

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 175 OF 2016
IN
CRIMINAL APPEAL NO. 101 OF 2016

- 1) Galib Abdul Majid Solkar
- 2) Nazir Kasam Manchekar
- 3) Aslam Kasam Manchekar
- 4) Abdul Muttlik Husain Solkar
- 5) Irfan Majid Solkar

.....Applicants

V/s.

The State of Maharashtra

....Respondent

Mr. Saurabh Butala a/w Mr. Harshad Bhadbhade Advocate for the
Applicants
Mrs. A. A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : FEBRUARY 10, 2016.

PC :

Heard. Applicants herein were acquitted by Judicial Magistrate First Class, Rajapur, Dist. Ratnagiri in R.C.C. No. 1 of 2011 of the offence punishable under sections, 143, 147, 148, 149, 452, 427, 323, 504, 506 of Indian Penal Code vide Judgment and Order dated 15/01/2013.

2) Being aggrieved by the said Judgment of acquittal, State of

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Maharashtra had filed criminal appeal no. 13 of 2013 before court of sessions Judge at Ratnagiri. Learned Sessions Judge vide Judgment and Order dated 06/01/2016 has been pleased to set aside the acquittal recorded in favour of accused nos. 1 to 4 and 10 and convicted them for offence punishable under sections 143, 147, 148, 452, 323 and 426 r.w. 149 of Indian Penal Code. Accused nos. 1 to 4 & 10 are sentenced to suffer rigorous imprisonment for two months and to pay fine of Rs. 1000/- each, in default to suffer one month imprisonment each, for offence punishable under section 143 r.w. 149 of Indian Penal Code. They are also sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 2000/- each, in default for three months each, for offence punishable under section 147 r.w. 149 of Indian Penal Code. They are also sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs. 3000/- each, in default for six months each, for offence punishable under section 148 r.w. 149 of Indian Penal Code. Accused nos. 1 to 4 and 10 are sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs. 1000/- each, in default for one month each, for offence punishable under section 323 r.w. 149 of Indian Penal

Code. They are also sentenced to suffer rigorous imprisonment for three months and to pay fine of Rs. 1000/- each, in default for one month each, for offence punishable under section 426 r.w. 149 of Indian Penal Code. They are also sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 5000/- each, in default for six months each, for offence punishable under section 452 r.w. 149 of Indian Penal Code.

3) Learned counsel for the applicants submits that learned Judicial Magistrate First Class had considered the evidence adduced by the prosecution in its proper perspective and had rightly arrived at conclusion that prosecution has failed to prove the guilt of the accused beyond reasonable doubt, however, learned Sessions Judge has failed to consider the evidence in its proper perspective and has convicted the applicants by setting aside the Judgment and Order of acquittal. It is further submitted that whenever two views are possible, it would be in the interest of justice that the court has to take the view which is in favour of accused persons.

4) It is further submitted that applicants were on bail during the pendency of trial as well as during the pendency of criminal appeal no. 13 of 2013 and

have not misused the liberty granted to them and hence, applicants deserve extension of the same relief during the pendency of present appeal. The sentence imposed upon the applicants is a short term sentence and hence, they deserve to be enlarged on bail during the pendency of appeal. Hence, following order.

ORDER

- (i) Application is allowed.
- (ii) The substantive sentence imposed upon the applicants is hereby suspended and they be enlarged on same bail, fresh bonds.
- (iii) Applicants shall furnish fresh bonds before the Appellate Court within 3 weeks from today. Upon failure to furnish fresh bonds within the stipulated time, Sessions Court shall issue non-bailable warrant against the applicants calling upon them to serve the substantive sentence.
- (iv) Applicants shall report to court of Sessions, Ratnagiri, once in six months, as directed by the concerned court, till the conclusion of appeal.
- (v) Upon failure to attend any two consecutive dates, prosecution would be at liberty to seek cancellation of bail.

- (vi) Application stands disposed of.
- (vii) Parties to act on authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J.)