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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1718 OF 2020
IN
CRIMINAL APPEAL NO.517 OF 2020

Pankaj s/o Wasudeo Saigal
Age: 30 Yrs. Occu. Labour,
R/o Ashti, Tq.Ashti,
District Beed.

= APPLICANT
(Orig.Accused No.1.)

VERSUS

The State of Maharashtra = RESPONDENT

Mr.VP Savant,Advocate for Applicant;
Mr.SW Mundhe,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 5th October, 2020.

PER COURT:-

1. Heard learned Advocate and learned APP appearing for respective parties.
2. In this Criminal Application, the applicant, who the original accused No.1, prays for suspension of substantive sentences and releasing him on bail during pendency and final hearing of Criminal Appeal No.517/2020.
3. The applicant is the original accused No.1 in Sessions Case No.197 of 2019, who has been convicted by learned Sessions Judge, Beed vide judgment and order dated 28th July, 2020. The

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applicant has been convicted and sentenced, thus, -

a) Under Section 353 of IPC and sentenced to suffer R.I. for one year and to pay fine of Rs. 500, in default, R.I. for ten days.

b) Under Section 332 of IPC and sentenced to suffer R.I. for two years and to pay fine of Rs.500, in default, R.I. for ten days; and

c) Under Section 506 of IPC and to suffer R.I. for one year and to pay fine of Rs.500, in default, R.I. for ten days.

. All the sentences are ordered to run concurrently.

4. It is vehemently submitted on behalf of the applicant that the the learned Trial Judge has misread and misconstrued the evidence brought on record and erred in convicting the applicant. The prosecution has utterly failed to prove charge under Section 353, 332 and 506 of IPC by cogent and reliable evidence on record and the conviction is not sustainable in law and facts of the case. The applicant has no criminal antecedents and may loose his job if he is made to undergo imprisonment. The applicant was on bail and he did not misuse the liberty of bail. He has deposited the fine amount

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in the Trial Court. The learned Advocate further argued that the sentences awarded to the applicant by the learned Special Judge are short term sentences. The learned Advocate further submits that the appeal involves other legal points/issues, which the applicant/appellant wants to agitate and address them at the time of final hearing of the appeal and the applicant has every hope of success in the appeal. It is further submitted that the another co-accused has been released by this Court and claims parity of the same. Consequently, the applicant prays for enlarging him on bail by suspending the substantive sentences awarded by the learned Sessions Judge on such terms and conditions as this Court may deem fit and proper.

5. Per contra, learned APP vociferously resisted the application and supported the reasons assigned by the learned Sessions Judge while convicting and imposing the sentences against the applicant. The learned APP submitted that the case is based on the direct as well as other evidence and the evidence of the informant PW 1 – Dr. Lande is well corroborated by PW 3 as well as PW 4 and,

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therefore, the conviction is warranted in the matter. The Evidence of PW 5 – I.O. shows that the incident as reported has happened in reality and the accused has committed the offence charged against him. He then submitted that even the spot of the incident also proved. Ample evidence is on record which indicates that, at the relevant time, the informant Dr. Lande was performing public duty and accused deterred and voluntarily caused hurt to Dr. Lande and as such, the prosecution has proved the guilt of the accused beyond reasonable doubt. The learned Sessions 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 Sessions Judge, particularly the sentences, that have been awarded against the applicant for several offences, are 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 applicant-appellant when he has demonstrated that the

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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 and he 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 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 Sessions Judge, Beed vide judgment and order dated 28th July, 2020 in Sessions Case No.197 of 2019, 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 any criminal activity.

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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