

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL REVISION APPLICATION NO.2/2018

Rupesh s/o Haribhau Mundle

..vs..

Shri Charandas s/o Fulchand Chandanbawane and anr

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

Court's or Judge's Order

Shri A.K. Chaube, Counsel for the applicant.

Shri V.A. Thakare, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : JANUARY 11, 2018.

1. Heard learned counsel Shri A.K. Chaube for the applicant and learned Additional Public Prosecutor Shri V.A. Thakare for the State.

2. Since the question of importance is raised in the present criminal revision application, **RULE**.

3. Call record and proceedings.

4. Learned Additional Public Prosecutor Shri V.A. Thakare waives service on behalf of the State.

Criminal Application (APPR) No.4/2018

1. This is an application for suspension of substantive jail sentence and for grant of bail.

2. Heard learned counsel Shri A.K. Chaube for the

applicant and learned Additional Public Prosecutor Shri V.A. Thakare for the State.

3. The applicant was convicted by learned Judicial Magistrate First Class at Bhiwapur in Summary Criminal Case No.41 of 2010 dated 22.5.2015 for the offence punishable under Section 497 of the Indian Penal Code, 1860 and was directed to suffer rigorous imprisonment for 6 months and to pay a fine of Rs.1500/- and, in default to pay the fine amount, to suffer simple imprisonment of one month.

4. Being aggrieved by the said judgment and order of conviction, the applicant preferred an appeal before learned Sessions Judge at Nagpur. The said appeal was registered as Criminal Appeal No.161 of 2015 and vide judgment and order dated 2.1.2018 learned Additional Sessions Judge-1 at Nagpur dismissed the appeal. Thereafter, the applicant ought to have been taken into custody by the Lower Appellate Court. However, an application under Section 389 of the Code of Criminal Procedure for suspension of substantive jail sentence and for grant of bail was filed by the applicant before the Lower Appellate Court. The said application was at Exhibit 15 and the Lower Appellate Court allowed the application and suspended the substantive jail sentence in order to give an opportunity to the applicant to approach to this Court.

5. The procedure adopted by learned Additional

Sessions Judge-1 at Nagpur is clearly contrary to law. There is no provision in the Code of Criminal Procedure that the Lower Appellate Court can exercise the powers under Section 389 of the Code.

6. Be that as it may, the applicant was released on bail by the Lower Appellate Court.

7. Today, when the matter was taken up for consideration, the applicant is present in the Court and he has submitted himself to the Court. I treat this his surrender before the Court and treat his presence as custody.

8. The applicant was on bail throughout i.e. during the course of the Trial and during course of the appeal. At any point of time, the applicant has not misused the liberty, is the statement made by learned counsel Shri A.K. Chaube for the applicant.

9. Statement accepted.

10. Looking to the facts that the criminal revision application gives rise an important question for consideration and it is admitted and the applicant was on bail throughout during the course of the Trial and during course of the appeal, I pass the following order:

ORDER

(a) The criminal application is allowed.

(b) Substantive jail sentence imposed upon the applicant by learned Judicial Magistrate First Class at Bhiwapur in Summary Criminal Case No.41 of 2010 vide judgment dated 22.5.2015 which is confirmed by learned Additional Sessions Judge-1 at Nagpur in Criminal Appeal No.161 of 2015 stands remained suspended during the pendency of the present criminal revision application.

(c) The applicant to execute the fresh bond before learned Additional Sessions Judge-1 at Nagpur in the sum of Rs.15,000/- with two solvent sureties of the like amount.

(d) The applicant shall remain personally present before this Court at the time of final hearing of the criminal revision application.

(e) Today's presence of the applicant stands discharged.

JUDGE

!! BRW !!

...../-