

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1660 OF 2022
IN
CRIMINAL REVISION APPLICATION NO.197 OF 2022

Mukund Biharilal Pardeshi and others	Applicants
versus	
Union of India and another	Respondents

Ms.Rui Danawala i/by Mr.U.R.Mankapure, Advocate for applicants.
Mr.A.D.Kamkhedkar, APP, for State.
Mr.Shreeram Shirsat with Mr.Amandeep Singh, Advocate for Union of India.

CORAM : PRAKASH D. NAIK, J.

DATE : 16th June 2022

PC :

1. This is an application for suspension of sentence and grant of bail during pendency of revision application preferred by applicants challenging impugned judgments of conviction. The applicants are convicted by the Court of learned Judicial Magistrate, First Class, Railway Court, Pune vide judgment and order dated 19th November 2011. The applicants were convicted for the offence u/s.3(a) of Railway Property (Unlawful Possession) Act, 1966. Applicant no.1 was sentenced to suffer imprisonment for two years whereas applicant nos.2 and 3 were sentenced to suffer imprisonment of one year each.

2. The judgment and order dated 19th November 2011 passed by the Trial Court convicting the applicants was challenged by preferring appeal before the Court of Sessions at Sangli. The appeal was dismissed vide judgment and order dated 11th May 2022. The

applicants are taken in custody on the date of judgment and since then they are undergoing sentence.

3. Learned advocate for the applicants submitted that there are serious discrepancies in the evidence adduced by the prosecution. The case is primarily based on the evidence of Investigating Officer (PW-1) and the alleged eye witness (PW-4). The independent witness i.e. panch witness to the seizure which is the prime evidence relied upon by prosecution has not supported the prosecution case and has been declared hostile. There are contradictions in the evidence of witnesses. The applicants were on bail during pendency of trial as well as appeal. The facility of bail was not misused by the applicants. Sentence of imprisonment is of short term and in the event sentence is not suspended, the revision application would become infructuous.

4. Learned counsel for respondent no.1 submitted that there are concurrent findings of two Courts. Trial Court as well as appellate Court has appreciated the evidence. The seizure was proved. The accused were found committing robbery of the high speed diesel from the wagon. They were apprehended on the spot. Evidence of Investigating Officer (PW-1) and the eye witness who had forwarded information to the Investigating Officer (PW-4), establishes the crime against applicants. The offence is of serious nature. Revisional Court has limited powers. Only in exceptional circumstances revision can be entertained. There is sufficient evidence against applicants. The Trial Court as well as appellate Court has appreciated the evidence while convicting the applicants. Applicant no.1 was convicted in the past. Learned counsel pointed out the observations in paragraph 3 of

the judgment of Appellate Court wherein it is mentioned that accused no.1 was twice convicted in Crime No.13/83 and 14/84. Learned counsel relied upon decision of Supreme Court in case of **Duli Chand Vs. Delhi Administration (1975)4-SCC-649**. In the light of the evidence adduced before Trial Court and the judgment of both the Courts below, there is no scope for entertaining the revision application. Therefore the revision application itself may be dismissed.

5. Applicant no.1 has been sentenced to suffer imprisonment of two years whereas applicant nos.2 and 3 are sentenced to imprisonment of one year each for the aforesaid offences. The applicants are in custody from 11th May 2022. The applicants have urged that there are discrepancies in the evidence adduced before Trial Court. Section 401 of Cr.PC indicate that High Court's powers of revision. It is categorically stipulated that powers of Appellate Court embodied in Section 386, 389, 390 and 391 may be exercised by the High Court. Since the revision relates to conviction, the revision has been admitted. The sentence is of short term. The applicants were on bail during trial and appeal. The grounds urged in this application can be considered at the stage of final hearing of revision. It is not clear as to for what offences the applicant no.1 was convicted and whether that conviction has been suffered or challenged or set aside by higher Court. The Appellate Court judgment, however, refers that there were two previous convictions for the offences of the years 1983 and 1984. The status of those convictions are not clear. In any case, the alleged offences were of the year 1983 and 1984.

6. Considering all the above aspects, the sentence of imprisonment can be suspended. Hence, I pass following order :

ORDER

- (i) Interim application is allowed and disposed of;
- (ii) During pendency of Criminal Revision Application No.197 of 2022, the sentence of imprisonment imposed vide judgment and order dated 19th November 2011 passed by Judicial Magistrate, Railway Court, Pune in RCC No.33 of 2003 and confirmed by Sessions Judge, Sangli vide judgment and order dated 11th May 2022 in Criminal Appeal No.416 of 2011 is suspended and applicants are directed to be released on bail on executing PR bond in the sum of Rs.15,000/- each with one or more sureties in the like amount;
- (iii) The applicants are permitted to furnish cash bail in the sum of Rs.15,000/- each for a period of six weeks in lieu of sureties;
- (iv) The applicants shall report the Trial Court once in six months on every first Monday of the month between 11 am and 1 pm till final disposal of revision application;
- (v) In the event there are two consecutive defaults in attending the Trial Court by applicants, the Trial Court shall submit report to this Court;
- (vi) In the event of default committed by the applicants in attending the Trial Court, the prosecution will be at liberty to prefer application for cancellation of bail.

(PRAKASH D. NAIK, J.)

MST