

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1556 OF 2021
IN
CRIMINAL APPEAL NO. 506 OF 2021

1. Nandkumar Vasant Pednekar	
2. Mahesh Laxman Chavhan	...Applicants
Versus	
The State of Maharashtra	...Respondent

Mr. Anil C. Lalla i/b Lalla and Lalla for the Applicants.

Mr. S.V.Gavand, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 2nd JULY, 2021
(Through Video Conferencing)

P.C. :

1. Heard learned Counsel for the parties.
2. At the outset, learned counsel for the applicants seeks leave to amend the prayer clause. Leave granted. Amendment to be carried out forthwith.
3. By this application, the applicants seek suspension of their sentence and enlargement on bail, pending the hearing and final disposal of

their appeal. The applicants also pray that the order directing the applicant to deposit fine amount of Rs.1,00,000/- each, be stayed.

4. The applicants, vide judgment and order dated 13/05/2021 passed by the learned District Judge – 6 and Additional Sessions Judge, Thane in Special Case No. 3 of 2016, have been convicted and sentenced as under :-

- for the offence punishable under Sections 406, 420 of the Indian Penal Code and under Section 3 of the Maharashtra Protection of Interest of Depositors Act to suffer rigorous imprisonment for 5 years and to pay fine of Rs.1,00,000/- each, in default to undergo further simple imprisonment for three months;

The learned Judge has also directed vide Clause (4) of the said order that the Liquidator and Competent Authority in consultation with each other sell out the immovable property described in the Judgment by public auction and use the sale proceeds for proportionate repayment to the investors main branch of the Co-operative Credit Society as well as branch at Koparkhairane.

5. Learned Counsel for the applicant submits that there is non compliance of Section 235(2) Criminal Procedure Code, which mandates that the Sessions Judge hear the accused on the question of sentence, before passing the order. He submits that admittedly, in the present case, the said mandate of Section 235(2) has not been adhered to by the learned Judge and as such, the matter be remitted back to the learned Sessions Judge on the point of sentence. He submits that the applicants would have an opportunity to point out to the learned Judge that the amount involved in the case was Rs.40,00,000/- and whereas, the property which was attached in the said case was over Rs.12 Crores and as such, the question of imposing fine would not have arisen. He further submits that the learned Judge has convicted the applicants under Section 406, 420 of the Indian Penal Code and under Section 3 of the Maharashtra Protection of Interest of Depositors Act for five years, when in fact, Section 406 of the Indian Penal Code contemplates a maximum punishment of three years. He further submits that the applicants were on bail, pending trial and that they have not misused the liberty granted to them. He further submits, on instructions of the applicants, that the applicants will not contest/oppose the public auction and distribution of sale proceeds for proportionate repayment to the investors as directed by the Trial Court vide clause (4) of the impugned judgment and order dated 13/05/2021. Statement accepted.

6. Learned APP submits that there is no reason to remand the case to the Trial Court. Learned APP relied on the judgment of the Apex Court in the case of ***Dagdu and Ors. V/s. State of Maharashtra AIR 1977 SC 1579*** wherein the three Judges Bench, referring to the judgment of ***Santa Singh AIR 1976 SC 2386*** held as under :

“The Court on convicting an accused must unquestionably hear him on the question of sentence. But if, for any reason, it omits to do so and the accused makes a grievance of it in the higher court, it would be open to that court to remedy the breach by giving a hearing to the accused on the question of sentence.

It further held as follows :

“... for a proper and effective implementation of the provisions contained in Section 235(2), it is not always necessary to remand the matter to the Court which has recorded the conviction ? Remand is an exception, not a rule and ought therefore to be avoided as far as possible in the interest of expeditious, though fair, disposal of cases.”

7. He submits that no doubt, there has been non compliance of Section 235(2) of the Criminal Procedure Code, however, it is not necessary to remand the matter back to the Trial Court and that the said exercise can be done by this Court, at the time of final hearing of the aforesaid appeal.

8. Perused the papers. As far as the mandate of Section 235(2) of the Criminal Procedure Code is concerned, it contemplates hearing the accused on the question of sentence. However, having regard to the judgment relied upon by the learned APP, it would also be open for this Court to hear the accused on the point of sentence when the appeal is heard finally. Admittedly, the amount involved in the case is Rs.40,00,000/- and the property seized is way beyond the said amount. At this stage, the learned APP states that the valuation of the property is Rs. 6 crores whereas according to the learned A.P.P, it is Rs. 12 crores. Learned Counsel for the applicant, on instructions of the applicants, states that the applicants will not challenge clause (4) of the impugned judgment and order dated 13/05/2021 nor will they oppose the public auction and distribution of the sale proceed for proportionate repayment to the investors as directed by the Trial Court. Statement accepted. In view of the aforesaid, having regard to the facts, the order directing payment of fine is stayed, pending the hearing and final disposal of this appeal.

9. The applicants were on bail pending trial and have not misused their liberty. The sentence awarded is a short term sentence. The appeal has been admitted by a separate order passed today in the aforesaid appeal and the same is not likely to be heard in the immediate near future.

10. Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and they are enlarged on bail, pending the hearing and final disposal of his appeal, on the following terms and conditions :-

ORDER

- i) The applicants be released on cash bail in the sum of Rs.25,000/- each, for a period of eight weeks;
- ii) The applicants shall within the said period of eight weeks, furnish P.R. Bond in the sum of Rs.25,000/- each, with one or two sureties in the like amount;
- iii) The order directing the applicants to deposit fine, is stayed, pending the hearing and final disposal of this appeal;
- iv) The applicants shall report to the trial Court, once in six months on the day/date specified by the trial Court, till their appeal is finally disposed of;
- v) The applicants shall keep the trial Court informed of their current address and mobile contact numbers and/or change of residence or mobile details, if any, from time to time;

vi) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

11. The application is accordingly disposed of.

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.