

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

**CRIMINAL APPLICATION NO.1877 OF 2023
IN
CRIMINAL APPEAL NO.440 OF 2023**

Noorjahan @ Aayesha Begum
@ Noorjahan Iqbal Pathan (Siddiqui),
Age-68 years, Occu:Small Business,
R/o-Near Eidgaha Masjid, Ghansawangi,
Tq-Ghansawangi, Dist-Jalna.

...APPLICANT

VERSUS

The State of Maharashtra,
Through Police Inspector,
Police Station, Nanapeth,
Tq. and Dist-Parbhani.

...RESPONDENT

...
Mr. Sambhaji S. Tope Advocate for Applicant.
Mr. A.M. Phule, A.P.P. for Respondent – State.
...

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

DATE : 15th JUNE, 2023

ORDER :

1. Present Application has been filed for suspension of sentence. Applicant is accused No.3 in Sessions Case No.124 of 2013 who has been convicted for offence punishable under

Section 364-A and 387 of the Indian Penal Code on 28th April 2023, by learned Additional Sessions Judge, Parbhani.

2. Heard learned Advocate Mr. Tope appearing for the applicant and learned APP Mr. Phule, appearing for the State and with their able assistance, we have gone through the entire record which was before the trial Court.

3. The first and foremost fact which is required to be noted is that present appellant was on bail throughout the trial. Secondly, she is presently aged 68 years. The prosecution story appears to be that the informant Angad was retired person from PWD / B & C Department at Parbhani. He lodged report on 6th October 2009, but then the learned trial Judge has referred, at the time of referring the history of the case in the Judgment, that as per Exhibit-69 last but one Para of page No.2 of the First Information Report dated 22nd October 2009. Since 5th June 2009 informant was serving as Deputy Engineer in Public Works Department, subdivision, Parbhani and 40 to 45 days prior to the First Information Report (for short "the FIR"), a lady by name Aayesha Begum had met him. It was informed by her that she is resident of Aurangabad and her husband's name was disclosed as - Yusuf, whose bill was pending with the subdivision, Vaijapur.

The outstanding bill was in respect of the work already done by the husband. Though informant has submitted that no bill is pending, yet he informed the lady that he would look into the matter. He then says that he has contacted on phone and also made inquiry in the matter. He says that thereafter inquiry was made frequently by giving a call by said Aayesha Begum.

4. Informant further says that on 1st October 2009 he wanted to go to Aurangabad with his friend Mujib, who was also serving as Deputy Engineer. They had decided to go in the Jeep of said Mujib. He then stated as to how they suspected one Indica Car which was following them and then near Jalna Toll Naka said Car overtook their Jeep and about three persons alighted from the Car and the age of those persons is stated between 35 to 40 years. It is stated that at the gun point their mobile phones were robbed and they were taken to the side of railway track at the hillside. One of them told that the lady has sent them whose bill has not been cleared. It is then stated that an amount of Rs.10,000/- from the pocket of the informant was taken away. It is further stated that ransom was demanded of Rs.4,50,000/- and it is stated that relative of Mujib, PW-5 Azim had given Rs.1,50,000/- to those persons. After giving threat, both of them were allowed to go and then the FIR was lodged.

5. At the outset, the testimony of the informant Angad would show that the said Ayesha Begum had given the name of her husband as 'Yusuf' and further says in the examination-in-chief that out of the three assailants, Yusuf was one of the assailant. But we are unable to get his name as accused in the Judgement of the trial Court. The trial was against one Juber Khan Manjoor Ahmed Khan, present applicant and one Haiderkhan Iqbalkhan Pathan. Accused No.2 - Shaikh Riyaz Shaikh Farooq was shown as absconding. So none of them was Yusuf. Accused Nos.1 and 4 have been acquitted by the learned trial Judge. The situation then stands that the present applicant, who was not present at the spot where the alleged incident had taken place, has been convicted and those persons who alleged to have committed the offence i.e. they were allegedly present at the spot, have been acquitted. PW-2 and PW-3 have turned hostile. PW-4 Mujib appears to be not knowing the present applicant as well as other accused persons prior to the alleged incident. Important point to be noted is that he has not supported the prosecution during identification of the accused. Further, there are other admissions also which have been given by the Investigating Officer.

6. Therefore, taking into consideration this quality of evidence, we are of the opinion that the sentence needs to be suspended as the Appeal stood admitted on 18th May 2023. Hence the following order:

ORDER

(I) Application stands allowed.

(II) The substantive sentence imposed on the applicant in Sessions Case No.124 of 2013 by the learned Additional Sessions Judge, Parbhani on 28th April 2023 stands suspended till the final hearing and disposal of Criminal Appeal No.440 of 2023.

(III) The applicant – Noorjahan @ Aayesha Begum @ Noorjahan Iqbal Pathan (Siddiqui) be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.

(IV) The applicant shall not commit any criminal activity.

(V) The applicant shall remain present before the learned Trial Judge one in six months, till final hearing and disposal of the Appeal, commencing from the date she tenders bail papers and

thereafter, the Trial Judge to fix dates for her subsequent appearances.

(VI) In case of two consecutive defaults on the part of the applicant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

(VII) Bail before the Trial Court.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JUN23