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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.929 OF 2021
IN
CRIMINAL APPEAL NO.215 OF 2021

Raghunath Sukha Fegade = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.MA Tandale, Advocate for Applicant/s;

Mr.NT Bhagat, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 27th April, 2021.

PER COURT :-

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

2. In this Criminal Application, the applicant prays for suspension of substantive sentences and releasing him on bail during pendency and final hearing of the Criminal Appeal.

3. The applicant is the original accused in Special (ACB) Case No.2/2014, who has been convicted and sentenced by learned Additional Sessions Judge, Jalgaon, vide judgment and order dated 30.3.2021, thus, -

a) For the offence under Section 7 of Prevention of Corruption Act and

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sentenced to suffer R.I. for one year and to pay fine of Rs. 3,000/-, in default, S.I. for three months;

b) For the offence under Section 13(1) (d) r/w 13(2) of the Prevention of Corruption Act and sentenced to suffer R.I. for two years and to pay fine of Rs. 3,000/-m, in default, S.I. for three months;

. All the sentences are ordered to run concurrently.

c) Out of the fine amount of Rs.6,000/-, an amount of Rs.2,000/- was ordered to be paid to the complainant as compensation.

4. It is vehemently submitted on behalf of the applicant that the the learned Trial Judge has misread and misconstrued the evidence brought on record and erred in convicting and sentencing the applicant. The prosecution has utterly failed to prove charge 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 argued that the sentences awarded to the applicant by the learned Special Judge are short term sentences. The applicant was on bail and he has deposited the fine amount. The learned Advocate further submits

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that the appeal involves other legal points/issues, which the applicant/appellant wants to agitate and address them at the time of final hearing of the appeal and the applicant has every hope of success in the appeal. He would abide by the terms of bail. Consequently, the applicant prays for releasing him 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 strongly resisted the application and supported the reasons assigned by the learned Sessions Judge while convicting and imposing the sentences against the applicant. There is sufficient evidence on record against the applicant in regard to demand and acceptance of the bribe. The concerned authority has legally and validly accorded sanction to the prosecution. The defence of the applicant is not reliable. The learned APP submitted that the case is based on the direct as well as other evidence. The learned Sessions Judge has properly scanned 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 applicant for several offences, are the short-term

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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 applicant-appellant when he has demonstrated that the material and significant points raised by him in the appeal are required to be considered at the time of final hearing of the appeal. Further, the applicant was on bail, has not misused his liberty and he 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 applicant 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 applicant by learned Additional Sessions Judge, Jalgaon, vide judgment and order dated 30.3.2021 in Special (ACB) Case No.02/2014, is hereby suspended till hearing and final disposal of the appeal.

iii. The applicant be released on executing PR and SB of Rs.30,000/- with two sureties of Rs.15,000/- each.

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iv. The applicant shall not commit any criminal activity.

v. The applicant 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 applicant 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

BDV