Appeal No. 37 of 2014 vide Judgment and Order dated 22/9/2015.

4 The applicant herein was convicted by the learned Additional Chief Metropolitan Magistrate, 24th Court, Boriwali in C.C. No. 2403064/PW/2012 vide Judgement and Order dated 28/1/2013.

5 Being aggrieved by the said Judgment and Order, the present applicant had filed Criminal Appeal No. 37 of 2014 before the Court of Sessions at Dindoshi. Learned Additional Chief Metropolitan Magistrate had convicted the applicant for offence punishable under Section 411 of the Indian Penal Code and had sentenced him to suffer R.I. for two years and fine of Rs. 2,000/- I.d. to suffer R.I. for 6 months. The learned Sessions Court in Appeal has upheld the conviction for the offence punishable under Section 411 of the Indian Penal Code. However, the sentence has been modified. The learned Sessions Court has enhanced the fine amount and reduced the sentence of actual imprisonment. The applicant is now sentenced to

suffer R.I. for 3 months and fine of Rs. 5000/-. Hence, this Revision Application.

6 The learned Counsel for the applicant has submitted that the applicant was not present on the date of pronouncement of Judgment and hence, was not taken into custody. The learned Counsel for the applicant has submitted that today i.e. on 26/10/2015 the applicant has surrendered before the Learned Additional Chief Metropolitan Magistrate, 24th Court, Boriwali, Mumbai and has been taken into custody by the learned Magistrate.

7 The learned Counsel for the applicant submits that the applicant was on bail during the pendency of the trial as well as during pendency of the appeal and has not committed breach of any condition imposed upon him. It is further submitted that the applicant has a good case on merits and the prosecution has failed to prove the case beyond reasonable doubt. 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 22/9/2015 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.

8 Hence, following order is passed:

ORDER

(i) The application is allowed.

(ii) The substantive sentence imposed upon the applicant by the learned Additional Sessions Court vide Judgment and Order dated

22/9/2015 passed in Criminal Appeal No. 37 of 2014 is hereby suspended.

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

(iv) The applicant shall attend the Court of the Additional Chief Metropolitan Magistrate, 24th Court, Boriwali 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.

9 Application stands disposed of.

(SMT. SADHANA S. JADHAV,J)