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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1674 OF 2020
IN
CRIMINAL APPEAL No.512 OF 2020

1) Namdeo s/o Vitthal Kolpewad
and Anr. = APPLICANTS

VERSUS

The State of Maharashtra = RESPONDENT

Mr.Taher Ali, Advocate for Applicants;
Mr.SR Yadav, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 9th December, 2020.

PER COURT:-

1. Heard learned Advocate and learned APP appearing for respective parties.

2. In this Criminal Application, the applicants pray for suspension of substantive sentence and releasing them on bail during pendency and final hearing of the Criminal Appeal.

3. The applicants are the original accused in Sessions Case No.07 of 2018, who have been convicted by learned Additional Sessions Judge, Bhokar vide judgment and order dated 22nd July, 2020. The applicants are convicted, thus, -

a) for the offence under Section 325 of IPC and sentenced to suffer R.I. for three years and to pay fine of

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Rs.1,000/-, in default, S.I. for one month.

4. It is vehemently submitted on behalf of the applicants that the learned Sessions Judge erred in convicting the appellants on the basis of assumptions and presumption which results failure of the prosecution to bring the guilt of the accused at home. False implication of the applicant is apparent from the testimony of the witnesses and other evidence. The Court below did not exercise the discretion while giving benefit of doubt to the applicants-appellants. The learned Sessions Judge failed to consider that evidence of PW 5 and 6, who are the independent witnesses, which is full of doubts and serious irregularities and infirmities can be noticed from their cross-examination and, therefore, their evidence ought not to have been believed for convicting the applicants. The prosecution failed to establish chain of circumstances completely and, therefore, applicants could not have been convicted. The Medical evidence is not properly considered. Inference of the guilt of the applicants is drawn by the Trial Court in absence of any cogent and

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reliable evidence which is erroneous and contrary to the evidence on record. The applicants were on bail during trial till impugned judgment is delivered. They never misused their liberty during trial. They have deposited the fine amount and they are ready to abide by the conditions that may be imposed. The learned Advocate further argued that the sentence awarded to the applicants by the learned Sessions Judge is a short term sentence.

5. The learned Advocate further submits that the appeal involves other legal and technical points/issues, which the applicants/appellants intend to agitate and address them at the time of final hearing of the appeal and the applicants have every hope of success in the appeal. Consequently, the applicant prays for enlarging them 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.

6. Per contra, learned APP resisted the application and supported the reasons assigned by the learned Sessions Judge while convicting and imposing the sentence against the applicants. The learned Sessions Judge has properly scanned

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the evidence brought on record. It is, therefore, submitted that the application being sans merit, deserves to be dismissed and it be dismissed accordingly.

7. As it appears from the impugned judgment of the learned Sessions Judge, particularly the sentence, that has been awarded against the applicants for offence, 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 applicants-appellants when they have demonstrated that the material and significant points raised by them in the appeal are required to be considered at the time of final hearing of the appeal. Further, the applicants were on bail during the trial and had also deposited the fine amount. In view of the matter, it can be said that a case is definitely made out for releasing the applicants on bail by suspending the substantive sentence during pendency and final disposal of the appeal. Hence, following order,-

ORDER

i. The Criminal Application stands

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allowed.

ii. The substantive sentence imposed on the applicants by learned Additional Sessions Judge, Bhokar, vide judgment and order dated 22nd July, 2020 in Sessions Case No. 07 of 2018, is hereby suspended till hearing and final disposal of the appeal.

iii. The applicants be released on their executing PR and SB of Rs.15,000/ (Rupees fifteen thousand) each.

iv. The applicants shall not commit any criminal activity.

v. The applicants 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 applicants to remain present before the Trial Court, the Trial Court to inform this Court

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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