

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

**CRIMINAL APPLICATION NO.4337 OF 2022
IN
CRIMINAL APPEAL NO.1006 OF 2022**

Ajay @ Taklya S/o Vijay Jondale,
Age-23 years, Occu:Nil,
R/o-Ishwar Nagar, Nanded,
Tq. and Dist-Nanded.

...APPLICANT

VERSUS

The State of Maharashtra,
Through Shivaji Nagar Police Station,
Taluka-Degloor, District-Nanded.

...RESPONDENT

...
Mr. Sanket S. Palnitkar Advocate with Mr. Chaitanya C.
Deshpande Advocate for Applicant.
Mr. R.D. Sanap, A.P.P. for Respondent.
...

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

DATE : 11th JANUARY, 2023

ORDER :

1. Heard. Present Application has been filed for suspension of substantive sentence imposed on the applicant – appellant. The applicant along with co-accused in Criminal Appeal No.224 of 2021 and Criminal Appeal No.360 of 2021, stood prosecuted for

various offences in Sessions Case No.139 of 2018 before the learned Additional Sessions Judge-1, Nanded. They have been convicted as follows:-

“ 01 The accused Nos. 1-Ankush Sidharth Taru, 2-Shailesh Piraji Kasbe, 3-Ajay @ Taklya Vijay Jondhale all resident of Iswar Nagar, Nanded are convicted vide Section 235(2) of Cr.P.C. for the offences punishable under Sections 302 r/w 149, 341 r/w 149, 143 r/w 149, 144 r/w 149, 147 r/w 149, 148 r/w 149 of the Indian Penal Code.

02 The accused Nos.1 to 3 for the offence punishable under Section 302 r/w 149 of IPC are sentenced to suffer R.I. for life each and also pay fine of Rs.1000/- each, in default to suffer further R.I. for 03 months.

03 For the offence under Section 341 r/w 149 of IPC, all accused Nos.1 to 3 are sentenced to suffer R.I. for one month each and pay fine amount of Rs.200 each, in default of payment of fine to suffer further R.I. for 10 days.

04 Accused Nos. 1 to 3 for the offence punishable under Section 143 r/w 149 of IPC are sentenced to suffer R.I. for 06 months each and also pay fine of Rs.200/- each, in default, to suffer further R.I. for 10 days.

05 Accused Nos. 1 to 3 for the offence punishable under Section 144 r/w 149 of IPC are sentenced to suffer R.I. for 06 months each and also pay fine of Rs.500/- each, in default, to suffer further R.I. for 20 days.

06 Accused Nos. 1 to 3 for the offence punishable under Section 147 r/w 149 of IPC are sentenced to suffer R.I. for 06 months each and also pay fine of Rs.500/- each, in default, to suffer further R.I. for 20 days.

07 Accused Nos. 1 to 3 for the offence punishable under Section 148 r/w 149 of IPC are sentenced to suffer R.I. for 06 months each and also pay fine of Rs.500/- each, in default, to suffer further R.I. for 20 days. ”

2. Learned Advocate for the applicant – appellant has pointed out that the co-equal Bench in Criminal Application No.2020 of 2022 in Criminal Appeal No.224 of 2021 (Shailesh s/o Piraji Kasbe vs. the State of Maharashtra) and in Criminal Application No.3786 of 2022 in Criminal Appeal No.360 of 2021 (Ankush Siddharth Taru vs. the State of Maharashtra), has suspended the sentence against co-accused – Shailesh s/o Piraji Kasbe and Ankush Siddharth Taru, respectively.

3. At the time of granting application for suspension of sentence of co-accused Shailesh Piraji Kasbe i.e. Criminal Application No.2020 of 2022, some observations have been made. We consider that those observations are prima facie and cannot be said to be binding on this Court at the time of final hearing.

4. The main point which the present applicant - appellant intends to harp upon is the delay in recording the statements of eye witnesses, however, the legal position on this point is very much clear. In the decision ***Goutam Joardar vs. State of West Bengal, 2021 (12) Scale 339***, it has been held by the Hon'ble Apex Court that mere factum of delay in recording statements of eye witnesses by itself cannot result in rejection of their testimonies. This legal position will have to be then required to be considered at the final stage. So also, the observations, as regards appreciation of evidence of PW-3 and PW-9, made in Para-5 in the order passed in Criminal Application No.2020 of 2022, dated 17th October 2022, will have to be considered as prima facie.

5. The fact remains that the co-accused have been directed to be released on bail by suspension of sentence and under such circumstance, equal treatment needs to be given to the present applicant. Though the present applicant was not released on bail throughout the trial, taking into consideration the observations that it will take long time to come up the appeal, the said

discretion has been used by this Court earlier and the same order is maintained here. Hence the following order:-

ORDER

(I) The Criminal Application is allowed.

(II) Pending the Appeal, the execution of the substantive sentences imposed by learned Additional Sessions Judge-1, Nanded in Sessions Case No.139 of 2018, by Judgment and order dated 23rd February 2021 shall stand suspended so far as the present applicant – Ajay @ Taklya Vijay Jondale, and the present applicant be released on bail on his executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(III) Bail before the Trial Court.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE