

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.3062 OF 2023
IN REVN/237/2023 WITH REVN/237/2023**

1. Gangadhar S/o Baba Rathod
2. Tukaram S/o Baba Rathod
3. Mohan S/o Baba Rathod
4. Rohidas S/o Baba Rathod
5. Dhanaji @ Dhanlal S/o Tukaram Rathod
6. Ganesh S/o Tukaram Rathod
7. Bablya @ Arvind S/o Gangadhar Rathod
8. Mangilal S/O Mohan Rathod
9. Dashrath S/o Rohidas Rathod
10. Santosh S/o Tukaram Rathod

All R/o: Savargaon (Met),
Tq. Bhokar Dist. Nanded.

..Applicants

Versus

The State of Maharashtra.
Through Police Station Officer,
Police Station Bhokar Tq. Bhokar,
Dist. Nanded.

..Respondent

...

Mr. Santosh C. Bhosle, Advocate for the Applicants.
Mrs. P. V. Diggikar, APP for Respondents-State.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATE : 21st AUGUST, 2023.**

PER COURT:-

1. Issue notice to the State. Learned APP waives service of notice for the State.

2. The applicants are accused in R.C.C. No.145 of 2023. They were convicted by judgment and order dated 07.01.2021 for the offences punishable under Sections 143, 147, 148, 294, 323, 324, 506 r/w Section 149 of Indian Penal Code and sentenced to suffer 2 years rigorous imprisonment and directed to pay Fine 5000/- each. Aggrieved thereby, they approached the Sessions Court by filing the Appeal. However, the said Appeal came to be dismissed. Hence, the present Revision Application.

3. The learned Advocate appearing for the applicants invites attention of this Court to clause no.2 of the order and contends that 15 days period has been granted to the applicants to surrender before the Trial Court and suffer sentence. By inviting attention of this Court to the certain observations in the impugned judgment, he submits that on merits the applicants have good grounds in Revision. Therefore, he urge for suspension of the sentence.

4. The learned APP opposes the contentions on the ground that as per order of the Appellate Court the applicants are directed to surrender before the Trial Court. They have not complied the order. In absence of such compliance, the prayer in the application for suspension of sentence may not be entertained.

5. Issue as to whether the Revisional Court can consider the Application for suspension of sentence without surrender of the accused, on confirmation the sentence in appeal against conviction recorded by the Trial Court is subject matter of Reference to the Larger Bench. However, till Reference is decided, the view taken by the earlier Courts, which is in the

benefit of accused can be followed. Hence, the following order :

ORDER

- (i) The Criminal Application is allowed.
- (ii) The effect and operation of substantive sentence under impugned judgment and order of Addl. Chief Judicial Magistrate, Bhokar, Dist. Nanded. in Regular Criminal Case No.145 of 2013 dated 07.01.2021 is hereby suspended till further orders.
- (iii) Meanwhile, the applicants be released on bail on executing P.B. and S.B. of Rs.25,000/- (Rs. Twenty Five Thousand only) each with one solvent surety of the like amount.
- (iv) Bail be furnished before the learned Trial Court.

ORDER IN REVISION APPLICATION NO.237 OF 2023

- 1. Issue notice to the respondent, returnable on 09.10.2023. *Humdast* allowed.
- 2. Call Record and Proceedings.

(S. G. CHAPALGAONKAR)
JUDGE