

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

**42 CRIMINAL APPLICATION NO.3576 OF 2022
IN APEAL/804/2022 WITH APEAL/804/2022**

**JAKOJI DIGAMBAR KURE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA**

Mr. Suraj R. Bagal, Advocate for the applicants
Mr. Sharad S. Shinde, Advocate for respondent No.2 (appointed)
Mrs. D. S. Jape, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 28th November, 2022

P. C.

1. Heard the learned advocate for the parties.
2. This is an application seeking suspension of sentence awarded by the learned Sessions Judge, Nanded by judgment and order dated 14-10-2022 in Sessions Case No. 137/2014. All the applicants are held guilty for the offences punishable under Sections 307, 385 and 506 of the Indian Penal Code and Section 4/25 of the Arms Act. Maximum sentence awarded is 5 years and to pay fine of Rs.10,000/- each and in default to suffer

simple imprisonment for six months for the offences punishable under Section 307. Out of fine amount, Rs.40,000/- is directed to be paid to the victim towards compensation during the trial court. The applicants were on bail. There is no complaint of misuse of liberty. They have already deposited the fine amount. It is further submitted that during the trial initially they were in jail for about 3 months and after the judgment dated 14-10-2022 they are immediately taken into custody and thus for more than one and half months they were in jail after judgment. Thus, they have suffered about 5 months in jail.

3. Considering that it is a short sentence and considering that the appeal is not likely to be heard in near future, he prays for suspension of sentence. He also relied upon the judgment in the case of Kiran Kumar Vs State of M. P reported in 2001 AIR (SCW) 5130 and in the case of Bhagwan Rama Shinde Gosai Vs State of Gujrat reported in 1999 AIR (SC) 1859.

4. Learned advocate appointed vehemently opposed this application. He submits that there are serious injuries on the victim. There are eye witnesses to the incident.

5. Learned APP also opposed the application stating that there is recovery of weapon. There are also eye witnesses and therefore, this is not the fit case to suspend the sentence.

6. Considering the submissions and considering the facts that the fine amount is already paid, the applicants were on bail during the trial and that sentence is only of five years, it would be desirable to allow the application. Hence, the following order:

ORDER

a] The application stands allowed.

b] The applicants be released on bail as per the conditions imposed by the trial court while granting the bail.

(4)

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c] The applicants shall not indulge into any criminal activity.

d] If their address is changed, same shall be informed to the concerned police station.

7. Mr. S. S. Shinde, learned advocate for respondent No.2 shall be entitled to fees as per rules.

[KISHORE C. SANT, J.]

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