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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1018 OF 2021
IN
CRIMINAL APPEAL NO.239 OF 2021

1. Amol Nagnath Sirsat
and Anr. = APPLICANTS

VERSUS

1. The State of Maharashtra = RESPONDENT/S

Mr.SG Chapalgaonkar,Advocate for Applicants;

Mr.AM Phule,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 6th May, 2021.

PER COURT :-

1. Heard Shri SG Chapalgaonkar, learned Advocate for applicants; and Shri AM Phule, learned APP appearing for Respondent-State.

2. In this Criminal Application, the applicants pray for suspension of substantive sentence 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 (POCSO) Case No.34/2018, who have been convicted and sentenced by learned Special Judge (POCSO) Parbhani vide judgment and order dated 20.3.2021, thus -

a) For the offence punishable under Section 8 of POCSO Act read with 34 of IPC and sentenced to suffer R.I. for three years and to pay fine of Rs. 5,000/- each, in default, R.I. for six months.

b) On realization of the fine amount, it is ordered to be paid to the victim.

4. It is vehemently submitted on behalf of the applicants that the entire prosecution case is based on testimonies of PW 2 – the victim and PW 3 – uncle of the victim. Their evidence is not consistent with each other. There are several admissions, contradictions and omissions surfaced during the cross examination. The prosecution evidence is doubtful. No other independent evidence is available on record, by which the applicants can be connected with the alleged offence. The learned Special 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 applicants were on bail during the trial and have also deposited the fine amount. They are falsely implicated in the alleged crime. They would abide by the terms of the bail. The learned Advocate further submits that the appeal involves

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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 Special Judge on such terms and conditions as this Court may deem fit and proper.

5. Per contra, learned APP vociferously resisted the application and supported the reasons assigned by the learned Special Judge while convicting and imposing the sentence against the applicants. The learned Special 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 Special Judge, particularly the sentence, that has been awarded against the applicants for the offence, 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

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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 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 (POCSO) Parbhani, vide judgment and order dated 20.3.2021, in Special (POCSO) Case No.34/2018, is hereby suspended till hearing and final disposal of the appeal.

iii. The applicants – 1) Amol s/o Nagnath Sirsat; and 2) Amol Vidhyadhar Suradkar, 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

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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