

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

CRIMINAL APPLICATION NO. 1135 OF 2018

IN

CRIMINAL APPEAL NO. 407 OF 2018

Dnyaneshwar Kisan Chandane ...Applicant

Versus

The State of Maharashtra ...Respondent

Nilesh U. Masurkar - Advocate for the appellant
A. S. Patil, APP for the Respondent - State

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 17th JUNE 2019.

P.C. :

1. The applicant was charged alongwith others for the offences under sections 363, 366-A of the IPC and 3, 4, 5 and 6 of Immoral Traffic (Prevention) Act 1956. The Trial Court has convicted all the accused and sentenced them as follows :

1) Accused Mankebai Gopal Rathod and Laxmibai Dyaneshwar Chandane are convicted for the offence punishable under Section 366A of the Indian Penal Code vide Section 235(2) of Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for period of three years each and sentenced to pay fine of Rs. 3000/- each. In default of payment of fine, accused nos. 1 and 3 are sentenced to suffer simple imprisonment for the period of three months each.

2) Accused Dnyaneshwar Kisan Chandane is convicted for the offence punishable under section 3 of Immoral Traffic (Prevention) Act, 1956 vide section 235 (2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for period of one year and sentenced to pay fine of Rs. 2000/-. In default of payment of fine, accused no. 2 is sentenced to suffer simple imprisonment for two months.

3) Accused Dnyaneshwar Kisan Chandane is convicted for the offence punishable under section 4 of Immoral Traffic (Prevention) Act, 1956 vide section 235 (2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for period of seven years and sentenced to pay fine of Rs. 1000/-. In default of payment of fine, accused no. 2 is sentenced to suffer simple imprisonment for two months.

4) Accused Dnyaneshwar Kisan Chandane is convicted for the offence punishable under section 5 of Immoral Traffic (Prevention) Act,

1956 vide section 235 (2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for period of seven years and sentenced to pay fine of Rs. 2000/-. In default of payment of fine, accused no. 2 is sentenced to suffer simple imprisonment for two months.

5) Accused Dnyaneshwar Kisan Chandane is convicted for the offence punishable under section 6 of Immoral Traffic (Prevention) Act, 1956 vide section 235(2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for period of seven years and sentenced to pay fine of rs. 5000/-. In default of payment of fine, accused no. 2 is sentenced to suffer simple imprisonment for three months.

6) Accused Mankebai Gopal Rathod, Dnyaneshwar Kisan Chandane and Laxmibai Dyaneshwar Chandane are acquitted for the offence punishable under section 363 of the Indian Penal Code vide section 235 (1) of the Code of Criminal Procedure.

7) Accused nos. 1 and 3 are acquitted for the offence punishable under section 3, 4, 5, 6 of Immoral Traffic (Prevention) Act vide section 235 (1) of the Code of Criminal Procedure.

8) Accused nos.2 is acquitted for the offence punishable under section 366A of the Indian Penal Code vide section 235 (1) of the Code of Criminal Procedure.

9) Substantive sentences imposed on accused no. 2 shall run concurrently.

10) Amount of fine if paid, out of that Rs. 10,000/- be given to the victim in view of section 357 (1) of the Code of Criminal Procedure.

11) Accused no. 1 is in jail since 29.06.2012 till 26.09.2012, accused no. 2 is in jail since 02.07.2012 till 08.10.2012 and accused no.3 is in jail since 02.07.2012 till 08.10.2012. Therefore, period of detention undergone by accused nos. 1 to 3 during investigation, inquiry or trial be set off against sentence of imprisonment imposed on them as per Section 428 of Code of Criminal Procedure.

2. Pending appeal, this Court suspended the sentence and enlarged on bail the other accused, who were awarded lesser punishment. As far as the appellant is concerned, he was imposed the major sentence of 7 years of rigorous imprisonment. Indeed, the allegations are quite disturbing, and precisely for these reasons, the learned APP has opposed any lenient approach to the application.

3. I reckon, before conviction, the appellant was in

judicial custody for more than 3 months and later was enlarged on bail. During that period, the appellant has not faced any allegation of abusing the bail granted to him. Now after the judgment on 12.9.2017, the appellant has been serving the sentenced for more than 19 months. Under those circumstances, it serves the interest of justice to suspend the sentence and enlarge the applicant on bail, subject to the following conditions:-

ORDER

- (i) Application is allowed.
- (ii) Substantive sentence imposed on the applicant is suspended and is directed to be released on bail on executing P.R. Bond in the sum of Rs.20,000/- and on furnishing two sureties in the like amount by each.
- (iii) Pending the appeal, the applicant/accused should not contact the any member of the victim's family in any manner.
- (iv) The applicant's failure to abide by these

conditions shall entail the prosecution to apply for cancellation of bail now granted to the applicant/accused.

(v) Application is according disposed of.

[DAMA SESHADRI NAIDU, J.]