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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2381 OF 2020
IN
CRIMINAL APPEAL NO.665 OF 2020

- 1) Shivaji Dagadu Kale
Age: 55 Yrs., occu. Agril.
- 2) Chandabai Shivaji Kale
Age: 48 Yrs., occu. Agril.
- 3) Sambhaji Shivaji Kale,
Age: 21 Yrs., occu. Agril.

All R/o Bhavinimgaon,
Tq. Shegaon, Dist. Ahmednagar = **APPLICANTS**

VERSUS

- 1) The State of Maharashtra
Through Shevgaon Police
Station, District Ahmednagar = **RESPONDENT/S**

Mr. GR Syed, Advocate for Applicants;
Mr. SR Yadav, APP for Respondent-State.

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

PER COURT:-

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

2. The applicants, by this Criminal Application,
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.257/2017 before the Sessions Judge, at

Ahmednagar. The applicants have been convicted for the offence punishable under Section 325 read with 34 of IPC and they are sentenced to suffer simple imprisonment for three months each and to pay fine of Rs.25,000 each, in default, simple imprisonment for three months each. Out of fine amount (if recovered) an amount of Rs. 70,000/- has been ordered to be paid to injured witness as compensation under Section 357 of Cr.P.C.

4. It is vehemently submitted on behalf of the applicants that there is no cogent and sufficient evidence. They did not commit the offence as alleged. The learned Judge erred in holding them guilty of the offence, in question, on the basis of assumption and presumption and the prosecution failed to bring the guilt of the accused at home. False implication of the applicants is apparent. The prosecution could not establish the offence by adducing medical evidence. The statements recorded by the Investigating Officer under Section 164 of Cr.P.C. were not considered. The applicants are entitled to get benefit of doubt. The applicants have deposited the fine amount before the court below. The applicants have challenged the judgment and order of conviction passed by the learned Sessions Judge by way of the appeal *inter alia* on numerous grounds as set out in the appeal itself and the applicants are having every hope of success therein. Consequently, the applicants pray for enlarging them on bail by suspending the substantive sentence, which is a short-term sentence, imposed by the learned Judge.

5. Per contra, learned APP strongly opposed the application and supported the reasons given by the

learned Sessions Judge while convicting and imposing the sentence against the applicants and submitted that the impugned judgment requires no interference and, therefore, the application lacks merit, it deserves to be dismissed and it be dismissed accordingly.

6. As it appears from the impugned judgment of the learned Sessions Judge, particularly the sentence, that has been imposed against the applicants for the offence, in question, is a short-term sentence, in view of the decision in the case of Kiran Kumar Vs. State of M.P. - (2001) 9 SCC 211, and, therefore, benefit will have to be given to the applicants-appellants when they have demonstrated that the material and significant points raised by them in the appeal are required to be taken into consideration at the time of final hearing of the appeal. The Applicants - appellants are, therefore, entitled to be released on bail by suspending sentence, during pendency of the appeal filed by them. Hence, following order,-

ORDER

I. The substantive sentence imposed upon the applicants by learned Sessions Judge, Ahmednagar in Sessions Case No. 257/2017 vide order dated 1.12.2020, stands suspended till final disposal of the Criminal Appeal.

II. The applicants be released on their executing PR and SB of Rs.30,000/- with two sureties of Rs.15,000/- each.

III. The applicants shall not indulge in any criminal activity.

IV. The applicants-appellants to remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, starting from the

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date they tender bail papers and, thereafter the Trial Judge to fix dates for their subsequent appearances.

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

III. The Criminal Application for bail and suspension of the sentence stands disposed of.

V. Bail before the Trial Court.

(SMT. VIBHA KANKANWADI,J.)

BDV