

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.745 OF 2021
IN
CRIMINAL REVISION APPLICATION NO.47 of 2021

1. Raosaheb s/o Ramrao Shinde
and two ors. = APPLICANTS

VERSUS

The State of Maharashtra = RESPONDENT

Mr.AK Bhosale,Advocate for Applicant/s;

Mr.AV Deshmukh,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 31st March, 2021.

PER COURT :-

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

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

3. The applicants are the original accused
in Regular Criminal Case No.128/2006, who have been
convicted by learned JMFC, Kannad, vide judgment
and order dated 5th April, 2016. The applicants
have been convicted and sentenced by the Trial
Court, thus, -

(2)

a) For the offence under Sections 324, 323, 504, 506 read with 34 of IPC and sentenced to suffer S.I. for six months and to pay fine of Rs.500/-, in default, S.I. for one month;

4. Aggrieved by the aforesaid judgment and order of conviction, the applicants have preferred an appeal being Criminal Appeal No.85/2016, which has been partly dismissed by the learned Additional Sessions Judge, Aurangabad, vide his judgment and order dated 12.3.2021, whereby the conviction and sentences have been modified and convicted and sentenced thus,-

a) For the offence under Section 323 read with 34, sentenced to suffer S.I. for three months;

b) For the offence under Section 324 read with 34 of IPC, sentenced to suffer S.I. for six months and fine of Rs. 500/-, in default, S.I. for one month;

c) For the offence under Section 504 read with 34 of IPC, sentenced to suffer S.I. for three months; and

d) For the offence under Section 506 read with 34 of IPC, they are sentenced to suffer S.I. for three months.

. All the substantive sentenced are

ordered to run concurrently.

5. It is vehemently submitted on behalf of the applicants that the learned Sessions Judge has erred in appreciating the evidence on one-sided manner and erroneously convicted the applicants. The impugned judgment is contrary to the evidence on record and it is based on inferences and surmises. There is absolutely no iota of evidence against the applicants. The applicants have been falsely implicated in the case. The learned Sessions Judge grossly erred in convicting the applicants. The conviction was based on the evidence of hearsay and interested witnesses and the learned Judge has ignored the material contradictions and omissions between versions of the witnesses. As the applicants and complainant are close relatives, having civil discord between them, the instant complaint is nothing but an outcome of the said enmity. Both the Courts below failed to consider that there is no medical expert report as regards super-imposition of teeth caused by the applicants and no any independent witness has been examined to that effect. Though there are no material or ingredients of Sections 504 and 506 of IPC; still, without going through the evidence, the learned Sessions Judge has acted upon the finding rendered by the trial Court. The allegation as regards bite injury cannot be sustained without there being medical report as to superimposition of teeth and if these injuries are not corroborated by way of medical evidence, no

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offence, under Section 324 of IPC, can be said to have been made out. There are material contradictions and omissions in the testimonies of the material witness and all these infirmities have been ignored by the learned Judge. The applicants are permanent residents of village Shivrai, Tq. Kannad, district Aurangabad and there is no possibility of they remain absconding. They are ready and willing to abide by the terms and conditions that may be imposed upon them. The learned Advocate further submits that the revision involves certain other legal points/issues, which the applicants intend to agitate and address them at the time of final hearing and the applicants have every hope of success in the revision. Consequently, the applicants pray for enlarging them on bail by suspending the substantive sentences awarded against them on such terms and conditions as this Court may deem fit and proper.

6. Per contra, learned APP vehemently resisted the application and supported the reasons assigned by the learned Sessions Judge while convicting and imposing the sentence against the applicants. The learned Sessions Judge has properly scanned and scrutinized the evidence brought on record and rightly convicted and sentenced the applicants, which requires no interference at the hands of this Court. It is, therefore, submitted that the application lacks merit, deserves to be dismissed and it be dismissed accordingly.

7. As it appears from the impugned judgment of the learned Sessions Judge, particularly the sentences, that have been awarded against the applicants for the offences, in question, 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 when they have demonstrated that the material and significant points raised by them in the revision are required to be considered at the time of final hearing. 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 revision. Hence, following order,-

ORDER

i. The Criminal Application stands allowed.

ii. The substantive sentence imposed on the applicants by learned Additional Sessions Judge, Aurangabad, vide judgment and order dated 12.3.2021 in Criminal Appeal No.85/2016, is hereby suspended till hearing and final disposal of the revision.

iii. The applicants - 1) Raosaheb s/o Ramrao Shinde; 2) Pandharinath s/o Ramrao

(6)

Shinde; and 3) Ankush s/o Raosaheb Shinde, be released on their executing PR and SB of Rs.15,000/ (Rupees fifteen thousand) each.

iv. The revision applicants shall not indulge in any criminal activity during pendency of the Criminal Revision.

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 they tender 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, 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