

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

**CRIMINAL APPLICATION NO. 2197 OF 2022
IN
CRIMINAL APPEAL NO. 928 OF 2015**

Shri. Umakant s/o Vasant Kumbhare (Borikar)
Age : 54 years approximately,
Occu. Service (Clerk) & Agriculturist,
Clerk at Venkatesh High School,
Latur (Rayat Shikshan Sanstha),
R/o. Motinagar, Latur, Tq. Dist. Latur. **...Applicant**

Versus

The State of Maharashtra **...Respondent**

.....
Mr. A. D. Ostwal, Advocate for the Applicant
Mr. R. V. Dasalkar, APP for respondent/State
.....

**CORAM : SMT. VIBHA KANKANWADI
AND
RAJESH S. PATIL, JJ.**

DATE : AUGUST 18, 2022

ORAL JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] : -

1. Present application has been filed for suspension of substantive sentence awarded against the applicant in Sessions Case No. 4/2013 and 118/2013 by learned

Additional Sessions Judge, Latur dtd. 16.11.2015. The applicant is accused no. 1, who has been sentenced thus : -

- (1) Accused no. 1 – Umakant s/o Vasant Kumbhare (Borikar) is hereby convicted u/s 235(2) of Cr.P.C. for the offence punishable under Section 143 r/w 149 of Indian Penal Code and he is sentenced to suffer R.I. for six months and fine of Rs. 1000/- in default to suffer S.I. for 1 month.
- (2) Accused no. 1 – Umakant s/o Vasant Kumbhare (Borikar) is hereby convicted u/s 235(2) of Cr.P.C., for the offence punishable under Section 147 r/w 149 of Indian penal Code and he is sentenced to suffer R.I. for 1 year and to pay a fine of Rs.1,000/- in default to suffer S.I. for 1 month.
- (3) Accused no. 1 – Umakant s/o Vasant Kumbhare is hereby convicted u/s 235(2) of Cr.P.C., for the offence punishable under section 148 r/w 149 of Indian Penal Code and he is sentenced to suffer R.I. for one year and to pay a fine of Rs. 1,000/- in default to suffer S.I. for one month.
- (4) Accused no. 1 – Umakant s/o Vasant Kumbhare (Borikar) is further hereby convicted u/s 235(2) of Cr.P.C. for the offence punishable u/s 302 r/w Sec. 149 of Indian Penal Code and he is sentenced to suffer imprisonment for life and to pay a fine of Rs. 2,000/- in default to suffer S.I. for three months.

2. Heard Mr. A. D. Ostwal, learned advocate for the applicant and Mr. R. V. Dasalkar, learned APP for respondent/State.

3. At the outset, it is to be noted that the appeal came to be admitted on 18.12.2015. Thereafter, the Criminal Application No. 6751 of 2015 was filed by the present applicant for suspension of substantive sentence. This court by order dated 26.02.2016 rejected the application and it was stated that the appeal shall be heard in short time. Now when this Court has already rejected the earlier application for suspension of substantive sentence then the question arises as to whether the second application would thus be maintainable and if it is maintainable, whether it can be allowed? We do not want to go into the reasons as to why until now the appeal was not heard, yet, one obvious reason is the huge pendency. Now the applicant is seeking suspension of substantive sentence imposed against him on medical ground also. It has been stated that he suffered heart attack on 22.04.2019 and was treated at GHATI Hospital, Aurangabad till 26.04.2019. According to him, though he as well as Jail authorities were advised by the doctors to refer the applicant to higher centre for CAG SR (Angeography) and other tests, according to him, those tests have not been conducted. The applicant was in Harsul Jail, Aurangabad, for a period of nine months approximately and then was shifted to Nashik District Open Prison because of the good conduct. According to him, his condition became

worst and he had to undergo bypass surgery. He was released on Covid parole on 13.05.2020 and since then he is on Covid parole and during that period he has in fact undergone the bypass surgery. According to him, it is because of the negligence on the part of Jail Authorities. The medical certificate along with discharge summary has been produced on record. Another ground on which he is seeking suspension of substantive sentence is the medical ground of his father and mother. His father has been detected with blood cancer. His father is aged 79 years old. Applicant states that he has already undergone the sentence under Section 143 r/w 149, 147 r/w 149 of the Indian Penal Code and Section 148 r/w 149 of the Indian Penal Code, the remaining part of the sentence under Section 302 r/w 149 of the Indian Penal Code is yet to be undergone. Alternatively, he has prayed for grant of temporary bail for a period of six months.

4. The first and the foremost fact which has to be reiterated is that, while rejecting his bail application this Court has observed that there is considerable evidence which is preventing the Court from releasing the accused on bail pending trial. Another fact that was taken note of was that during the period of trial also, he was not released on bail. These two points are definitely required to be

considered here also. Perusal of the evidence would *prima facie* gives an impression that there is strong circumstantial evidence against the applicant and also the motive.

5. Now as regards the medical ground of the applicant is concerned, he has placed on record various documents since 2019 and recent one about the discharge summary after he had undergone the bypass surgery. It nowhere states that his health is not good. In fact, after the bypass surgery has been done, he has been discharged. Another fact is that since 13.05.2020, he was on Covid-19 parole and he has returned to Jail few days prior to his present application.

6. At this stage, there is nothing on record to show that due to the negligence of the Jail authorities he was required to undergo bypass surgery. If he was advised to be referred for other tests and the concerned authority was not paying attention, he could have definitely brought it to the notice of this Court and then immediately the medical assistance could have been given. For his own inaction, he cannot now blame the Jail Authorities. Another fact is that when since May-2020 he is on Covid-19 parole, there might be other reasons also for which he has to undergo bypass surgery. Sufficient parole has been granted to him, which

cannot be extended now as it would be beyond the rules.

7. Now as regards the medical ground of his father is concerned, no doubt it appears that his father is suffering from blood cancer and he is undergoing treatment with TATA Memorial Hospital but, that cannot be the ground to release him that too on a temporary bail when his father can be looked after by his other family members. As and when need arises he may seek parole leave if it can be given as per rules.

8. Lastly, it can be said that, by a separate order, it has been proposed by this Court that if it is convenient to this Court the matter would be taken up for final hearing in the week commencing from 10.10.2022. Under such circumstances, this is not a fit case where the substantive sentence should be suspended.

9. Criminal Application stands rejected.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE