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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1990 OF 2020
IN
CRIMINAL APPEAL NO.581 OF 2020

Shafik Shabbir Shaikh = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT

Mr. Satej S.Jadhav, Advocate for Applicant;
Mr. SW Mundhe, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 4th November, 2020.

PER COURT:-

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

2. In this Criminal Application, the
applicant, who is the original accused, 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.343 of 2015, who has been
convicted by learned Sessions Judge, Ahmednagar
vide judgment and order dated 1st October, 2020.

(2)

The applicant has been convicted, thus, -

a) Under Section 7 punishable under Section 8 of POCSO Act, and sentenced to suffer R.I. for three years and to pay fine of Rs.50,000, in default, S.I. for six months.

b) Under Section 451 of IPC and sentenced to suffer S.I. for one years and to pay fine of Rs. 1,000/-, in default, S.I. for ten days

. Both the substantive sentences are order to run concurrently.

4. It is vehemently submitted on behalf of the applicant that, PW No.1 - Shamrao who is a panch witness to the spot panchanama has proved the spot panchanama at Exh.9. PW 3 - Akshaya is an independent witness who turned hostile. There is no materiel to show presence of the appellant near house of the victim and no witness from such busy area has been examined to depose that because of one person there was commotion and the victim has raised hue and cry at the given time. As the applicant is not resident of Ahmedangar and, therefore, he would not be knowing the independent witnesses which ought to have been examined by the prosecution. The applicant also deserves to have

(3)

benefit of doubt. 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 brought on record. The applicant was on bail during the trial of the Sessions Case and he has not misused the liberty. The learned Sessions Judge has also given set off as per Section 428 of Cr.P.C. As the applicant was in jail since 18.4.2015 till 18.5.2015. The learned Advocate further argued that the sentences awarded to the applicant by the learned Sessions Judge are short term sentences. The learned Advocate further submits that the appeal involves other legal and technical points/issues, which the 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 Special Judge on such terms and conditions as this Court may deem fit and proper.

5. Per contra, learned APP resisted the

(4)

application and supported the reasons assigned by the learned Sessions Judge while convicting and imposing the sentence against the applicant. The learned APP submitted that the case is based on the direct as well as other evidence. 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 offences, in question, 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 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

(5)

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, Ahmednagar, vide judgment and order dated 1st October, 2020 in Sessions Case No.343/2015, 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.

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

(6)

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