

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3593 OF 2022 IN
REVISION APPLICATION NO.313 OF 2022

KISHAN VITTHAL KOKULWAR
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. U. B. Bilolikar
APP for Respondent : Mr. K. S. Patil
...

CORAM : S. G. MEHARE, J.

DATE : 20-10-2022

PER COURT :-

1. Issue notice to the respondent, returnable forthwith. The learned A.P.P. waives service of notice for the respondent/State.
2. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent / State.
3. The learned Judicial Magistrate First Class, Naigaon Bazar, District Nanded, convicted the accused of the offence punishable under Section 7(1)(a)(ii) of the Essential Commodities Act and sentenced him to suffer rigorous imprisonment for three months and fine of Rs.5,000/-, in default to suffer simple imprisonment for one month. The learned Additional Sessions Judge, Biloli, District Nanded, confirmed the said conviction.
4. The counsel of the applicant would submit that the law has not been properly considered by the Court of J.M.F.C., Naigaon (Bz.) and the learned Additional Sessions Judge, Biloli. The applicant has surrendered before the Court and is behind bars.

The applicant is 70 years old and has good chances of success in the revision. Hence, the corporal sentence imposed against him may be suspended.

4. The learned A.P.P. would submit that there are two concurrent judgments on the facts and the law. There are least chances of interference in the impugned judgment in view of limited powers of this Court under Section 401 of the Code of Criminal Procedure. Hence, it would not be profitable to suspend the sentence.

5. Perused the impugned order. The applicant appears to have a good arguable case. No harm would cause to the State, if the sentence is suspended. In view of the facts of the case, discretion under Section 397 of the Code of Criminal Procedure, may be exercised in favour of the applicant. Hence, the following order :-

- i) The application is allowed.
- ii) The sentence of rigorous imprisonment for three months imposed by the learned Judicial Magistrate, First Class, Naigaon Bazar, District Nanded, in RCC No.37 of 2012 decided on 06.10.2017 and confirmed by the learned Additional Sessions Judge, Biloli, in Criminal Appeal No. 30 of 2017 decided on 07.10.2022, is suspended till the disposal of this petition.
- iii) The applicant Kishan Vitthal Kokulwar be released on bail, on furnishing PB and SB of Rs.15,000/- with one solvent surety of the like amount.

(S. G. MEHARE)
JUDGE