

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1003 OF 2021
IN
CRIMINAL APPEAL NO.237 of 2021

1) Nitin s/o Sampatrao Maske
and Anr. = APPLICANTS

VERSUS

The State of Maharashtra & Anr. = RESPONDENTS

Mr.SB Ghatol-Patil, Advocate for Applicant/s;

Mr.AM Phule, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 4th May, 2021.

PER COURT :-

1. Heard Shri SB Ghatol-Patil, learned Advocate for applicants and Shri AM Phule, learned APP, 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 Special (Atrocity) Case No.20 of 2019, who have been convicted and sentenced by learned Special Judge and Additional Sessions Judge, Parbhani, vide judgment and order dated 16.3.2021, thus -

a) For the offence punishable under Section 354-A(i) and (iv) read with 34 of IPC, and sentenced to suffer R.I. for one year and to pay fine of Rs.1,000/- each, I.D. to suffer S.I. for ten days each;

4. It is vehemently submitted on behalf of the applicants that the applicants were on bail by suspending the sentence by trial Court. The trial is already complete and there is no question of tampering of the witnesses or no possibility of threats to the prosecution witnesses. They have deposited the fine amount. The sentence that has been awarded against the applicants is a short term sentence. The applicants are falsely implicated by the informant in the alleged crime. They are having immovable property and roots in the locality and would abide by every conditions in the event of their release on bail. The learned 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 sentence 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 sentence 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 offence, in question, is a short-term sentence. 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 during the trial, 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

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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 Special Judge and Additional Sessions Judge, Parbhani in Special (Atrocity) Case No. 20 of 2019, vide judgment and order dated 16.3.2021, is hereby suspended till hearing and final disposal of the appeal.

iii. The applicants - 1) Nitin s/o Sampatrao Maske; and 2) Baliram s/o Ganesh Raut, be released on their executing PR and SB of Rs.30,000/ (Rupees fifteen thousand) with two sureties of Rs.15,000/- 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

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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