

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

**CRIMINAL APPLICATION NO.286 OF 2017
IN
CRIMINAL APPEAL NO.21 OF 2017**

Ankush Hariba Borphale and others .. Applicants

Versus

The State of Maharashtra .. Respondent

Mrs. Supriya L. Pansambal, Advocate h/f Mr. V.D.Gunale,
Advocate for the applicants
Mr.P.N. Kutti, APP for the respondent/State

**CORAM : V.L.ACHLIYA, J.
DATED : 23.01.2017**

P.C. :-

. The applicants have moved this application seeking suspension of substantive sentence and release on bail, during pendency of appeal.

2. The applicants were tried for committing offence punishable under Sections 147,148,307,323,324,341,504 r/w 149 of Indian Penal Code and under section 135 of the Bombay Police Act.

3. On conclusion of the trial the applicants were held guilty of offence under Sections 147,148,323,324,325

& 341 & r/w 149 of Indian Penal Code and awarded separate sentence for each of the offence. The maximum sentence awarded is rigorous imprisonment for three years. Being aggrieved the applicants have preferred the appeal on the grounds set out in detail in the memo of appeal.

5. Learned counsel for the applicant strenuously contended that the impugned judgment and order passed by the trial court is not sustainable in law and there is no cogent, convincing and reliable evidence to sustain the offence under sections 147,148,323,324,325 & 341 & r/w 149 of Indian Penal Code. She further submits that the incident in question was occurred on account of boundary dispute with complainant and other persons. In respect of the same incident counter case was registered against the complainant and other person and they are also held guilty of same offences. She further submits that looking to the nature of the offences proved against the applicants and sentence awarded the applicants deserves to be enlarged on bail as it is not possible to immediately take up appeal for final hearing.

6. Learned APP has opposed the application with contention that there is cogent, convincing and reliable evidence to sustain the conviction. He further submits that there is every likelihood that applicants may

indulge into committing similar type of offences and may abscond on their released on bail.

7. Having appreciated the submission advanced in the light of reasons and findings recorded by the trial court, over all facts of the case the nature of the offence proved and sentence awarded, I am of the view pending disposal of appeal the applicants be enlarged on bail. The maximum sentence awarded to applicants is of three years. It will not be possible to immediately take up the appeal for final hearing. In this view application is allowed with certain conditions. Hence the following order.

ORDER

I] Application is allowed.

II] Pending disposal of appeal the execution of substantive sentence awarded against the applicants stands suspended subject to their deposit of fine.

III] Pending disposal of appeal the applicants Ankush Hariba Borphale, Mithu @ Pintu Lahu Borphale, Satish Shripati Borphale, Ramesh

Ganpati Borphale, Bhagwat Venkat Borphale, Shivaji Venkat Borphale and Lahu Ganapati Borphale be released on bail on each of them furnishing bail in the sum of Rs.25,000/- with one surety in like amount on the following conditions.

- a) The applicants shall mark their attendance before the PSO, Police Station, Nilanga, Tq. Latur, Dist. Nanded on last day of each month between 10.00 am to 11.00 am. till final disposal of the appeal.
- b) The applicants shall furnish the names and addresses of his 3 close relatives with phone numbers.
- c) The applicants shall not cause threat to complainant and other prosecution witnesses.
- d) In the event of change in address the applicants shall intimate concerned Police Station as well as this Court.
- e) During the pendency of appeal the applicants shall not indulged into any criminal activities.

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IV) In the event of breach of any of the above mentioned condition, the bail granted to the applicants shall be liable to be canceled.

V] Bail to be furnished before the trial Court.

VI] The Office In-Charge of the Police Station, Nilanga, Tq. Nilanga, Dist. Latur is directed to submit the report of compliance of condition of bail after every six months.

[V.L.ACHLIYA,J.]