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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.395 OF 2021
IN
CRIMINAL APPEAL NO.67 OF 2021

1. Bharat s/o Uttam Shinde
and Ors. = APPLICANT/S

VERSUS

1. The State of Maharashtra
and Anr. = RESPONDENT/S

Mr.PP More, Advocate for Applicant/s;

Mr.SB Narwade, APP for Respondent-State;

Mr.AR Mate, Advocate for Respondent No.2.

CORAM : SMT.VIBHA KANKANWADI, J.

RESERVED ON : 22/03/2021

PRONOUNCED ON : 06/04/2021

PER COURT :-

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

2. In this Criminal Application, the
applicants pray for suspension of substantive
sentences and releasing them on bail during
pendency and final hearing of the Criminal Appeal.

3. The applicants are the original accused
Nos.1 to 3 in SCC No.167/2017, who have been
convicted and sentenced by the Additional
Sessions Judge, Jalna vide judgment and order dated

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3rd February, 2021, thus, -

a) Under Section 307 read with 34 of IPC and sentenced to suffer rigorous imprisonment for Six years each and to pay fine of Rs. 6,000/-, in default, R.I. for two years each.

b) Under Section 326 read with 34 of IPC and sentenced to suffer R.I. for five years each and to pay fine of Rs. 5,000/-, in default, R.I. for two years;

. All the sentences are ordered to run concurrently and out of the recovered fine amount, Rs.30,000/- has been ordered to pay to the complainant under Section 357(1) of Cr.PC.

4. It is vehemently submitted on behalf of the applicants that through there were independent witnesses, they have not been examined and the relatives of the applicants, who are the interested witnesses, have been examined. The Trial Court did not consider that there is no any corroborative evidence on record to convict the applicants. The material contradictions in the evidence of the witnesses have been ignored by the learned Sessions Judge while convicting the applicants. The applicants have deposited the fine amount of Rs.33,000/- on 3.2.2021. The accused have been

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falsely implicated in the alleged crime. The prosecution has utterly failed to prove the charge levelled against the applicants, by cogent and reliable evidence on record and the conviction is not sustainable in law and facts of the case. The applicants were on bail during pendency of the Sessions Case and have not misused their liberty. They are not likely to jump on the bail and are ready to abide by the terms of the bail and furnish solvent surety, if ordered. The learned Advocate further submits that the appeal involves other legal points/issues, which the applicants/appellants want to agitate and address them at the time of final hearing of the appeal and the applicant has every hope of success in the appeal. Consequently, the applicants pray for enlarging them on bail by suspending the substantive sentences awarded by the learned Sessions Judge on such terms and conditions as this Court may deem fit and proper.

5. Per contra, learned APP vociferously resisted the application and supported the reasons assigned by the learned Sessions Judge while convicting and imposing the sentences against the applicants. The prosecution with the aid of testimony of PW - Rajaram Wachlu Rathod, duly proved the spot of occurrence. According to him, complainant Mahadeo Shinde has shown the spot of incident. He proved the spot panchanama as per Exh. 28. Similarly, he has supported the seizure panchanama at Exh. 29 whereby 13 documents produced

by the complainant Mahadeo Shinde were seized. The evidence of this witness is fully supported through the evidence of Investigating Officer PW 7 – PSI. C.M.Charbhare. The learned APP further submitted that the case is based on the direct as well as other material evidence. The learned Sessions Judge has properly scanned and scrutinized the evidence brought on record and it does not require any interference. It is, therefore, submitted that the application being sans merit, deserves to be dismissed and it be dismissed accordingly.

6. As it appears from the impugned judgment of the learned Sessions Judge, particularly the sentences, that have been awarded against the applicants for several offences, are the short-term sentences. In view of the decision in the case of Kiran Kumar Vs. State of M.P. - (2001) 9 SCC 211, benefit will have to be extended to the applicants-appellants when they have demonstrated that the material and significant points raised by them in the appeal are required to be considered at the time of final hearing of the appeal. Further, the applicants were on bail throughout the trial, have not misused their liberty and had also deposited the fine amount. In this view of the matter, it can be said that a case is definitely made out for releasing the applicants on bail by suspending the substantive sentence during pendency and final disposal of the appeal. Hence, following order,-

ORDER

- i. The Criminal Application stands

allowed.

ii. The substantive sentence imposed on the applicants by learned Sessions Judge, Jalna vide judgment and order dated 3rd February, 2021, in Sessions Case No.167/2017, is hereby suspended till hearing and final disposal of the appeal.

iii. The applicants – 1) Bharat s/o Uttam Shinde; 2) Kaveribai w/o Bharat Shinde; and 3) Prashant s/o Bharat Shinde, be released on their executing PR and SB of Rs.15,000/ (Rupees fifteen thousand) each.

iv. The applicants shall not commit any criminal activity.

v. The applicants 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 their subsequent appearances.

vi. In case of two consecutive defaults on the part of the applicants to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality,

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the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicants.

vii. Bail before the Sessions Court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV