

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

**CRIMINAL APPLICATION NO.3768 OF 2023
IN
CRIMINAL REVISION APPLICATION NO.309 OF 2023**

Madan Baburao Autade

... Applicant

Versus

The State of Maharashtra & Ors.

... Respondents

...

Mr. Ranjit B. Gaikwad and Ms. Ashwini Lomte a/w Mr. S. J. Salunke,
Advocate for the Applicant

Mr. S. P. Deshmukh, APP for Respondent No.1

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 12.10.2023

PER COURT :

1. Heard the learned Advocate appearing for the applicant and learned APP appearing for the respondent No.1/State.
2. Mr. Salunke, learned Advocate appearing for the applicant would submit that the applicant has been prosecuted in Regular Criminal Case No.71/2002 before the Judicial Magistrate, First Class, Paranda for the offences punishable under Sections 408 and 420 of the Indian Penal Code [for short 'IPC']. After having full-fledged trial, the learned Magistrate convicted the applicant for the aforesaid offences and sentenced to undergo simple imprisonment for two years with fine of Rs.1000/-. An appeal

filed by the applicant against the aforesaid conviction vide Criminal Appeal No.03/2023 before the learned Sessions Judge at Paranda came to be partly allowed. The conviction and sentence for offences punishable under Sections 420 has been set aside, whereas, the conviction and sentence for the offences punishable under Section 408 of IPC has been maintained. After confirmation of conviction and sentence, the applicant has surrendered on 04/10/2023. Since then, he is behind the bars.

3. Mr. Salunke, learned Advocate would further submit that the Courts below have failed to appreciate the evidence on record and the principles governing the offences punishable under Section 408 of IPC. He invites attention of this Court to certain observations in the orders of trial court as well as appellate court and submits that there are many arguable points, which require consideration in detail. He submits that the applicant was on bail during the trial so also during pendency of appeal. He has never misused the liberty.
4. Learned APP opposes the prayer for grant of bail and submits that both the courts below have found complicity of the applicant in commission of offence after appreciation of evidence on record and he supports the order of conviction and sentence.
5. Having considered the submissions advanced and after going through the reasoning as adopted by the courts below, it appears that, there are arguable points, which require consideration in detail. In that view of the matter, the case is made out to release the applicant on bail. Hence, the following order:

ORDER

- (i) The Criminal Application is allowed.
- (ii) Pending hearing and final disposal of criminal revision application no.309/2023, substantive sentence imposed by the learned Judicial Magistrate, First Class at Paranda in Regular Criminal Case No.71/2002 and confirmed by the learned Sessions Judge, Paranda in Criminal Appeal No.03/2023 is hereby suspended.
- (iii) Meanwhile, the applicant / accused be released on bail on executing P.B. and S.B. of Rs.25,000/- [Rs. Twenty Five Thousand].
- (iv) Bail be furnished before the Trial Court.
- (v) Criminal Application is disposed of accordingly.

[S. G. CHAPALGAONKAR]
JUDGE

Sameer