

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.378 OF 2018
IN
CRI. REVISION APPLICATION NO.396 OF 2018**

1)	ShivramHari Khamkar;	
2)	Santosh Shivram Khamkar	.. Applicants
	Vs.	
	The State of Maharashtra	.. Respondent

.....
Mr.Rahul M. More, Advocate for the Applicants.
Mr.P.H. Gaikwad, APP for the Respondent - State.
.....

CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 7, 2018.

P.C. :

This is an application for suspension of sentence and grant of bail. The applicants along with accused no.2 were prosecuted for offence punishable under Sections 326, 323, 452 read with Section 34 of the Indian Penal Code ("IPC", for short). By judgment and order dated 30th January, 2012, the trial Court convicted all the accused for the offence punishable under Section 326 read with 34 of IPC and they were sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.5,000/-, each. They were also convicted for offence punishable

under Section 452 read with 34 of IPC and sentenced to suffer rigorous imprisonment for three years. They were further convicted for the offence punishable under Section 323 read with 34 of IPC and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.1000/-, each.

2 Applicants, thereafter, preferred an Appeal before the Additional Sessions Judge, Mangaon, Raigad, which was partly allowed by judgment dated 17th July, 2018. The Appellate Court modified the order and reduced the sentence of imprisonment. Accused no.1 and accused no.3 (applicants) were sentenced to suffer simple imprisonment for six months and to pay Rs.5000/-, each, for the offence punishable under Section 325 of IPC. They were also sentenced to suffer simple imprisonment for three months and six months for the offences under Section 324 and 452 of IPC, respectively. Accused no.2 was, however, acquitted by the Sessions Court.

3 Learned counsel for the applicants submits that the applicants are arrested in pursuant to dismissal of Appeal and they are in custody from 17th July, 2018. It is further submitted that the applicants were on bail during the trial and they have not

misused the liberty. It is submitted that there is gross error in the prosecution case. Prosecution did not examine any independent witnesses. There is error in the evidence relating to the spot panchanama as well as recovery panchanama. It is submitted that the evidence of the witnesses suffer from several infirmities, which were brought on record during the cross-examination of the witnesses. It is also submitted that the applicant no.1 is 71 years old person and applicant no.2 is son of applicant no.1.

4 Learned APP submitted that there are concurrent findings of two Courts and on the basis of evidence, the applicants were convicted by the trial Court. The Appellate Court has reduced the sentence and no further interference is required. Considering the submissions advanced by both the parties, case for suspension of sentence and grant of bail is made out.

5 Hence, I pass the following order:

:: ORDER ::

- (i) Pending hearing and final disposal of Criminal Revision Application No.396 of 2018, the

sentence awarded by the Court of Judicial Magistrate First Class, Roha, vide judgment and order 30th January, 2012, passed in Criminal Case No.112 of 2009, which was modified by the Sessions Court, by Judgment and order dated 17th July, 2018, passed in Criminal Appeal No.11 of 2012, is suspended and the applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.15,000/-, each with one or more sureties in the like amount;

- (ii) Criminal Application stands disposed of.

(PRAKASH D. NAIK, J.)