

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

CRIMINAL APPLICATION (APPA) NO.589/2018

IN

CRIMINAL APPEAL NO.394/2018

Padmakar s/o Sadaram Neware

..VS..

State of Mah., thr. the Police Station Officer, Duggipar Police Station, Duggipar, Tahsil
Sadak Arjuni, District Gondia

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

Court's or Judge's Order

.....
Shri A.N. Ansari, Counsel for the applicant.
Shri S.D. Sirpurkar, Addl.P.P. for the State.

CORAM : MRS. SWAPNA JOSHI, J.

DATED : JULY 13, 2018.

1. By this application, the applicant prays for suspension of substantive jail sentence and grant of bail.

2. The applicant was convicted on 13.6.2018 by learned Additional Sessions Judge, Gondia in Special (ATRO) Case No.15/2010 for offence punishable under 354 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.5000/- and in default of the same to suffer rigorous imprisonment for 1 months. He was also convicted for offence punishable under Section 341 of the Indian Penal Code and sentenced to suffer simple imprisonment for 1 month and and to pay a fine of Rs.500/- and in default of the same to suffer simple imprisonment for 1 month.

1. I have heard learned counsel Shri A.N. Ansari for the applicant and learned Additional Public Prosecutor Shri S.D. Sirpurkar for the non-applicant/State.

2. Learned counsel Shri A.N. Ansari for the applicant submits

that the applicant was on bail during the pendency of the Trial. However, learned Trial Judge has not suspended the substantive jail sentence as the same was for 5 years. He further contended that under Section 354 of the I.P.C., prior to amendment, the sentence was for 2 years. However, learned Trial Judge has failed to consider the said aspect and has illegally convicted the applicant and awarded sentence for 5 years. He submitted that the incident had taken place prior to the amendment. However, the said aspect has not been considered by learned Trial Judge.

3. Having heard learned counsel Shri A.N. Ansari for the applicant and learned Additional Public Prosecutor Shri S.D. Sirpurkar for the State and gone through the contents of the application, I am of the considered opinion that the substantive jail sentence imposed upon the applicant has to be suspended, as per order below:

ORDER

(i) The criminal application stands allowed.

(ii) The substantive jail sentence imposed upon the the applicant on 13.6.2018 by learned Additional Sessions Judge, Gondia in Special (ATRO) Case No.15/2010 shall remain suspended during the pendency of the present appeal.

(iii) The applicant shall be released on bail on executing a fresh bond in the sum of Rs.15,000/- with one or two solvent sureties.

(iv) Learned Trial Judge before whom the bail bond will be executed shall ensure that before execution of the bail, the entire fine amount is deposited by the applicant.

.....3/-

(v) The applicant shall remain personally present before this Court at the time of final hearing of the appeal.

The application stands disposed of accordingly.

JUDGE

!! BRW !!