

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3318 OF 2018
IN
CRIMINAL APPEAL NO.559 OF 2017

Abhilesh Shankar Patel,
Age 22 yrs., Occ. Driver,
R/o Karjat, Tq. Shahada,
Dist. Nandurbar.

... Applicant

... Versus ...

The State of Maharashtra
Through Police Station In-charge,
Police Station, Supa, Tq. Parner,
Dist. Ahmednagar.

... Respondent

...

Mr. S.B. Chavan, Advocate for applicant

Mr. S.W. Munde, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 16th DECEMBER, 2020.

ORDER :

1 Present application has been filed for suspension of sentence.
The applicant has been convicted in Sessions Case No.159/2016 by
Additional Sessions Judge, Ahmednagar on 20.04.2017. He has been

sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.5,000/-, in default to suffer simple imprisonment for two months for the offence punishable under Section 394 read with Section 34 of the Indian penal Code. He has been further sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.5,000/-, in default to suffer simple imprisonment for two months for the offence punishable under Section 397 read with Section 34 of the Indian Penal Code. He has been further sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/-, in default to suffer simple imprisonment for seven days for the offence punishable under Section 342 read with Section 34 of the Indian Penal Code.

2 Heard learned Advocate Mr. S.B. Chavan for applicant and learned APP Mr. S.W. Munde for respondent.

3 It has been submitted on behalf of the applicant that there is no direct evidence to connect the applicant with the incident in question and nothing has been recovered from him so as to incriminate him. The applicant has challenged the conviction and sentence on various grounds by filing an appeal. The applicant was on bail during trial. He has not misused the liberty granted to him. The amount of fine has been deposited by him in the trial Court. The learned Counsel, therefore, submits that the applicant may

be enlarged on bail by suspending the substantive sentence of imprisonment during pendency of the appeal.

4 The learned APP strongly opposed the application. He submitted that the applicant was identified by the informant/victim during the T.I. parade. There is sufficient evidence on record leading to the conviction of the applicant. He, therefore, prayed that the application may be rejected.

5 The incident has taken place on 23.08.2015 at about 00.30 hours near village Waghunde at Nagpur-Pune Highway. The assailants were unknown to the informant and others. The informant seems to have identified the applicant during the T.I. parade but he does not seem to have attributed any specific role against the applicant at the time of the alleged identification. No incriminating article has been discovered at the instance of the applicant. The spot of the incident was accessible to all and it cannot be said that it was seen for the first time at the instance of the applicant.

6 Considering the evidence of the prosecution against the applicant, the fact that the applicant was on bail during the trial, hearing of the appeal would take a considerable time and the applicant will have to be extended an opportunity of agitating his grounds of objections against the conviction and sentence passed against him, I am of the view that it will be

just, proper and expedient to suspend the substantive sentence of imprisonment passed against the applicant during pendency of the appeal.

7 Hence, the following order.

ORDER

1 The Criminal Application stands allowed.

2 The substantive sentence imposed on the applicant/appellant by the learned Additional Sessions Judge, Ahmednagar vide Judgment and order dated 20.04.2017 in Sessions Case No.159 of 2016, is hereby suspended till hearing and final disposal of Criminal Appeal No.559 of 2017.

3 The applicant Abhilesh Shankar Patel be released on PR. of Rs.30,000/- (Rupees Thirty Thousand only) with two sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.

4 The applicant shall not commit any criminal activity.

5 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 his subsequent appearances.

6 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.

7 Bail before the Trial Court.

(Smt. Vibha Kankanwadi, J.)

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