

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 2849 of 2016
(In Criminal Appeal No. 336 of 2016)

District : Ahmednagar

1. Mahesh s/o. Ambadas Dalimbkar,
Age : 39 years,
Occupation : Teacher.

2. Manjushri Mahesh Dalimbkar,
Age : 36 years,
Occupation : Teacher.

Both R/o. "Aai Niwas",
Mauli Nagar, Miri Road,
Shevgaon, Taluka : Shevgaon, .. Applicants
District : Ahmednagar. (Original accused)

versus

The State of Maharashtra. .. Respondent.

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*Mr. Santosh S. Jadhavar, Advocate, for the
applicants.*

*Mr. A.G. Magare, Addl. Public Prosecutor, for
the respondent.*

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CORAM : SANGITRAO S. PATIL, J.

DATE : 3rd June 2016
(Summer Vacation)

PER COURT :

Heard the learned Counsel for the applicants
and the learned Addl. Public Prosecutor for the

respondent - State.

2. By the present application, the applicants (original accused) have prayed that they may be released on bail by suspending the judgment of conviction and order of sentence dated 20.05.2016, passed by the learned Addl. Sessions Judge, Ahmednagar, in Sessions Case No. 244/2014.

3. Applicant no.1 is the original accused no.1, whereas applicant no.2 is the original accused no.2. Applicant no.1 is convicted of the offence punishable under Section 376 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years, and to pay a fine of Rs. 20,000/- with default clause. Both of the applicants are convicted of the offence punishable under Section 342 read with Section 34 of the IPC and sentenced to suffer rigorous imprisonment for one year, each, and to pay a fine of Rs. 500/-, each, with default clause. Applicant no.1 is further convicted of the offence punishable under Section 506 of the IPC and sentenced to suffer rigorous imprisonment for 2 years and to pay a fine of Rs. 10,000/- with default clause. The trial Court has directed that the substantive sentences shall run concurrently.

4. Against the said judgment and order, the applicants have preferred Criminal Appeal No. 336 of

2016 before this Court wherein notice to the respondent - State has been issued today.

5. The learned Counsel for the applicants submits that the applicants were on bail during pendency of the trial. The sentence of applicant no.2 has been suspended by the trial Court. He further submits that the applicants have good chances of succeeding in the appeal. Both the applicants have deposited the fine amount as ordered by the trial Court. He, therefore, urged that the applicants be released on bail during the pendency of the Criminal Appeal preferred by them, by suspending substantive sentences.

6. The learned Counsel for the applicants further submits that so far as applicant no.2 is concerned, she is serving as Assistant Teacher in the Zilla Parishad Primary School at Mhasale, Taluka Newasa, District Ahmednagar. He submits that if the conviction recorded against her is not suspended, she would be terminated from the service. He, therefore, prays that the conviction recorded against her, for the offence punishable under Section 342 read with Section 34 of the IPC, also may be suspended.

7. Both the applicants were on bail during pendency of the trial. Both of them have deposited the fine amount. There is no possibility that the

appeal preferred by them would be decided in the near future. Therefore, execution of the substantive sentences passed against them will have to be suspended, during pendency of the appeal. Otherwise, very purpose of filing the appeal would be frustrated.

8. So far as the prayer made by the learned Counsel for the applicants for suspension of conviction against applicant no.2 is concerned, I find substance in the same. If the conviction recorded against applicant no.2 is not suspended, there is every possibility that she may invite the penalty of dismissal from the service on the basis of the said conviction. I, therefore, think it fit to suspend the conviction, so far as applicant no.2 is concerned. The application is liable to be allowed partly with the following order :-

(a) The substantive sentences imposed upon applicant no.1 (original accused no.1), namely, Mahesh Ambadas Dalimbar, for the offences punishable under Sections 376, 342 read with Section 34 and Section 506 of the Indian Penal Code, vide judgment and order dated 20.05.2016, in Sessions Case No. 244 of 2014, passed by the Special Judge and Addl. Sessions Judge, Ahmednagar, are suspended and the said applicant is directed to be released on bail pending hearing and final disposal of the Criminal Appeal No. 336 of

2016, on his executing personal bond in the sum of Rs. 15,000/- [Fifteen thousand] with a surety in the like amount.

(b) The conviction recorded and substantive sentence imposed upon applicant no.2 (original accused no.2), namely, Manjushri Mahesh Dalimbar, for the offence punishable under Section 342 read with Section 34 of the Indian Penal Code, by the aforesaid judgment and order, are suspended and she is directed to be released on bail pending hearing and final disposal of Criminal Appeal No. 336 of 2016, on her executing personal bond in the sum of Rs. 10,000/- [Ten thousand] with a surety in the like amount.

(c) Bail bonds shall be furnished before the trial Court.

(d) The Application stands disposed of accordingly.

(SANGITRAO S. PATIL)

JUDGE

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