

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 847 OF 2022
IN
CRIMINAL REVISION APPLICATION NO. 83 OF 2022**

Datta Maneji Bhandawale
and others

.. Applicants

Versus

The State of Maharashtra
Through Police Station Officer

.. Respondent

Mr. Atul R. Muely, Advocate for the Applicants.
Mrs. G. L. Deshpande, APP for Respondent.

CORAM : BHARAT P. DESHPANDE, J.

DATED : 26th AUGUST, 2022.

PER COURT:-

1. This is an application for suspension of sentence and grant of bail.
2. Heard learned counsel for the applicants and learned APP for the respondent.
3. The applicants were prosecuted for the offences under Sections 294, 326, 504 r/w Section 34 of the Indian Penal Code (for short "IPC") in R.C.C. No. 97 of 2006. The learned Magistrate vide judgment and order dated 13.06.2013 found the applicants guilty for the said offences and sentenced them accordingly as found in the operative order.

4. The applicants challenged the said conviction before the learned Sessions Judge, Nanded in Criminal Appeal No. 72 of 2013.

5. The learned Additional Sessions Judge - 2, Nanded in Criminal Appeal No. 72 of 2013 vide its judgment dated 25.03.2021 partly allowed the appeal. The conviction of the applicants was maintained for the offence under Sections 294, 326, 504 r/w Section 34 of the IPC. The applicants were acquitted for the offence punishable under Section 506 r/w Section 34 of the IPC.

6. Learned counsel for the applicants submits that all the applicants were on bail during trial as well as during the appeal period. He further submits that, there are arguable grounds raised in the revision application which require consideration and till the disposal of the revision application substantive sentence awarded against the applicants be suspended.

7. Considering the grounds raised in the revision application and on perusal of the judgments passed by the Courts below, it is necessary to consider such grounds on merits. Therefore, till the disposal of the revision application substantive sentence awarded against the applicants needs to be suspended.

8. In the present matter, the learned Additional Sessions Judge, Nanded while passing the impugned judgment in Criminal Appeal No. 72 of 2013

nowhere observed that the accused persons were present at the time of passing of the judgment in the appeal. Similarly, there is no whisper as to whether any order is passed regarding suspension of sentence by the Appellate Court. No direction is issued to the learned Magistrate or to the applicants to surrender or undergoing the sentence which was confirmed.

9. The provisions of Section 389 of the Code of Criminal Procedure clearly goes to show that the Appellate Court is not having any specific power to suspend the sentence at the time of decision of appeal. In spite of this the operative part of the judgment is silent as to whether the applicants/accused were taken into custody for undergoing the remaining sentence.

10. The learned APP submitted that the applicants did not surrender before the Appellate Court or before the Trial Court for undergoing the remaining sentence till date.

11. Learned counsel for the applicants submits that the applicants were not called upon to surrender by the First Appellate Court.

12. Considering the above facts, the sentence awarded by the learned Courts below needs to be suspended. Hence, the following order.

ORDER

(I) The application stands allowed.

(II) The substantive sentences awarded by the Courts below are

suspended till the disposal of the revision application. The applicants shall be released on furnishing personal bond of Rs. 25,000/- (Rs. Twenty Five Thousand only) each with one solvent surety in the like amount to the satisfaction of the learned Magistrate.

(III) The application stands disposed of accordingly.

(BHARAT P. DESHPANDE, J.)

P.S.B.