

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.1455 OF 2021
IN
CRIMINAL APPEAL NO.471 OF 2021**

Vicky @ Vilas Suresh Khichhi

.. Applicant/ Appellant

Versus

State of Maharashtra

.. Respondent

.....

Mr.Raju D. Suryawanshi, Advocate for the Applicant/Appellant.

Mr.S.V. Gavand, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JANUARY 27, 2022.

P.C. :

This is an application for suspension of sentence and grant of bail during pendency of Criminal Appeal No.471 of 2021.

2 The applicant (accused no.1) and others were convicted for the offence punishable under Section 307 of Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.500/-, vide judgment and order dated 8th March, 2021, passed by the learned Additional Sessions Judge, Nashik, in Sessions Case No.109 of 2015.

3 Learned advocate for the applicant submitted that the applicant was on bail during the trial. During the pendency of this Appeal, the applicant has been granted temporary bail on the ground of pandemic of Covid-19 and the said order is in operation. It is further submitted that the co-accused (accused nos.2 to 4) has preferred criminal Appeal No.487 of 2021. The Appeal has been admitted by this Court. The said accused had preferred interim application no.1485 of 2021, and, the said application has been allowed vide order dated 30th June, 2021, granting bail to them by suspending the sentence of imprisonment. The order dated 30th June, 2021, indicate that one of the accused was not in custody while the sentence was suspended. He further submitted that the order dated 30th June, 2021, mentions the fact that the convict therein had filed Affidavit-cum-Undertaking, which is taken on record and in the said Undertaking it was stated that in the event the said accused are released on bail, they will not commit any offence or indulge any crime in future.

4 Learned counsel for the applicant pointed out the order dated 20th December, 2021, passed by this Court in the present Interim Application, wherein it was recorded that the co-accused who have filed Criminal Appeal No.487 of 2021, have been released on bail

on filing an Affidavit-cum-Undertaking that they will not commit or will not indulge in any crime in future. The advocate for the applicant/appellant sought leave to file similar Affidavit-cum-Undertaking in this Appeal. Leave was granted by permitting the applicant/appellant to file such Undertaking before the next date of hearing. Learned advocate submitted that in the light of leave granted to the applicant/appellant, Affidavit-cum-Undertaking dated 13th January, 2022, has been filed in this application stating that the applicant/appellant will not commit any offence or indulge in any crime in future, and, that he will not contact or issue threats to the complainant, witnesses or any person concerned with the present case, and, shall keep the trial Court informed of my current address and mobile number. Applicant to file Undertaking, that he will scrupulously follow all the terms and conditions, while released on bail.

5 Learned APP, however, submitted that the order granting bail to the co-accused refers to the role played by the said applicants. The role of the applicant can be distinguished from the co-accused.

6 On perusal of order dated 30th June, 2021, it can be seen that in paragraph 7 of the said order, this Court has noted that the

incident had occurred at the spur of moment and the accused has assaulted the injured.

7 It is noted that the applicant was on bail during the trial. The co-accused who were convicted for the similar offence are directed to be released on bail by taking into consideration the factual aspects, and, also that they have filed Undertaking before this Court. The applicant was permitted to file similar Undertaking in this application vide order dated 20th December, 2021.

8 In view of the above, this application can be allowed.

9 Hence, I pass the following order:

:: ORDER ::

- (i) Interim Application No.1455 of 2021, is allowed;
- (ii) During pendency of Criminal Appeal No.471 of 2021, the sentence of imprisonment imposed vide judgment and order dated 8th March, 2021, passed by the learned Additional Sessions Judge, Nashik, in Sessions Case No.109 of 2015, is suspended and applicant is enlarged on bail on furnishing P.R.Bond in the sum of Rs.20,000/-, with one or two sureties in the like amount;

- (iii) Applicant shall report to the trial Court once in two months on the day/date specified by the trial Court, till his Appeal is finally disposed of;
- (iv) Applicant shall not contact or threaten the complainant, witnesses or any person concerned with the case;
- (v) Applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- (vi) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail;
- (vii) Applicant is permitted to furnish cash bail in the sum of Rs.20,000/-, for a period of eight weeks, in lieu of surety;
- (viii) Interim Application No.1455 of 2021, stands disposed of accordingly;
- (ix) All concerned to act on an authenticated copy of this order.

(PRAKASH D. NAIK, J.)