

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

CRIMINAL APPLICATION NO. 2074 OF 2023
IN
CRIMINAL APPEAL NO. 504 OF 2023

JANARDHAN RAMRAO WAGHMARE
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for the applicant : Mr. S. C. Arora
A.P.P. for respondent State : Mr. S. P. Deshmukh

.....
AND
CRIMINAL APPLICATION NO. 2180 OF 2023
IN
CRIMINAL APPEAL NO. 534 OF 2023

BADSHAHASINGH @ BASHASINGH S/O AJABSINGH TAK
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for the applicant : Mr. S. C. Arora
A.P.P. for respondent State : Mr. S. B. Narwade

.....

CORAM : S. G. MEHARE, J.

DATE : 07.07.2023

PER COURT :

1. Heard the learned counsel for the applicants and the learned A.P.P for the respondent State.

2. The applicants are seeking suspension of the sentence

imposed upon them to suffer rigorous imprisonment for 10 years for the offences punishable under Section 395 of the Indian Penal Code , 7 years for the offence punishable under Section 397 of the Indian Penal Code, 3 years rigorous imprisonment for the offence punishable under Sections 3/ 25 of the Indian Arms Act and further three years rigorous imprisonment for the offences punishable under Section 5/27 of the Indian Arms Act by the learned Additional Sessions Judge-2, Hingoli in Sessions Case No. 2/2018 dated 18.05.2023.

3. The learned counsel for the applicants would submit that the first informant and one another eyewitness have given the candid admission in their cross-examination that at the time of the alleged incident there were only three accused, but the prosecution has erroneously tried the applicants for the offence under Section 395 of the Indian Penal Code. That apart there were many material infirmities in the prosecution evidence. The so called robbed money has been recovered from the third convict. There were no antecedents to the discredit of the applicant. The applicants were under trial prisoners throughout the trial. Now they have completed around seven years i.e. half of the sentence imposed upon them. They are the permanent resident of Bhandegaon Taluka and district Hingoli and Wadali Bus Stop, Amravati. They would not flee away from the justice. The trial

would take its time. Therefore, the substantive sentence may be suspended till conclusion of the appeal.

4. Per contra, the learned A.PP would point out that another witness stated that he saw two persons and driver was there in the van other than these present accused. The witness stated that there were more than five accused while committing crime; hence section 395 of the Indian Penal Code has been correctly applied and the prosecution has proved the same. Barely undergoing half or more than half of the imprisonment is no ground to suspend the sentence. There was consistence evidence against the applicants. The witnesses identified them. The offense was serious. There may danger to the life of the people at the hands of such decoit. Hence, sentence may not be suspended.

5. Heard both sides and gone through the papers, there appears disparity in the statements of the witnesses as regard the total number of the accused present on the spot of the incident to attract Section 395 of the Indian Penal Code. The learned counsel for the applicant has also pointed out some other infirmities that may be considered as good ground for appeal. The Court is not oblivious of the fact that rule of undergoing more than half the conviction would not apply in the case of conviction. However, there is other material to

believe the defense that may be considered along with the other facts, which help the accused getting sentence suspended. That apart, the applicants appear to have roots in village Bhandegaon Taluka and district Hingoli and Wadali Bus Stop, Amravati. Though the term of sentence is long but there appears grounds for consideration as raised by the learned counsel for the applicant. The circumstances of the case, permit this Court to exercise power under Section 389 of the Code of Criminal Procedure. Hence, the following order.

ORDER

- (i) Both applications are allowed.
- (ii) The applicant Janardhan Ramrao Waghmare and Badshahasingh @ Bashasingh S/o Ajabsingh Tak be released on bail on executing PB and SB of Rs. 50,000/- each with one solvent surety of the like amount on the condition that henceforth they shall not involve in the similar crime.
- (ii) Bail before the learned Additional Sessions Judge, Hingoli.

(S. G. MEHARE)
JUDGE