

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**904 CRIMINAL APPLICATION NO.1814 OF 2022
IN APPEAL/417/2022**

RAUF NYAJU PATEL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant : Mr. Bagal Vishal A.
APP for Respondent-State : Mr. S. P. Deshmukh

...

WITH

**CRIMINAL APPLICATION NO.1994 OF 2022
IN APPEAL/439/2022**

KUNAL SUHASH RAUT
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. A. N. Sabnis
APP for Respondent-State : Mr. S. P. Deshmukh

...

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 24-06-2022

ORAL ORDER :

1. Heard both sides.
2. The prosecution story is that the informant Shirish Bhalerao was serving as a Constable in Special Branch, Police Commissioner Office, Aurangabad. He was attending a training program in the Control

Room on 29-10-2018. It is the case of the prosecution that the Police Inspector of the Special Branch had received an information about accused No.1 and 2 that under the guise of agitation they would create some law and order problem. Upon the directions of Police Inspector, the informant had gone to Zilla Parishad and Municipal Corporation Office to meet accused No.1 and 2. When he had reached Zilla Parishad Office at about 12.15 p.m., he found accused in Canteen area. Informant introduced himself to them and made inquiry about their agitation. Thereafter, as per the informant there was altercation and accused No.1 caught hold of collar of his shirt and talked in abusive and threatening language. According to informant the other police persons rescued him from the clutches of accused No.1. Accused persons were overpowered by the police persons and were brought to Police Station Kranti Chowk, Aurangabad, and thereafter, the informant has lodged the report.

3. After the investigation was completed, charge-sheet was filed and after committal of the case, charge were framed, trial was conducted. The learned Additional Sessions Judge, Aurangabad by Judgment and order dated 27-05-2022 convicted the accused Nos.1 and 2 thus : -

"01.....

02. The accused No.1/Rauf Nyaju Patel and accused No.2/Kunal Subhash Raut are convicted for the offence punishable under Sections 332 and 353 of the Indian Penal Code vide Section 235 (2) of the Code of Criminal procedure, 1973.

03. The accused No.1/Rauf Nyaju Patel and accused No.2/Kunal Subhash Raut are sentenced for the offence punishable under Section 332 of the Indian Penal Code to suffer rigorous imprisonment for six months and to pay a fine of Rs.3000/- (Rs.Three Thousand Only) each, in default to suffer simple imprisonment for fifteen days.

04. The accused No.1/Rauf Nyaju Patel and accused No.2/Kunal Subhash Raut are sentenced for the offence punishable under Section 353 of the Indian Penal Code to suffer rigorous imprisonment for one year and to pay a fine of Rs.5000/- (Rs.Five Thousand Only) each, in default to suffer simple imprisonment for one month....."

4. Taking into consideration the submissions on behalf of the applicants/appellants it appears that the applicants/appellants intend to put forward that there was no motive for the accused persons to commit any crime against the informant. The best possible evidence in the form of CCTV footage was not collected by the Investigating

Officer nor any independent witness has been examined, who ever has been examined is the police officer. The medical evidence is also not supporting the statement of the informant, and therefore, the learned Additional Sessions Judge ought not to have come to the conclusion that the accused persons are guilty of committing offence.

5. Per contra, the learned APP supported the reasons given by the learned Additional Sessions Judge and submitted that all the competent witnesses have been examined and there is nothing elucidated in their cross-examination on behalf of the appellants. Under such circumstances, there is no necessity to suspend the sentence though the appeal has been admitted.

6. First of all the points in favour of the applicants/appellants are that the appeal is admitted and it is less likely that the appeals would be heard in the near future. Secondly, the sentence that has been imposed against them is small sentence, and therefore, in view of *Kiran Kumar v. State of M.P.*, reported in (2001) 9 SCC 211, the sentence deserves to be suspended. As regards the points raised by the applicants/appellants are concerned, they will have to be answered at the time of final hearing of the appeals. Hence, following order.

ORDER

- 1) Both the applications stand allowed.
- 2) The substantive sentence imposed on the applicants/appellants by the learned Additional Sessions Judge, Aurangabad, in Sessions Case No.589 of 2019, dated 27-05-2022, is hereby suspended till the hearing and final disposal of Criminal Appeals No.417 of 2022 and No.439 of 2022.
- 3) Applicants/appellants Rauf Nyaju Patel and Kunal Subhash Raut be released on P.R. Bond of Rs.50,000/- each with two solvent sureties of Rs.25,000/- each.
- 4) The applicants/appellants shall not indulge in any criminal activity.
- 5) The applicants/appellants 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, and thereafter, the Trial Judge to fix dates for their subsequent appearances.

6) In case of two consecutive defaults on the part of the applicants/appellants to remain present before the Trial Court, the Trial 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.

7) Bail before the Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.