

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

3 CRIMINAL APPEAL NO.532 OF 2017
WITH APPLN/31/2018
WITH APPLN/44/2018 IN APEALST/21/2018

KESHAV GANPATI SHINDE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. N.S. Ghanekar, Advocate for appellants

Mr. R.D. Sanap, APP for respondent No.1

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CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

DATE : 09nd JANUARY, 2023

PER COURT :

1 Learned Advocate for the appellants-accused submits that the appellant Lalji Kondiba Shinde, who is in jail, would be completing his sentence by 26.01.2023.

2 We have received the report from Secretary, High Court Legal Services Sub-Committee, Aurangabad and also the communications those have been made by the Committee to various authorities. It will not be out of place to mention here that the said communication was undertaken in view

of the compliance to the directions given by Hon'ble Supreme Court of India in Suo Moto Writ Petition (Cri.) No.4 of 2021 in Re : Policy Strategy for grant of bail with Miscellaneous Application No.764 of 2022 in Criminal Appeal No.491 of 2022 in Writ Petition (Cri.) No.170 of 2022. We have considered the decision by the Hon'ble Apex Court in the said case. Point No.6.3 of the said decision runs thus -

“6.3 If the convict is in jail and has undergone 40% of the sentence, his case can be taken up by the District Legal Services Authority. The District Legal Services Authority, through a lawyer of sufficient seniority, can counsel the accused that if he is willing to accept his guilt, request can be made to the High Court to reduce the sentence or for releasing the convict on probation of good conduct for a remainder of the sentence. It should be clearly disclosed that the said acceptance of guilt is only for the purposes of closing the matter and in case the High Court is not inclined to accept the plea, then the matter would be considered by High Court on its own merits and his plea would not come in the way of hearing of the appeal on merits.”

It appears that communication was made to the jail authorities and the desire of accused Lalji Kondiba Shinde was sought. According to him, he has undertaken 40% of the punishment awarded to him and then he was ready to take back his appeal, however, the facts are required to be considered. All the accused persons in the said case i.e. five in number stood prosecuted for the offence punishable under Section 302, 143, 148, 447, 506

read with Section 149 of the Indian Penal Code and after the evidence the learned Additional Sessions Judge-1, Nanded has held them guilty of committing offence punishable under Section 304-II, 143, 148, 447, 506 read with Section 149 of the Indian Penal Code. Separate sentence has been awarded under each of the sections. The State Government has filed leave to appeal along with delay condonation application for the acquittal of the original accused persons from the offence punishable under Section 302 of the Indian Penal Code and, therefore, the matter is before the Division Bench, otherwise it could have gone to the Single Bench. Whether to grant leave to the State would be a question that is required to be decided by this Court. Though the delay appears to be of 24 days only and by a separate order today itself further steps in the application for delay condonation would be taken, however, at this stage, though said accused-appellant has given the said application in view of the compliance of the order passed by the Hon'ble Apex Court, it cannot be considered immediately as he is not the only appellant. He has filed the appeal along with co-accused who have been convicted. The effect of his such application is definitely required to be considered and also unless the further compliances have been made i.e. regarding the antecedents of the said accused are produced, it cannot be considered. Therefore, place the matter for further consideration on 30.01.2023. Till then learned APP to get the antecedents of appellant Lalji

Kondiba Shinde from the concerned Police Station.

3 In respect of Criminal Application No.44 of 2018 issue notice to the respondents. Learned Advocate Mr. N.S. Ghanekar waives notice for all the respondents – original accused. As regards the present applicant is concerned, he may file his Vakalatnama before the next date. Though he is strongly opposing the application; yet, it is to be noted that there is delay of 24 days and for the reasons stated in paragraph Nos.3 and 4 the delay stands condoned. Application stands allowed and disposed of. The criminal appeal filed by the State be registered and placed for further consideration on 30.01.2023.

4 Further, as regards the Criminal Application No.31 of 2018 is concerned, issue notice to the respondents. Learned Advocate Mr. N.S. Ghanekar waives notice for the respondent Nos.1 to 5 – original accused. He may file Note of Appearance before the next date.

5 Learned Registrar (Judicial) to inform about this order to Secretary, High Court Legal Services Sub-Committee, Aurangabad.

(Abhay S. Waghware, J.)

(Smt. Vibha Kankanwadi, J.)