

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL REVISION APPLICATION NO.12/2021

Raju s/o Narayan Todsam

..VS..

State of Mah., thr. PSO PS Pandharkawda, Taluka Kelapur, District Yavatmal

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

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Shri Sunil Manohar, Senior Counsel with Shri A.A.Naik, Advocate
for the Applicant.

CORAM : V.M.DESHPANDE J.

DATED : JANUARY 28, 2021.

1. Heard learned senior counsel Shri Sunil Manohar for the applicant.
2. Contention raised by learned senior counsel Shri Manohar is that the applicant is convicted in Summary Criminal Case No.23/2014 by learned Magistrate before whom entire evidence was not recorded. He submits that the said point was also argued by the applicant in appeal after he was convicted by learned Magistrate. The said was not properly considered by learned Additional Sessions Judge.
3. In view of judgment of this Court in the case of Samadhan Motiram Patil vs. The State of Maharashtra, reported at 2015(1) AIR Bom.R (Cri.) 26, RULE.
4. Learned Additional Public Prosecutor Shri K.L.Dharmadhikari, waives service on behalf of the State.
5. Call record and proceedings of Summary Criminal Case No.23/2014 decided by learned Judicial Magistrate First Class, Court No.2, Kelapur on 27.11.2015 together with proceedings of Criminal Appeal No.49/2015 decided by learned

.....2/-

Additional Sessions Judge, Kelapur, district Yavatmal on 21.1.2021.

Criminal Application (APPR) No.30/2021

1. This is an application for suspension of the substantive jail sentence and for grant of bail.

2. Heard learned senior counsel Shri Sunil Manohar for the applicant and learned Additional Public Prosecutor Shri K.L.Dharmadhikari for the State.

3. Learned senior counsel Shri Manohar for the applicant, submits that in the cause title wrong provision of law is mentioned and, therefore, he prays for correction of the said.

The prayer is accepted.

4. The amendment to be carried out forthwith.

5. The applicant faced a trial in Summary Criminal Case No.23/2014 for offences punishable under Sections 294, 352, and 506 of the Indian Penal Code. For offence punishable under Section 294 of the Indian Penal Code, learned Magistrate convicted the applicant and sentenced to suffer rigorous imprisonment for three months and to pay a fine of Rs.10,000/- and in default of payment of the fine amount to suffer rigorous imprisonment for one month. For offence punishable under Section 352 of the Indian Penal Code, he was sentenced to suffer rigorous imprisonment for three months and to pay a fine of Rs.500/- and in default of payment of the fine amount to suffer rigorous imprisonment for ten days. Learned Magistrate acquitted the applicant for offence punishable under Section 506 of the Indian Penal Code. Learned Magistrate directed that the substantive jail sentence shall run concurrently.

6. The aforesaid judgment and order of conviction was upheld by learned Additional Sessions Judge, Kelapur on 21.1.2021 in Criminal Appeal No.49/2015.

7. Today since revision was involving question of law, this Court has admitted the revision. The applicant was on bail throughout, is the submission made by learned senior counsel for the applicant as it could be fortified from perusal of orders passed by both the Courts below.

8. After judgment delivered by Appellate Court, the applicant is taken into custody as it could be seen from statement made on affidavit filed along with this application by wife of the applicant.

9. Since the applicant was on bail throughout and the revision involves question of law and looking to quantum of sentence, I pass following order:

ORDER

(1) The criminal application is allowed.

(2) The substantive jail sentence imposed upon the applicant on 27.11.2015 by learned Judicial Magistrate First Class, Court No.2, Kelapur in Summary Criminal Case No.23/2014 which is upheld by learned Additional Sessions Judge, Kelapur on 21.1.2021 in Criminal Appeal No.49/2015 shall stand suspended during the pendency of this revision.

(3) The applicant shall be released on bail on he executing a P.R.Bond in the sum of Rs.15,000/- with one solvent surety of the like amount.

(4) The applicant shall execute the bail bonds before learned Judge below and learned Judge before whom the bail bonds will be executed shall ensure that entire fine amount is paid by the applicant. If the entire amount is not paid, release warrant need not be issued, till fine amount is deposited.

With this, the criminal application is disposed of.

JUDGE

!! BRW !!

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