

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.75 OF 2016
IN
CRIMINAL APPEAL NO.115 OF 2014**

Mahadev @ Suresh Annaro Patil ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Shikur G. Kudle, Advocate for the Applicant.

Mr. V. V. Gangurde, APP for the Respondent/State.

....

CORAM : A.M.BADAR J.

DATED : 22nd JANUARY 2018.

P.C. :

1 This is application for suspension of conviction of the applicant/appellant recorded by the learned trial Court.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that in Sessions Case No.65 of 2010, the applicant along with others is convicted for the offence punishable under Section 324 read with Section 34 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for three years. The learned counsel further argued that the applicant has undergone the entire sentence imposed on him and, therefore,

during pendency of the appeal, his conviction needs to be stayed in order to enable the applicant to render his service as a 'teacher' in the school. The learned Advocate further argued that this case be treated as a special case in order to enable the applicant to render his service. It is further pointed out that the First Informant had tendered an affidavit before this Court stating that the applicant is not involved in the crime in question.

3 The learned Additional Public Prosecutor is seeking adjournment by stating that his office record is not traceable.

4 I have considered the submissions so advanced by the learned Advocate for the applicant/accused. In fact, the record shows that on earlier occasion similar such application bearing No.936 of 2014 was moved and it was rejected though in absence of the learned Advocate for the applicant/accused vide Order dated 9th October 2015 by this Court. Even the instant application was heard from time to time by this Court. The affidavit tendered by the First Informant who had adduced evidence before the trial Court was also considered by this Court as seen from Orders dated 4th April 2016, 15th April 2016 and 30th June 2016 passed by this Court (Coram : Smt.Sadhana S.Jadhav J.) Vide Order dated 4th April 2016, notice was ordered to be issued to deponent/First Informant Shrimant Ishwarappa Kore. Then vide Order dated 15th April 2016, the instant application was again considered by this

Court (Coram : Smt.Sadhana S.Jadhav J.). It was directed to the Registrar (Judicial-I) of this Court to conduct an inquiry in accordance with law as required under Section 340 of the Code of Criminal Procedure and to submit a report to the Court.

5 By Order dated 30th June 2016, this Court (Coram : Smt.Sadhana S.Jadhav J.) called upon the deponent named Shrimant Ishwarappa Kore in the witness box and heard him. Then the Registrar (Judicial-I) of this Court was directed to take appropriate steps and direct the officer concerned to file complaint against the deponent. In the wake of these three Orders, the fact that the First Informant/prosecution witness, at the earlier stage has filed an affidavit stating the applicant/appellant/accused is not involved in the crime in question is of no assistance to the applicant.

6 It is seen that earlier similar application bearing No.936 of 2016 filed by the applicant was rejected by this Court on 9th October 2016 (Coram : Abhay M. Thipsay J.). Subsequently, when the instant application was considered by this Court (Coram : Smt.Sadhana S.Jadhav J.), on 30th June 2016, following are the observations in Paragraphs 3 and 4 of the said Order :

“3..... It is also a matter of record that by an order dated 9.10.2015, this Court had refused to suspend the conviction

as there was no exceptional circumstance or extraordinary reasons for suspension of conviction.

4.... From perusal of the said Order, it appears that the Hon'ble Court was not only swayed by the fact that none appeared for the applicants, but had also taken into consideration the merits of the matter and had found that there were no exceptional circumstances warranting stay tot he conviction."

7 In this view of the matter and as the applicant is already convicted by the learned trial Court after considering evidence on record, mere filing of an affidavit of the eye-witness and alleging non-complicity of the applicant in the crime in question cannot be a exceptional ground for staying the conviction. In the result, the following Order :

- (i) The application is rejected.
- (ii) The hearing of the appeal be expedited in its category.

(A.M.BADAR J.)