

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

CRIMINAL APPLICATION (APPA) NO.992/2019

IN

CRIMINAL APPEAL NO.755/2019

Ratanlal Dalaji Berwa and ors

..VS..

State of Mah., thr. PSO PS Barshitakli, Taluka Barshitakli, District Akola

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

Court's or Judge's Order

.....
Shri H.N.Mohta, Counsel for Applicants.
Shri M.K.Pathan, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE, J.
DATED : DECEMBER 17, 2019.

1. This is an application for suspension of substantive jail sentence and for grant of bail.
2. Heard learned counsel Shri H.N.Mohta for applicants and learned Additional Public Prosecutor Shri M.K.Pathan for the State.
3. By judgment and order of conviction, impugned in the present appeal, dated 14.11.2019 passed by learned Additional Sessions Judge, Akola in Sessions Trial Case No.88/2014, applicants were convicted for offence punishable under Section 9-B of the Explosives Act, 1884 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 2 years and to pay a fine Rs.20,000/- each and in default of payment of the fine

amount to suffer rigorous imprisonment for 1 month.

Applicants were also convicted for offence punishable under Section 5 of the Explosive Substances Act, 1908 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.50,000/- each and in default of payment of the fine amount to suffer rigorous imprisonment for 6 months.

4. Learned counsel Shri H.N.Mohta for applicants, submitted that in view of Section 7 of the Explosive Substances Act, 1908, the Trial itself ought not to have proceeded further because there was no consent as envisaged in Section 7 of the said Act.

5. Learned Judge of the Court below was of opinion that in view of law laid down by Honourable Apex Court in the case of Loopchand Naruji Jat and another vs. State of Gujarat, reported at (2004)7 SCC 566, sanction was not necessary. In my view opinion, learned Judge of the Court below has not applied the said law correctly. In the case cited *supra*, the prosecution was for offence under the Explosives Act, 1884 and not for offence under the Explosive Substances Act, 1908.

6. In this view of the matter, judgment and order of conviction, impugned in the present appeal, requires second thought.

7. From the judgment and order of conviction, it is clear that applicants were on bail during Trial. It is nobody's

case that during Trial applicants misused liberty granted to them in their favour. Hence, I pass following order:

ORDER

(1) The criminal application is allowed.

(2) The substantive jail sentence imposed upon applicants, by judgment and order of conviction, impugned in the present appeal, dated 14.11.2019 passed by learned Additional Sessions Judge, Akola in Sessions Trial Case No.88/2014, shall remain suspended during the pendency of the present appeal.

(3) Applicant No.1-Ratanlal Dalaji Berwa, applicant No.2-Harful Daluji Choudhary, and applicant No.3-Ratanlal Sohanji Choudhary, be released on bail on they executing a P.R.Bond in the sum of Rs.1.00 lac by each of them with one solvent surety of the like amount by each of them.

(4) Learned Judge of the Court below before whom the bail bonds will be executed shall ensure that applicants have deposited entire fine amount.

(5) Applicants are directed to attend Barshitakli Police Station, District Akola once in 3 months.

(6) Applicants are directed to remain personally present at the time of final hearing of the present appeal before this

Court.

With this, the criminal application stands disposed of accordingly.

JUDGE

!! BRW !!