

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.761 OF 2021
IN
CRIMINAL APPEAL NO.154 OF 2021

1. Ankush Vithal Jadhav
and Anr. = APPLICANTS

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.CV Thombre, Advocate for Applicant/s;

Mr.AM Phule, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 20th April, 2021.

PER COURT :-

1. Heard Mr.CV Thombre, learned Advocate for the applicants and Mr. AM Phule, learned APP appearing for Respondent-State.

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.199/2019, who have been convicted and sentenced by learned Sessions Judge, Beed, vide judgment and order dated 5.3.2021, thus -

(2)

a) For the offence punishable under Section 353 read with 34 of IPC, sentenced to suffer R.I. for one year and to pay fine of Rs.500/- each, I.D. to suffer further R.I. for one month;

b) For the offences punishable under Sections 3/181 and 130/177 of MV Act, the accused No.1 to pay fine of Rs.250/-, in default, S.I. for one day .

. The above sentences are ordered to run concurrently.

4. It is vehemently submitted on behalf of the applicants that they have no criminal antecedents and were falsely implicated. There is no examination of independent witness by the prosecution and, therefore, it creates a doubt about the spot of occurrence which is a crowded place on National Highway and surrounded by Hotel. There is delay in lodging the FIR and there is no convincing explanation for that. Though charge was framed under Sections 353, 323 read with 34 of IPC along with provisions of MV Act, however, charge under Section 323 was not proved and applicants were acquitted under Section 323 as there was no evidence and all the witnesses do not support the prosecution case. The applicants have deposited the fine amount and the Court has suspended the punishment for a period of one month. Short term sentence is awarded to the applicants. The learned

(3)

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. The learned 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 vehemently resisted the application and supported the reasons assigned by the learned Sessions Judge while convicting and imposing the sentences against the applicants. The prosecution case is based on ocular evidence. Merely to save them from clutch of law, false defence is raised by the accused. Over acts of the accused disclose that the prosecution has proved those overt acts by leading cogent and reliable evidence and learned Sessions Judge has rightly convicted and imposed the sentence against the applicants/accused and it requires no interference. 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, 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 Sessions Judge, Beed, vide judgment and order dated 5.3.2021 in Sessions Case No.199/2020, is hereby suspended till

(5)

hearing and final disposal of the appeal.

iii. The applicants – 1) Ankush Vithal Jadhav; and 2) Baliram Namdeo Rathod, 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

BDV