

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.952 OF 2020
IN
CRIMINAL REVISION APPLICATION NO.184 of 2017

1. Umrao s/o Ganpati Mohate
and another = APPLICANTS

VERSUS

The State of Maharashtra = RESPONDENT

Mr.Ram S.Shinde, 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.111/2002, who have been
convicted by learned JMFC, Udgir, vide judgment and
order dated 18th July, 2008. The applicants have
been convicted and sentenced by the Trial Court,
thus, -

(2)

a) Under Section 452 of IPC and sentenced to suffer S.I. for two years and to pay a fine of Rs.5,000/- each, in default, S.I. for a period of six months;

b) Under Section 323 of IPC and sentenced to suffer S.I. for six months;

. Both the sentences are ordered to run concurrently.

4. Aggrieved by the aforesaid judgment and order of conviction, the applicants have preferred an appeal being Criminal Appeal No.15/2008, which has been partly allowed by the learned Additional Sessions Judge, Udgir, vide his judgment and order dated 12.5.2017, whereby the conviction under Section 323 read with 34 of IPC, awarded by the Trial Court, has been quashed and set aside and conviction and sentence under Section 452 read with 34 of IPC has been upheld.

5. It is vehemently submitted on behalf of the applicants that the prosecution has not examined any independent witnesses to corroborate the case of the informant. It is the case of the prosecution that the informant, along with his family members and co-sharer – Hanumant, was present at home, however, said Hanumant was not examined before the Court as he is the eye-witnesses to the incident in question. The version

(3)

of interested witnesses, viz. PW 1, PW 2 and PW 3, cannot be relied on without there being any independent corroborative witness. The prosecution has not proved its case beyond all reasonable doubts. There is no material on record to indicate guilt of the accused persons. The medical evidence has not been proved by leading a cogent and convincing evidence therefor. The prosecution has to prove its case with substantive evidence and in the instant case, though the eye witnesses were present at the time of the alleged incident, but none of them have been examined during the course of the trial. The learned Advocate further submits that the revision involves 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 releasing them on bail by suspending the substantive sentences awarded against them on such terms and conditions as this Court may deem fit and proper in the interest of justice.

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 and no interference is warranted. The learned Sessions Judge has properly scanned and scrutinized the evidence brought on record. 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 pondered 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, Udgir, vide judgment and order dated 12.5.2017 in Criminal Appeal No.15/2008, is hereby suspended till hearing and final disposal of the revision.

iii. The applicants - 1) Umrao s/o Ganpati Mohate; and 2) Laxmibai w/o Eknath Mohate, 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 he tenders 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 applicant.

vii. Bail before the Sessions Court.

(SMT. VIBHA KANKANWADI)
JUDGE