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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.760 OF 2021
IN
CRIMINAL APPEAL NO.153 OF 2021

1. Kavishwar s/o Baburao Madile
and Anr. = APPLICANTS

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.PP More,Advocate for Applicant/s;

Mr.AM Phule,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 7th April, 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 and 2 in Sessions Case No.70/2019, who have
been convicted and sentenced by learned Additional
Sessions Judge-6, Latur, vide judgment and order
dated 15.2.2021, thus -

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a) For the offence punishable under Section 353 read with 34 of IPC, sentenced to suffer R.I. for six months and to pay fine of Rs.10,000/- each, I.D. to suffer further imprisonment for one month;

b) For the offence punishable under Sections 341 and 323 read with 34 of IPC, sentenced to suffer simple imprisonment for one month.

. The above sentences are ordered to run concurrently.

4. It is vehemently submitted on behalf of the applicants that the learned Sessions Judge has misread and misconstrued the evidence brought on record and erred in convicting and sentencing the applicants. The prosecution has utterly failed to prove the charges levelled against the applicant/s by a cogent and reliable evidence on record and the conviction is not sustainable in law and facts of the case. Though there were material contradictions in the evidence of the witnesses, they have been brushed aside by the learned Sessions Judge while convicting and imposing the sentences against the applicants. The applicants were on bail during the trial and have also deposited the fine amount within time. They are falsely implicated in the alleged crime. They would abide by the terms of the bail. The learned

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Advocate further submits that the appeal involves other legal points/issues, which the applicants/appellants intend to agitate and address them at the time of final hearing of the appeal and they have every hope of success in the appeal. Consequently, the applicants pray for releasing 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. He referred the evidence of PW 1 – Informant – Gopal Devidas Gadikar and PW 2 – Sheshrao Tulshiram Kshirsagar, who is conductor of the concerned ST Bus, and said that it is consistent with each other. There is no contradictions between these two witnesses. They have fully supported to the case of the prosecution and it is categorically proved from the evidence that the applicants/accused, in furtherance of their common intention, assaulted the informant by giving kicks and fist blows to him and thereby caused an obstruction in discharging public duty of PW 1. The learned Sessions Judge has properly scanned and scrutinized the evidence brought on record. 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 during the trial, they have not misused their liberty and had also deposited the fine amount. In 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 Additional Sessions Judge-6, Latur, vide judgment and order dated 15.2.2021 in Sessions Case No.70/2019, is hereby suspended till hearing and final disposal of the appeal.

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iii. The applicants – 1) Kavishwar s/o Baburao Madile; and 2) Ranjit s/o Eknath Ghodke, 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 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 Sessions Court, the Sessions 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