

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.899 OF 2021
IN
CRIMINAL APPEAL NO.199 OF 2021

1. Sagar Ramsing Pardeshi
and Anr. = APPLICANTS

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.PA Bhosle, Advocate for Applicant/s;

Mr.NT Bhagat, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 9th April, 2021.

PER COURT :-

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

2. By this Criminal Application, moved under
Section 389 of Cr.P.C., 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.107/2014, who have
been convicted and sentenced by learned Additional
Sessions Judge Aurangabad, vide judgment and order
dated 08.3.2021, thus -

(2)

a) For the offence punishable under Section 363 read with 34 of IPC, sentenced to suffer R.I. for three years and to pay fine of Rs.5,000/- each, I.D. to suffer simple imprisonment for one month;

4. It is vehemently submitted on behalf of the applicants that the learned Sessions Judge did not consider the evidence of the complainant that it was the juvenile/co-accused, who compelled her to sit on his bike and not the present applicants/appellants. The juvenile has been acquitted from the charges as the complainant has admitted before the JJ Board that she had mistakenly named the accused in her complaint. The learned Sessions Judge has failed to appreciate that though the spot of occurrence was crowded place, there was no eye witness to the incident creating doubt about the prosecution story. The learned Sessions Judge has also failed to appreciate evidence of the complainant that she did not raise hue and cry though there were several vehicles passing nearby them. 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. They would abide by the terms of the bail. The learned Advocate further submits that the appeal involves other legal points/issues, which the applicants/appellants intend to agitate and address

(3)

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 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 sentence, that has been awarded against the applicants for the alleged offences, is 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. 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

(4)

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, Aurangabad, vide judgment and order dated 8.3.2021 in Sessions Case No.107/2014, is hereby suspended till hearing and final disposal of the appeal.

iii. The applicants – 1) Sagar Ramsing Pardeshi; and 2) Ganesh Janardhan 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.

(5)

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