

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders

CRIMINAL APPLICATION NO. 3250 OF 2017

IN

CRIMINAL APPEAL NO. 287 OF 2017

RAMESH WAGHU DUKARE & ORS.

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. N. B. Narwade

APP for Respondent/State: Mr.G.O.Wattamwar

...

CORAM : V.L. ACHLIYA, J.

Dated: JULY 14, 2017

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ORDER :

The applicants have moved this application seeking suspension of sentence and release on bail during pendency of appeal, for the reasons set out in detail in the application.

2] Heard the learned counsel for the applicants and

A.P.P for the State. Perused the impugned judgment and order passed by the trial court as well as record and proceedings.

3] It is contended out that the prosecution has approached with the case that on 10/03/2012, the Tahsildar, Rahuri received the information of illegal lifting of sand from the river bed of river Pravara at village Chincholi. They reached on the spot at about 6.30 a.m. They found some persons, present on the spot and illegally extracting and transporting sand from the river bed of river Pravara. When those officials tried to apprehend them, they abused them and one of the accused i.e. accused No. 4 attempted to run away. When they obstructed him and accused tried to run over them by the tipper which he was driving. In the back-ground of the facts of the case, it is contended that even if entire case of prosecution goes unchallenged and unrebutted, still no offence u/s 143,147,395,506 read with section 149 of the Indian Penal Code attracted against the applicants. He submits that in the facts and circumstances of the case, at the most the offence of illegal extraction of sand and theft can be registered. It is contended that going by the facts of the case, no case is made out against the applicant that they had

formed unlawful assembly with an intention to commit act of dacoity or to assault the revenue officer so as to convict them u/s 395 read with section 109 of the Indian Penal Code. It is, therefore, contended that the applicants have good case to succeed in Appeal. During the trial, the applicants were on bail. In order to prefer Appeal, trial Court has suspended the sentence.

4] On the other hands, learned A.P.P appearing for respondent-State opposed the application with contentions that there is strong evidence to sustain the conviction. He submits that the prosecution witnesses have categorically deposed that the applicants were found on spot for extraction of sand from river and also machinery found to have extracted the sand and transport the same by the vehicle found on the spot. When the officer tried to take action against them, the applicants abused and threatened them to kill and attempt was also made to run over them by the tipper.

5] In order to appreciate the submissions advanced, I have perused the impugned judgment and order passed by the trial court as well as the evidence adduced by the prosecution. In my view, arguable case is made out to entertain the application to the extent of present applicants. The

allegations made against them as well as the evidence adduced by the prosecution spell out that they were alleged to have abused the revenue officer as well as police personnel. and indulging act of illegal extraction of sand and its transportation. There is no evidence to show that the present applicants tried to assault the revenue officer. Trial Court has acquitted them from charge u/s 307 read with section 149 of Indian Penal Code. Prima facie it is difficult to sustain charge u/s 395 read with section 149 of the Indian Penal Code. The maximum sentence awarded is of three years. I am, therefore, of the view that case is made out to entertain the application. During the trial, the applicants were on bail. In order to prefer Appeal, trial Court has suspended the sentence till the Appeal period. It may not be possible to immediately take up the Appeal for final hearing. In case the application is not entertained, there is every likelihood that Appeal may become infructuous. I am, therefore, inclined to allow the application.

6. It is clarified that the observations made above are made for limited purpose of deciding the present application. It shall not be assumed as expression of view of this Court on merit of the case.

ORDER

[1] Pending disposal of the appeal, the execution of substantive sentence stands suspended subject to deposit of fine amount by the applicants.

[2] Pending disposal of the appeal, applicant No.1 Ramesh Waghu Dukare (original accused No.1), applicant No.2 Vitthal Jagannath Late (original accused No.3) and applicant No.3 Prakash Dashrath Late (original accused No.6) be enlarged on bail on their furnishing bail in the sum of Rs. 50,000/- [Rupees Fifty Thousand] each with one or two sureties in like amount on following conditions. :-

[i] The applicants shall furnish the names and addresses of their three close relatives.

[ii] The applicants shall not indulge in the commission of similar offence during the pendency of the appeal.

[iii] Pending disposal of the Appeal, the applicants shall appear and record their appearance before the Police Inspector of Rahuri Police Station, Dist. Ahmednagar on the last day of each month in between 9 a.m. to 10 a.m.

[3] Bail be furnished within two weeks from the

date of this order.

[4] In case of breach of any condition, the bail granted to the applicants shall be liable to be cancelled.

[5] Police Inspector of Rahuri Police Station, Dist. Ahmednagar is directed to submit the report after every six months in respect of compliance of conditions.

[6] Bail be furnished in the trial Court.

[V.L.ACHLIYA, J.]