

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1 OF 2019
IN
CRIMINAL APPEAL NO.1052 OF 2019

Shantiprasad Veniprasad Yadav

Applicant

versus

The State of Maharashtra

Respondent

Mr.Prashant Gurav for applicant.

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

CORAM : PRAKASH D. NAIK, J.

DATE : 25th September 2020
(LD/VC)

PC :

1. This is an application for suspension of sentence during pendency of Criminal Appeal No.1052 of 2019 preferred by applicant challenging judgment and order dated 21st June 2019 passed by learned Additional Sessions Judge, Greater Bombay in Sessions Case No.757 of 2013 along with Sessions Case No.71 of 2014. The applicant has been convicted for the offence under Sections 451 and 357 read with Section 34 and Section 395 r/w Section 397 of Indian Penal Code and Section 37(1)(a) r/w Section 135 of Maharashtra Police Act. For the offence u/s 451 r/w Section 34 of IPC, the applicant is sentenced to suffer imprisonment for seven years. For the offence u/s 347 r/w Section 34 of IPC, he was sentenced to suffer rigorous imprisonment for three years. For the offence u/s 395 r/w Section 397 of IPC, he is sentenced to suffer rigorous imprisonment for seven years. For the offence u/s 37(1)(a) r/w Section 135 of Maharashtra Police Act, he has been sentenced to suffer rigorous imprisonment for six months.

2. The applicant had preferred application for suspension of sentence viz Criminal Application No.1044 of 2019. The said application was withdrawn. The tenor of the order indicate that the application was not adjudicated on merits. Subsequently accused no.5 Narayan Mangal Karan @ Nepali was granted bail by suspending the sentence of imprisonment vide order dated 11th October 2019 passed by this Court in Criminal Appeal No.1370 of 2019.

3. During pendency of the trial the applicant was granted bail by the Sessions Court. Learned counsel for applicant submitted that the applicant is in custody for a period of about three years. There are no criminal antecedents against applicant. The co-accused who was attributed serious role than the applicant has been granted bail by suspending sentence by this Court. The only material against the applicant is recovery of mobile hand set. There is serious discrepancy with regard to the identity of hand set. The applicant was not identified in the test identification parade.

4. Learned APP submitted that the applicant had acted in connivance with the co-accused. He acted in furtherance of the common intention and thereby convicted for the offences as stated above.

5. Apparently the evidence against applicant is recovery of hand set. The applicant has doubted the identity of recovered article. Undisputedly the applicant was not identified. The co-accused Narayan Mangal Karan @ Nepali was directed to be released on bail by suspending sentence by order dated 11th October 2019.

Apparently the Court has also taken into consideration the fact that he was in custody for a period of about six and half year. It is pertinent to note that the applicant is in custody for a period of three years. He was on bail during trial. Considering the nature of evidence against applicant, the case for suspending the sentence and grant of bail is made out.

6. Hence, I pass following order :

ORDER

- (i) Interim Application No.1 of 2019 is allowed and disposed of;
- (ii) The sentence of imprisonment awarded to the applicant Shantiprasad Veniprasad Yadav is suspended during pendency of Criminal Appeal No.1052 of 2019 and he is directed to be released on bail on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Pydhonie Police Station, Mumbai on every first day of each month between 10 am and 1 pm initially for a period of six months and thereafter quarterly on the first day of each such month;
- (iv) The applicant shall pay amount of fine, if not paid already;
- (v) Provisionally the applicant shall be released on cash bail of Rs.25,000/- and he shall furnish surety within eight weeks from the date of release.

7. 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