

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.917 OF 2021
IN
CRIMINAL APPEAL NO.210 OF 2021

Shridhar Pandhari Gaikwad = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT

Mr.KJ Suryawanshi, Advocate for Applicant;

Mr.NT Bhagat, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 27th April, 2021.

PER COURT :-

1. Heard Shri KJ Suryawanshi, learned Advocate for the applicant and Shri NT Bhagat, learned APP appearing for Respondent-State.

2. By 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 original accused in Sessions Case No.12/2016, who has been convicted and sentenced by learned Additional Sessions Judge, Ambajogai, vide judgment and order dated 20.3.2021, thus, -

a) For the offence under Section 307 of

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

b) For the offence under Section 498A of IPC and sentenced to suffer R.I. for one year and to pay fine of Rs.1,000/-, in default, S.I. for one month;

. Both the sentences are ordered to run concurrently.

4. It is vehemently submitted on behalf of the applicant that the applicant has deposited the fine amount and he was on bail during the trial and has not misused the said liberty in any manner. He is not a habitual criminal and has no criminal antecedents. The learned Sessions Judge did not consider that the complainant nowhere stated that she had visited the doctor along with her daughter. The medical papers do not disclose presence of burn injuries on the person of the complainant. When the daughter of the complainant stated that her mother narrated the entire incident to the police at that time no injury was present on the person of her mother. The learned Sessions Judge failed to consider that daughter of the complainant stated that her mother told her that her father poured kerosene and tried to set her on fire and they will go to the police station to lodge the report against her father, which indicates that the

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evidence of the daughter of the complainant is hearsay. The investigating officer stated that during the course of the investigation it was found that the complainant did not sustain any injuries. The prosecution failed to prove the alleged incident. The prosecution further utterly failed to prove the ingredients of offence under Section 307 and 498A of IPC. 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 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 learned Advocate further submits that the appeal involves other legal points/issues, which the applicant/appellant intends 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. 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. The

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complainant Manisha (PW 2) supports the prosecution case and the complaint is duly proved. Her evidence is not shaken in the cross-examination and there is no reason for disbelieving her testimony. The certified copies of the non-cognizable cases filed by the complainant indicate that the complainant was being harassed by the applicant/accused for the demand of amount and present incident is outcome of that harassment. The evidence of Dr. Ashish Garje (PW 4) from Civil Hospital Beed corroborates the prosecution case and it shows that red rash was present on the body of the complainant which was the outcome of chemical reaction of kerosene. Thus, the prosecution has proved the intention of the accused to eliminate the complainant. The CA reports also corroborate the prosecution case wherein the presence of the kerosene residue was found on the seized clothes of the complainant and thus 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 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-

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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. The informant is the wife of appellant. Appellant says that the behaviour of informant was changed after she took up service and started earning. Now she does not want to stay with him. Their daughter is now under the control of informant. With this background, it will have to be considered as to whether there was real intention of the accused to commit murder of the informant. 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 sentences 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, Ambajogai, vide judgment and order dated 20.3.2021 in Sessions Case No.12/2016, is hereby suspended till hearing and final disposal of the appeal.

iii. The applicant be released on

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executing PR and SB of Rs.30,000/- with two sureties of Rs.15,000/- each.

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