

(1)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.272 OF 2020
IN
CRIMINAL APPEAL NO.173 OF 2020

Jitendra s/o Dilip Gavande
Age: 25 Yrs., occu. Driver,
R/o Chite Pimpalgaon,
Tq. and Dist. Aurangabad = APPLICANT
(Orig. Accused)

VERSUS

1. The State of Maharashtra
and Anr. = RESPONDENTS

Mr.K.A.Ingle, Advocate for Applicant;
Mr.SW Mundhe, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 21st October, 2020.

PER COURT:-

1. Heard learned Advocate Shri K.A.Ingle for applicant and learned APP Shri SW Mundhe, for Respondent-State.

2. In this Criminal Application, the applicant prays for suspension of substantive sentence and releasing him on bail during pendency and final hearing of the Criminal Appeal.

3. The applicant is the original accused in Sessions Case No.285 of 2013, who has been convicted by learned Additional Sessions Judge,

(2)

Aurangabad vide judgment and order dated 11th March, 2019. The applicant has been convicted, thus, -

a) Under Section 8 of POCSO Act, and sentenced to suffer R.I. for three years and to pay fine of Rs.1000, in default, R.I. for one month.

No separate sentence is awarded to the applicant-accused for having committed the offence punishable under Section 354(A)(2) of IPC. The Amount of fine has been ordered to be paid to the informant-victim as compensation.

4. It is vehemently submitted on behalf of the applicant that the learned Trial Court did not appreciate the evidence brought on record. There is delay of two days in lodging the report to the police Station and no plausible explanation to that effect is shown. There is material inconsistencies in the testimonies of PW Nos.1 and 2. The prosecution has failed to examine any independent witness. The prosecution has failed to prove the spot panchanama and seizure of the auto rickshaw. Evidence of PW Nos.1 and 2 was not recorded in terms of the law, and, therefore, their testimonies have no evidentiary value in the eye of law. The

(3)

prosecution has examined one Laxman Narayan Nemade as PW 3, who is Headmaster of Swami Vivekanand Vidyalaya, Chite Pimpalgaon, where the victim was studying, who deposes that he had issued the bonafide certificate. However, he did not produce on record an extract of the School leaving certificate to indicate correct date of birth of the victim and thus the prosecution has failed to establish date of birth of the victim. The Sessions Court erred in not considering the aspect that the prosecution has utterly failed in not establishing the guilt of the accused beyond reasonable doubt in the light of omissions on the part of the prosecution witnesses. Inference of the guilt of the applicant is drawn by the Trial Court in absence of any cogent and reliable evidence which is erroneous and contrary to the evidence on record. The applicant was on bail during the trial and he has not misused the liberty.

. The learned Advocate further argued that the sentences awarded to the applicant by the learned Sessions Judge is a short term sentences. The learned Advocate further submits that the appeal involves legal points/issues, which the

(4)

applicant/appellant wants to agitate and address them at the time of final hearing of the appeal and the applicant have every hope of success in the appeal. Consequently, the applicant prays for enlarging him on bail by suspending the substantive sentence awarded by the learned Sessions Judge on such terms and conditions as this Court may deem fit and proper.

5. Per contra, learned APP resisted the application and supported the reasons assigned by the learned Trial Judge while convicting and imposing the sentence against the applicant. The learned Trial Judge has properly scanned the evidence brought on record. It is, therefore, submitted that the application being sans merit, deserves to be dismissed and it be dismissed accordingly.

6. As it appears from the impugned judgment of the learned Trial Judge, particularly the sentence, that has been awarded against the applicant for the offences, in question, is the short-term sentences. In view of the decision in the case of Kiran Kumar Vs. State of M.P. - (2001) 9 SCC 211, benefit will have to be extended to the

(5)

applicant-appellant when he has demonstrated that the material and significant points raised by him in the appeal are required to be considered at the time of final hearing of the appeal. Further, the applicant was on bail throughout the trial, has not misused his liberty. In view of the matter, it can be said that a case is definitely made out for releasing the applicant on bail by suspending the substantive sentence during pendency and final disposal of the appeal. Hence, following order,-

ORDER

- i. The Criminal Application stands allowed.
- ii. The substantive sentence imposed on the applicant by learned Additional Sessions Judge, Aurangabad vide judgment and order dated 11th March, 2019 in Sessions Case No.285 of 2013, is hereby suspended till hearing and final disposal of the appeal.
- iii. The applicant be released on executing PR and SB of Rs.15,000/ (Rupees fifteen thousand) each.
- iv. The applicant shall not commit

(6)

any criminal activity.

v. The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and, thereafter, the Trial Judge to fix dates for their subsequent appearances.

vi. In case of two consecutive defaults on the part of the applicant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

vii. Bail before the Trial Court.

(SMT. VIBHA KANKANWADI,J.)

BDV