

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

**CRIMINAL APPLICATION NO. 918 OF 2022
IN
CRIMINAL APPEAL NO. 166 OF 2022**

Surekha Adhar Borse and Others

..APPLICANTS

VERSUS

State of Maharashtra

..RESPONDENT

....

Mr. D.R. Irale Patil, Advocate for applicants
Smt. D.S. Jape, A.P.P. for respondent - State

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**CORAM : R.G. AVACHAT, J.
DATED : 28th MARCH, 2022**

PER COURT :

1. This is an application for suspension/stay of conviction of the applicants herein in Sessions Case No. 32 of 2019. The applicants have been convicted for the offences punishable under Sections 353, 332, 351 read with Section 34 of the Indian Penal Code ('I.P.C.').

2. This Court has already suspended execution of substantive sentence of imprisonment. The question is whether, in the facts and circumstances of the case, conviction of the applicants deserves to be stayed.

3. Learned counsel for the applicants would submit that Applicant No.1 has been serving with Zilla Parishad, Nandurbar. The Zilla Parishad

authorities are likely to terminate her services on account of conviction in question. Applicant No.2 is just twenty two years old girl taking education. On completion of graduation, she may join services. The conviction in question may come in her way to secure a job. Applicant No.3 is seventy years old. If the conviction is not stayed, it would be a stigma. Learned counsel, therefore, urged for grant of the application.

4. Learned A.P.P. would, on the other hand, submit that on appreciation of evidence in the case, the applicants have been convicted. According to learned A.P.P., the conviction can be stayed in rarest of the rare case. A strong case therefor has to be made out. He would further submit that there was overwhelming evidence against the applicants herein. On appreciation of the same, the trial Court has rightly convicted them. As such, it is not a case for suspending conviction of the applicants. He, therefore, urged for rejection of the application.

5. Considered the submissions advanced. Perused the relevant evidence and the judgment of conviction impugned herein. The applicants herein are women. Applicant No.1 has been serving with Zilla Prishad, Nandurbar. She had undertaken a fast unto death since she has been placed under suspension. There is no material to indicate the reason for her suspension. Since due to fast, her health was deteriorated. She was

medically screened. The doctor advised to shift her to hospital. She was reluctant to leave. The police personnel on duty at the site had, therefore, to move Applicant No.1 to the hospital. As she was reluctant to go to the hospital, the police were required to forcibly remove her. It is the case of the prosecution that Applicant No.2, daughter of Applicant No.1, took a video shooting of the entire episode with a view to prevent the police authorities from taking Applicant No.1 to the hospital. Applicant No.2 bit the arm of a ladies constable. Applicant No.1 used criminal force against the lady constables on duty. Both, Applicant Nos.1 and 2 abused the police personnel.

6. Close scrutiny would indicate that evidence was that of the police officials, who were engaged in taking Applicant No.1 to the hospital. Another so called independent witness is none other than an employee of the Zilla Parishad, with whose higher ups. Applicant No.1 appears to be at loggerheads since she was placed under suspension. Applicant No.2 is a student. It will take time for the appeal to come up for hearing. In the given circumstances, the applicant may lose her service on account of conviction in question. There would be hurdle for Applicant No.2 to secure a job, if any.

7. In these circumstances, this Court is inclined to allow the application in terms of prayer clause (C), so far as regards Applicant Nos. 1 and 2 are concerned. Needless to mention this order shall not come in the

way of disciplinary proceedings, if any, initiated against Applicant No.1. The authorities concern may take such proceedings to its logical conclusion.

(R.G. AVACHAT, J.)

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