

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1291 OF 2020

**MAHENDRA MOTILAL PAKHARE
AND ANR.**

... PETITIONER.

VERSUS

**THE STATE OF MAHARASHTRA
AND ORS.**

... RESPONDENTS.

Mr.Sachin R. Pawar, Advocate for the Petitioner.

Mr.RM Pethe, Additional Public Prosecutor for the State.

CORAM : A. M. BADAR, J.

DATE : 6TH MARCH 2020.

P.C.:

1. By this petition, the petitioner/convicted accused are challenging order dated 24.2.2020 passed by the learned appellate court, below application-Exhibit 11 in Criminal Appeal No.203/2019.

2. Heard the learned counsel appearing for the petitioners/ convicted accused at sufficient length of time. He argued that conviction warrant has been issued by the learned Judicial Magistrate, First Class and his application for suspension of sentence has not been decided by the appellate court.

3. I have considered the submissions so advanced and also perused the prayer clause of the petition.

4. The petition is challenging the Order below Exhibit 11 passed in Criminal Appeal No.203 of 2019. By Order below Exhibit 11, application for exemption moved by the petitioner/accused persons came to be rejected by the learned appellate court with reason that the petitioner/accused persons have not obtained bail. No infirmity can be found in the said order. The petitioner/convicted accused are free to appear before the learned appellate court and seek suspension

of sentence as well as direction to release them on bail. Other prayers made in the petition for directing the appellate court to decide the petitioner's application dated 30.1.2020 can be decided by the learned appellate court while hearing the application for suspension of sentence. However, as yet sentence imposed on the petitioners by the learned trial Magistrate is not suspended, conviction warrant issued against them by the learned trial Magistrate can not be stayed. It can not be said that the said conviction warrants were issued without adhering to the provisions of law. Undisputedly, the sentence imposed on the petitioners/accused is not suspended as yet by the learned appellate court.

5. In this view of the matter, the petition is disposed of with a direction to the learned appellate court to consider the application for suspension of sentence if any, moved by the petitioners in the pending appeal, challenging application and the resultant sentence imposed by the learned trial

Magistrate, for offence punishable under Section 138 of the
Negotiable Instruments Act.

(A. M. BADAR, J.)