

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 61 of 2017**

1. Sabbir Khan S/o Sahad Ali Khan (now) aged about 60 years, R/o Village Bargaon "B", Patelpara, P.S. - Bagbahar, Dist. - Jashpur (C.G.)
2. Asheem Khan S/o Sabbir Khan, (now) aged about 25 years, R/o – Village Bargaon "B", Patelpara, P.S. Bagbahar, Distt. - Jashpur (C.G.)

----Petitioners**Versus**

- State of Chhattisgarh, Through, District Magistrate, Jashpur, Distt. - Jashpur (C.G.)

---- Respondent

For Petitioners
For State

Ms. S. Singhai, Advocate
Mr. Vinod Tekam, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****16.01.2017**

1. The present Petition under Section 482 of the Cr.P.C. has been filed seeking suspension of sentence and grant of bail to the Petitioners herein.
2. The facts in brief necessary for disposal of the present Petition is that the Petitioners herein were tried for the offence under Sections 452, 294, 341, 323/34 and 506(B) of the IPC in Criminal Case No. 128/11 whereby they were convicted for the offence under Sections 452, 323/34 and 341 IPC. The judgment of conviction was assailed before the Additional Sessions Judge, Kunkuri in Criminal Appeal No. 26/11. The Petitioners were Appellants before the Court below and were granted bail on 30.12.2011. Thereafter, the Petitioners appeared

before the Lower Appellate Court on all the dates so provided by the Lower Appellate Court however on 27.09.2016 there was a default on their part for some personal reasons. By virtue of the default non-bailable warrants were issued against the Petitioners. Before the non-bailable warrants could be cancelled the Petitioners got arrested on 19.12.2016. Subsequent to their arrest the Petitioners herein moved an application under Section 439 of the Cr.P.C. for grant of bail before the lower Appellate Court. It is pertinent to mention that though the application was filed under Section 439 whereas it ought to have been filed under Section 389, the Court below has not rejected the application on the ground of maintainability but has rejected the application on its merits stating that it was not a fit case for grant of bail and passed the rejection order on 21.12.2016. It is this order which has been assailed by the Petitioners in the present case.

3. Considering the total facts and circumstances of the case and the total period of sentence imposed upon by the Court below coupled with the fact that they were on bail from December, 2011 till December, 2016 and they were regularly appearing before the Court except for 27.09.2016, this Court is of the opinion that the Lower Appellate Court ought to have considered the case in a more pragmatic manner and should have allowed the application.
4. Thus, considering the period of sentence imposed upon the Petitioners and the fact that the Petitioners were on bail for a considerable period of 5 years, this is a fit case to be allowed.
5. Accordingly, the present Cr.M.P. stands allowed.
6. It is directed that the jail sentence imposed upon the Appellants shall remain suspended during the pendency of Criminal Appeal No. 26/11

before the Lower Appellate Court and they shall be released on bail on furnishing a personal bond in the sum of Rs. 25000/- each with one surety in like sum to the satisfaction of the trial Court. The appellants are directed to appear before the Lower Appellate Court on **15th February, 2017** and all further dates to be given to them by the said Court till disposal of the appeal.

7. With the aforesaid observation the present Cr.M.P. stands allowed.

**Sd/-
(P. Sam Koshy)
JUDGE**