

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

955 CRIMINAL APPLICATION NO.403 OF 2021
IN APEAL/73/2021

- | | | | |
|----|---------------------------|-----|-------------------|
| 1. | Raghunath s/o Dattu Phad | | |
| 2. | Satyabhama w/o Dattu Phad | ... | Applicants |

Versus

	The State of Maharashtra		... Respondent
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Mr. G. L. Kedar, Advocate for applicants.
Mr. M. M. Nerlekar, APP for the respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 18th March, 2021

ORDER :-

. Present application has been filed by original accused Nos.1 and 2 for suspending the sentence imposed upon them by learned Additional Sessions Judge, Ambajogai in Sessions Case No.40 of 2016 dated 28.01.2021. They have been convicted for the offence punishable under Sections 363 read with 34 of Indian Penal Code and thereby sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.5,000/- each, in default to undergo rigorous imprisonment for two months. Further, they have been convicted for the offence punishable under Section 326 read with 34 of Indian Penal Code and thereby sentenced to undergo rigorous imprisonment for five years and to pay

fine of Rs.10,000/- each, in default to undergo rigorous imprisonment for two months. Further, applicant No.1 has been convicted for the offence punishable under Section 506 of Indian Penal Code and thereby sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.5,000/-, in default to undergo rigorous imprisonment for one month.

2. Heard learned Advocate Mr. G. L. Kedar for the applicant and learned APP Mr. M. M. Nerlekar for the respondent-State.

3. It has been vehemently submitted on behalf of applicants that the applicants have challenged the judgment and order of conviction passed by the learned Additional Sessions Judge by way of an appeal *inter alia* on numerous grounds as set out in the appeal itself and the applicants are having every hope of success therein. It is further submitted that the applicants were on bail amid the trial and, there was no complaint against the applicants during the course of trial. The learned Advocate further argued that the sentence imposed upon applicants by the learned Additional Sessions Judge is a short-term sentence. The learned Advocate further submits that the appeal involves other legal and technical points/issues, which the applicants/appellants intend to agitate and address them at the time of final hearing of the appeal. Consequently, the applicants pray for enlarging them on bail by

suspending the substantive sentence imposed by the learned Additional Sessions Judge on such terms and conditions as this Court may deem fit and proper.

4. Per contra, learned APP strongly resisted the application and supported the reasons given by the learned Additional Sessions Judge while convicting and imposing the sentence against the applicants and it is stated that the prosecution has proved the offence beyond reasonable doubt.

5. At the outset, the points which are in favour of the applicants are that there were on bail throughout the trial and they have not misused the liberty granted to them. As it appears from the impugned judgment of the learned Additional Sessions Judge, particularly the sentence, that has been imposed against the applicants for the offence, in question, is a short term sentence, in view of the decision in the case of ***Kiran Kumar Vs. State of M.P., [(2001) 9 SCC 211]***, a benefit will have to be given to the applicants-appellants when they have demonstrated that the material and significant points raised by them in the appeal are required to be pondered at the time of final hearing of the appeal. 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, the following order :-

ORDER

1. The Criminal Application stands allowed.
2. The substantive sentence, imposed upon the applicants by learned Additional Sessions Judge, Ambajogai in Special Case No.40 of 2016 vide judgment and order dated 28.01.2021, is hereby suspended till hearing and final disposal of the appeal.
3. The applicants be released on P. R. Bond of Rs.30,000/- (Rupees thirty thousand) with two sureties of Rs.15,000/- (Rupees fifteen thousand) each.
4. The applicants shall not indulge in 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 paper/s and, thereafter, the Trial Judge to fix dates for the 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.]