

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

CRIMINAL WRIT PETITION NO.1278 OF 2022

SHAIENDRA RAMCHANDRAN VISHWAKARMA
VERSUS
THE STATE OF MAHARASHTRA

AND

CRIMINAL WRIT PETITION NO.1289 OF 2022

SHAIENDRA RAMCHANDRAN VISHWAKARMA
VERSUS
THE STATE OF MAHARASHTRA

....
Mr. Dhanraj S. Ingole h/f N.S. Ghanekar, Advocate for the
Petitioner in both the WPs
Mr. S.P. Deshmukh, APP for Respondent/State in both the WPs
....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 17 OCTOBER 2022

PER COURT:-

. Heard finally with consent of both the sides.

2. Both these petitions are similarly placed and being
disposed of by common order.

3. Heard Mr. Ingole holding for Mr. N.S. Ghanekar,
learned counsel for the petition and Mr. S.P. Deshmukh,
learned counsel for the respondent/State

4. Mr. Ingole holding for Mr. Ghanekar, learned counsel for the petitioner invited my attention to the orders passed by the Additional Sessions Judge, Nandurbar in Regular Criminal Appeal Nos. 7 of 2022 and 8 of 2022. He pointed out that the applications for suspension of sentence and bail came to be rejected by the appellate Court only on the ground that the petitioner/accused in the respective petitions is resident of another State, and he may not remain present if released on bail, and he would repeat the same kind of offences. He submitted that the impugned order is bad in law. The applications for suspension of sentence and bail cannot be refused only because the petitioner/accused is resident of another State. The petitioner/accused is ready to furnish local surety as per the orders of this Court. He submitted that the impugned order is liable to be quashed and set aside.

5. Mr. S.P. Deshmukh, learned APP for the respondent/State supported the impugned order passed by the learned Additional Sessions Judge, Nandurbar.

6. I have considered the submissions of both the sides. Perused the impugned orders passed by the Additional Sessions Judge, Nandurbar in Regular Criminal Appeal Nos.7

of 2022 and 8 of 2022 dated 09.06.2022. The applicants for suspension of sentence and bail moved by the petitioner/accused came to be rejected by the Additional Sessions Judge, Nandurbar only on three grounds, (i) He is resident of another State, (ii) he may not appear at the time of hearing of the appeals and (iii) He may repeat the same nature of the offences.

7. If the scheme of Section 389 of the Code of Criminal Procedure is carefully read, it nowhere provides that order of sentence can not be suspended if the petitioner/accused is resident of another State. The request for suspension of sentence and bail needs to be considered by the appellate Court as per the scheme of Section 389 of the Code of Criminal Procedure. The petitioner/accused came to be convicted under Sections 454 and 380 read with Section 34 of the Indian Penal Code. Even though he was behind the bars during the trial, cannot be a sole ground to reject the applications for suspension of sentence and bail. Equally, his applications can not be rejected only because he is resident of another State. His presence can be secured by giving directions to the petitioner/accused to furnish local surety. It may take care of his presence at the time of hearing of the

appeals. Under these circumstances, the impugned orders passed by the learned Additional Sessions Judge, Nandurbar in respective Regular Criminal Appeals are liable to be quashed and set aside. The petitioner/accused is liable to be released on bail by suspending the sentence passed by the learned Chief Judicial Magistrate, Nandurbar. There are no extraordinary circumstances to keep the petitioner/accused behind the bars.

ORDER

(i) The impugned orders passed by the Additional Sessions Judge, Nandurbar dated 09.06.2022 in Regular Criminal Appeal Nos. 7 of 2022 and 8 of 2022 are hereby quashed and set aside.

(ii) The execution of substantive sentence passed against the petitioner/accused in RCC No.01 of 2022 (Crime No.910 of 2021) and in RCC No.2 of 2022 (Crime No.911 of 2021) by the Chief Judicial Magistrate, Nandurbar is hereby suspended till final decision of the appeals pending on the file of Additional Sessions Judge, Nandurbar.

(iii) The petitioner/accused shall be released in both the above said appeals on furnishing local surety in the sum of Rs.20,000/- (Rupees Twenty Thousand) in each appeal. The Additional Sessions Judge may put reasonable conditions also in order to secure presence of the petitioner/accused.

(iv) The learned Additional Sessions Judge, Nandurbar shall release the petitioner/accused in both the appeals after furnishing local surety by the petitioner/accused.

(v) It is pointed out by Mr. Deshmukh, learned APP for the State that fine amount is not deposited by the petitioner/accused. As such, the learned Additional Sessions Judge is directed to issue release order only after payment of fine amount by the petitioner/accused in respective appeals.

(vi) Both the writ petitions are accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane