

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1040 OF 2017
IN
CRIMINAL APPEAL NO. 650 OF 2016

Pandurang Mahadeo Mali and anr.	Applicants
In the matter of	
The State of Maharashtra	Appellant
versus	
Pandurang Mahadeo Mali and anr.	Respondents

Mr. Ritesh Thobde, advocate for the applicants/respondents.
Mr. J. P. Yagnik, APP for the appellant/State.

**CORAM : RANJIT MORE &
SARANG V. KOTWAL, JJ.**

DATE : 26th JULY, 2017.

P. C. :

Heard the learned counsel for the applicants and learned APP
for the State.

2. The application is filed for bail pending the hearing and final disposal of the above appeal. The applicant Nos.1 and 2 are the original accused Nos.1 and 2, they along with accused No. 3 came to be charged for the offences punishable under Sections 302, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 (for short "the IPC"). By judgment and order dated 24th April, 2015, the learned Additional

Sessions Judge, Malshiras, convicted the original accused Nos.1 and 2 for the offence punishable under Section 323 of the IPC and sentenced them to suffer Simple Imprisonment for six months. Though, in the operative part of the said order, there is no reference of the applicants being acquitted of the offence punishable under Section 302 of the IPC, observations are made in paragraph 28 of the said judgment that the prosecution could not prove the charge under Section 302 of the IPC so far as original accused Nos. 1 and 2 are concerned.

3. Being aggrieved, the State has filed the aforesaid criminal appeal challenging the applicants acquittal under Section 302 of the IPC. The applicants have also filed a separate appeal No. 569 of 2015 challenging the conviction under Section 323 of the IPC. Both the appeals are admitted by separate orders. So far as the above appeal filed by the State is concerned, in addition to admission order, an action under Section 390 of the Code of Criminal Procedure, 1973 was directed and in pursuance of the said order, the applicants were arrested and produced before the learned Additional Sessions Judge at Malshiras. By an order dated 14th April, 2017, the learned Additional Session Judge rejected the applicants' bail application and, therefore, they are before this Court.

4. The applicants' bail application is rejected merely on the ground that the offence is serious. The learned Additional Sessions Judge overlooked the fact that the applicants have already been acquitted of the charge under Section 302 of the IPC and the appeal of the State is admitted by the High Court. Ordinarily, such bail application ought not to have been rejected. In any case, there is no reason why the applicants should remain in custody subsequent to their acquittal by the Court of competent jurisdiction. In the above circumstances, we allow this criminal application and release the applicants on executing a PR bond of Rs.10,000/- each.

5. The criminal application stands disposed off.

(SARANG V. KOTWAL, J.)

[RANJIT MORE, J.]