

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

28 CRIMINAL APPLICATION NO.623 OF 2021
IN APPEAL/118/2021 WITH APPEAL/118/2021

BALASAHEB @ BALAJI BABASAHEB JAGTAP

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. H.P. Jadhav, Advocate for the applicant

Mr. A.V. Deshmukh, APP for the respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15th MARCH, 2021.

PER COURT :

1 Heard learned Advocate Mr. H.P. Jadhav for the applicant and learned APP Mr. A.V. Deshmukh for the respondent.

2 Learned APP has strongly opposed the application for suspension of sentence submitting that the well reasoned Judgment has been delivered by the learned Trial Judge.

3 The learned Advocate for the applicant submits that the applicant was on bail throughout the trial. He has been falsely implicated. Further, the informant, who was the Gramsevak, himself has turned hostile.

Yet, the conviction has been awarded. The applicant has merits in the appeal.

4 It appears that apart from the present applicant there were two more accused persons, against whom the FIR was lodged and the prosecution was launched. They have been charged and tried for the offence punishable under Section 353, 323, 504 read with Section 34 of the Indian Penal Code and Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Special (Atrocity) Case No.14/2014 decided by the learned Special Judge, under the Atrocities Act (Additional Sessions Judge), Ambajogai, Dist. Beed on 26.02.2021. Only the present applicant came to be convicted that too for Section 353 only. He has been sentenced thus -

“The Accused No.(1) Balasaheb @ Balaji s/o Babasaheb Jagtap is hereby held guilty for the offence punishable under Section 353 of the Indian Penal Code and sentenced to suffer simple imprisonment of two months and a fine of Rs.5,000/-. In default of payment of fine amount, accused to suffer simple imprisonment for 15 days.”

5 It also appears from the impugned Judgment that the informant himself has turned hostile. No doubt, the learned Trial Judge has relied upon the decision by the Apex Court stating that hostility of a witness does not

debar the Court from considering the other evidence on record. Under such circumstance, whether other evidence is available or not is required to be considered, and therefore, case is made out to suspend the sentence. Taking into consideration that it is a small sentence, **Kiran Kumar vs. State of M.P., (2001) 9 SCC 211**, he deserves to be released on bail pending appeal. Hence, following order.

ORDER

- 1 The Criminal Application stands allowed.
- 2 The substantive sentence imposed on the applicant/appellant by the learned Special Judge under the Atrocities Act (Additional Sessions Judge), Ambajogai, Dist. Beed vide Judgment and order dated 26.02.2021 in Special (Atrocity) Case No.14/2014, is hereby suspended till hearing and final disposal of Criminal Appeal No.118 of 2021.
- 3 The applicant Balasaheb @ Balaji Babasaheb Jagtap be released on P.R. of Rs.15,000/- (Rupees Fifteen Thousand only) with one surety in the lime amount.
- 4 The applicant shall not commit 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 papers and thereafter, the Trial Judge to fix dates for his 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.)

agd