

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 291 OF 2017

IN

CRIMINAL APPEAL NO.23/2017

HARSHWARDHAN RAIBHAN JADHAV.

..APPLICANT.

VERSUS

THE STATE OF MAHARASHTRA.

..RESPONDENT.

...

Advocate for Applicant : Mr.Bhosale Abhaysinh K.

APP for Respondents/State: Mr.K.N. Lokhande.

...

CORAM : V.L. ACHLIYA, J.

Dated: February 01, 2017.

PER COURT:

At the outset, the learned Counsel for the applicant on instructions submits that though the present application is filed with composite prayer seeking suspension of substantive sentence as well as suspension/stay of conviction, but for the present the application is pressed for suspension of sentence and release on bail during pendency of appeal. He further

submits that if exigency arose, the applicant shall file separate application seeking stay / suspension of conviction. In this view, the application now stands restricted to prayer to the extent of suspension of execution of the substantive sentence and release on bail.

2. Mr. Bhosle, learned Counsel for the applicant submits that though the applicant was tried for committing offences punishable under Sections 307, 333, 354, 504, 506 of I.P.C., but on conclusion of trial, he has been held guilty of the offences punishable under Sections 332 and 353 of I.P.C. and separately sentenced to suffer R.I. for one year and to pay fine of Rs.5000/- for each of the offences. He submits that the applicant has a good case to succeed in appeal. The applicant is Member of Legislative Assembly. Looking to the nature of offence and the sentence awarded, the execution of substantive sentence deserves to be suspended as it will not be possible to immediately take

up appeal for final hearing. He submits that the trial Court had suspended the execution of sentence till the appeal period is over so as to enable the applicant to move appellate Court. He has deposited the fine amount. He further submits that during the trial, the applicant was on bail. He has not misused the conditions of bail during trial.

3. The learned APP has opposed the application with the contention that there is a *prima facie* case to connect the applicant with the commission of the offences. He submits that the applicant is held guilty of obstructing the public servant from discharge of his official duty and further assaulted the public servant and, therefore, looking to nature of offences proved, the request may not be entertained.

4. Having regard to the submissions advanced, the nature of the offence and the sentence awarded, I am of the view that pending disposal of the appeal, execution

of substantive sentence deserves to be suspended. The applicant was on bail during trial. It is no where the case of prosecution that he has misused the liberty granted. Looking to the huge pendency of appeals, it will not be possible to immediately take up the appeal for final hearing. In case, the substantive sentence is not suspended, the very purpose of filing the appeal will be frustrated. I am, therefore, inclined to allow the application with certain conditions. Hence, the following order:

ORDER

- (1) The application is partly allowed to the limited extent of suspension of sentence and release on bail during the pendency of appeal.
- (2) Pending disposal of the appeal, the execution of substantive sentence stands suspended subject to deposit of fine amount.
- (3) Pending disposal of the appeal, the applicant be released on bail on his furnishing bail in the sum of Rs. 50,000/- (Rupees fifty thousand) with one surety in the like amount, on following conditions;
 - (i) The applicant shall not

indulge into any offence of similar nature during the pendency of the Appeal;

(iii) The applicant shall furnish the names of his three close relatives with their addresses and phone numbers;

(4) In the event of breach of any of the conditions of bail, the bail granted to the applicant is liable to be cancelled.

(5) Bail be furnished in the trial Court.

5. Criminal Application stands disposed of in above terms.

(V.L. ACHLIYA,J)

kadam/