

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1438 OF 2019
IN
CRIMINAL APPEAL NO.421 OF 2020

Farukh Saifulalam Shaikh

Applicant

versus

The State of Maharashtra

Respondent

Mr.Omneel A. Jadhav, Advocate for applicant.

Mr.A.R.Kapadnis, APP, for State.

Mr.Subhash G. Kale, Police Inspector, ATS, Thane Unit, Mumbai,
present.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th October 2020

PC :

1. This is an application for suspension of sentence during pendency of appeal. The accused no.4 had preferred application for suspension of sentence before this Court, which was allowed by this Court vide order dated 11th June 2019. The said order is placed on record by learned counsel for applicant.

2. The brief facts of the matter are that the applicant is convicted by the Additional Sessions Judge, Thane in Sessions Case No.293 of 2018 for the offences under Sections 14(A)(a)(b) of Foreigners Act and u/s 3,6 of Passport Act. He is sentenced to suffer simple imprisonment for four years and to pay a fine of Rs.5,000/-, in default to suffer simple imprisonment for six months vide judgment and order dated 26th December 2018.

3. Learned counsel for the applicant submits that the applicant is in custody since 23rd March 2018. Learned counsel for applicant has drawn attention of this Court to the report filed by the Deputy Commissioner of Police, Special Branch to the Commissioner informing him about the arrest of six Bangladeshi nationals dated 24th March 2018. It shows that on 23rd March 2018, six Bangladeshi nationals are arrested since it was found that they had entered into India through unauthorized route without any travel documents and continued to stay illegally in Bhiwandi.

4. It is pertinent to note that after the arrest, the appellants were issued show cause notice on 24th March 2018. The accused were called upon to furnish any such evidence to show that they were the nationals of India or then it would be held that they are fullfledged Bangladeshi nationals. The show cause notice also showed that the applicant is liable for deportation out of India under the provisions of Clause (C) of sub-section 3(2) of the Foreigners Act, 1946.

5. Learned counsel appointed for the appellant vehemently submits that in fact the officer had first arrested the proposed accused and had then issued show cause notice to him while in custody and therefore it would not be possible for him to furnish any documents. The notice further shows that the reasonable opportunity was given before arrest to produce documentary evidence.

6. PW-2 Sanjay Taralgatti has admitted before the Court that

notice was given to the accused only after arresting him. It is also admitted that in the FIR there is no disclosure that which border of India has been crossed by the accused and the date of crossing. There are several lapses in the investigation. Non-issuance of notice has caused grave prejudice to the accused. The appellant-accused was residing at Bhiwandi. There is no proper inquiry with the persons with whom he was residing, as of date, when the applicant has entered into India or is residing at Bhiwandi.

7. The sentence imposed upon the applicant is a short term sentence and the applicant has been in jail since 20th March 2018. Hence, the following order :

ORDER

- (i) The Interim Application is allowed;
- (ii) The substantive sentence imposed upon the applicant vide judgment and order dated 26th December 2018 is hereby suspended;
- (iii) The applicant be enlarged on bail on furnishing PR bond in the sum of Rs.15,000/- with one or more local sureties from Mumbai or Bhiwandi in the like amount to the satisfaction of the Trial Court;
- (iv) The applicant shall not leave India without prior permission of the Court and shall report to the Court of Sessions Judge, Thane once in three months on the date assigned by the Sessions Judge;
- (v) In the eventuality that the police decide to deport him to Bangladesh, the same shall be reported to this Court only after issuing notice to the applicant;
- (vi) Office to communicate this order to the applicant, who is lodged in Thane Central Jail.

8. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

MST