

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2561 OF 2022
IN APEAL/238/2018

SHAIKH SAILANI BABA S/O RAJMOHAMMAD @ RAJAMIYA
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. S. J. Salunke, Advocate for the applicant.
Mr. A. M. Phule, APP for the respondent – State.
...

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

DATE : 3rd October, 2022

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. Present application has been filed for suspension of sentence. The learned Additional Sessions Judge-2, Nanded in Sessions Case No.117 of 2014, by order dated 14.03.2018 has convicted and sentenced the applicant thus :-

"1. Accused No.2 – Shaikh Sailani Baba s/o Rajmohammad @ Rajamiya is convicted under Section 235(2) of the Code of Criminal Procedure for an offence punishable under Sections 364, 365, 397, 302, 201 read with Section 34 of Indian Penal Code, arising out of Crime No.113 of 2014 registered with Police Station, Bhagyanagar, Nanded.

2. Accused No.2 – Shaikh Sailani Baba s/o Rajmohammad @ Rajamiya is sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.7000/- and in default of payment of fine, he shall suffer rigorous imprisonment for five months for an offence punishable under Section 302 read with Section 34 of Indian Penal Code.

3. Accused No.2 – Shaikh Sailani Baba s/o Rajmohammad @ Rajamiya is sentenced to suffer rigorous imprisonment for seven years for an offence punishable under Section 397 read with Section 34 of Indian Penal Code.

4. Accused No.2 – Shaikh Sailani Baba s/o Rajmohammad @ Rajamiya is sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.5000/- and in default of payment of fine, he shall suffer rigorous imprisonment for three months for an offence punishable under Section 364 read with Section 34 of Indian Penal Code.

5. Accused No.2 – Shaikh Sailani Baba s/o Rajmohammad @ Rajamiya is sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.5000/- and in default of payment of fine, he shall suffer rigorous imprisonment for two months for an offence punishable under Section 365 read with Section 34 of Indian Penal Code.

6. Accused No.2 – Shaikh Sailani Baba s/o Rajmohammad @ Rajamiya is sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.3000/- and in default of payment of fine, he shall suffer rigorous imprisonment for one month for an offence punishable under Section 201 read with Section 34 of Indian Penal Code.”

2. Heard learned Advocate Mr. S. J. Salunke for the applicant and learned APP Mr. A. M. Phule for the respondent – State.

3. It has been submitted on behalf of the applicant that the applicant came to be arrested on 21.06.2014 and has faced the trial being under trial prisoner. He was released on emergency parole due to pandemic of Covid-19 on 14.07.2021 and he has surrendered before the jail authorities as per the orders. This is his successive application for suspension of sentence and bail. The earlier bail application was rejected by this Court and hearing of the appeal was expedited, however, since there is no possibility of early hearing of the appeal, the present application has been filed.

4. Learned Advocate appearing for the applicant has taken us through the evidence once again and submitted the same points which were earlier agitated on his behalf. It will not be out of place to mention here that by order dated 20.06.2018, by giving a

detailed order, this Court (Coram : S. S. Shinde and V. K. Jadhav, JJ.) had rejected the application. No doubt, it was stated that considering the facts and circumstances of the case, the hearing of the appeal is expedited, however, that does not give the applicant a right to be released on bail or suspension of sentence on the same count. We accept that the applicant has a right of expeditious hearing of the appeal, however, taking into consideration the pendency of the cases, the applicant will have to stand in queue. This Court is dealing with the jail appeals which have been filed in the year 2015. Under such circumstance, when there are other appellants, who are in jail even prior to the present applicant, then they will have to be given preference. Therefore, we reiterate the reasons given by the earlier Bench vide order dated 20.06.2018 on the point of rejecting the application on merits and also it is stated that still we can hear the appeal provided the earlier backlog is clear, as early as possible. The application stands rejected.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm