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

**CRIMINAL APPLICATION NO. 253 OF 2017
APEAL/570/2016 WITH APEAL/532/2016 WITH APEAL/570/2016 WITH
APEAL/583/2016 WITH APEAL/607/2016 WITH APPLN/6597/2016 IN
APEAL/13/2017 WITH APEAL/13/2017**

**NISHANT S/O ANANDA BHOSALE AND ANR
VERSUS
THE STATE OF MAHARASHTRA**

**...
Advocate for Applicants : Deshmukh Rajendra S.
APP for Respondents: Mr.P.N.Kutti**

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CORAM : V.L.ACHLIYA,J.

DATE : 31/01/2017

PER COURT :-

Heard learned counsel for the applicants and APP for the State and perused the order dated 13/10/2016.

2] The applicants (original accused no.4 and 8) have filed this composite application seeking correction of order dated 13/10/2016 as well as relaxation of condition to deposit fine amount and alternatively, prayed for early hearing of the Appeal.

3] By order dated 13/10/2016, Criminal Application No.5533/2016 filed in Criminal Appeal No.570/2016 was allowed and the applicants

were ordered to be released on bail during pendency of Appeal. Learned counsel for the applicants submits that the composite application was filed seeking suspension of sentence and bail for applicants no.1 and 2 i.e. accused no.4 and 8. While making the submission, it was inadvertently mentioned that both the applicants were arrested on 18/11/2011. In fact, the applicant no.1 was arrested on 18/11/2011 and the applicant no.2 was arrested on 30/8/2014. In view of the submission made that both the applicants were arrested on 18/11/2011, the observations came to be recorded that both the applicants have practically completed the substantive sentence of five years awarded by the trial Court. In this view, the learned counsel urged to correct the order dated 13/10/2016. He further submits that applicant no.1 has completed substantive sentence and now undergoing sentence in default of non-payment of fine. So far as the applicant no.2 is concerned, he is undergoing the substantive sentence. He submits that applicants are poor persons and they have no means to pay such huge amount of fine. They have good case to succeed in Appeal. He therefore, urged to waive the condition of deposit of fine. In alternative, learned counsel urged to list the Appeal for final hearing.

4] Learned APP submits that while passing order dated 13/10/2016, this Court has already taken into consideration the

submission advanced that applicants are not in a position to deposit the entire fine amount and accordingly the fine amount to the extent of 25% of the total fine amount ordered to be deposited by applicants and therefore there is no reason to modify the order.

5] Having appreciated the submissions advanced, I am inclined to partly allow the Application to the extent of correction of order dated 13/10/2016. The mistake appears to be not deliberate. I am therefore inclined to allow the application to the extent of correction of order.

6] So far as the submission advanced that the condition of deposit of fine be waived, I am not inclined to entertain the request. While dealing with the bail application, passing of order dated 13/10/2016, the submission advanced that applicants are not in a position to deposit the entire fine amount, was duly considered. In due consideration of that submission the applicants were ordered to be released on their depositing the fine to the extent of 25% of the total fine amount imposed by trial Court. Hence there is no question of modification of order and waiving of condition to deposit fine.

7] Applicant no.2 is undergoing substantive sentence of three years. The applicants are convicted by special Court under the

provisions of the Maharashtra Control of Organised Crime Act 1999. I am therefore, not inclined to modify the order dated 13/10/2016 to waive the condition of deposit of fine amount. Looking to the fact that the applicant no.1 has practically completed substantive sentence and undergoing sentence in default of payment of fine and the applicant no.2 has undergone sentence of more than two years, I am inclined to grant alternative prayer to expedite hearing of the Appeal. Hence the following order :

ORDER

i] In para 2 of the order dated 13/10/2016, the words "*applicants were arrested on 18/11/2011*" be replaced by the words "*the applicant no.1 was arrested on 18/11/2011 and the applicant no.2 was arrested on 30/8/2014.*" Further in the same para in 8th line, the word "*applicants*" be replaced by word "*applicant no.1*". Similarly, in para 4 of the order, in 3rd line from the bottom, the words "*applicants have*" be replaced by words "*applicant no.1*". After carrying out the corrections the corrected copy be uploaded.

ii] The prayer made for modification of order to waive the condition of deposit of fine is rejected. However, the alternate prayer made to expedite hearing of the Appeal is granted.

iii] List the Appeal for final hearing alongwith connected Appeals after receipt of paper books and connected appeals are ready for final hearing.

iv] The application is disposed of in above terms.

(V.L.ACHLIYA,J.)

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