

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 1912 OF 2023
IN
CRIMINAL APPEAL NO. 605 OF 2023**

1. Nilesh Pandit Shelar
2. Furkan Rakib Kutti
Versus
The State of Maharashtra

...Applicants/Appellants
...Respondent

....

Mr. Abdul Wahab Shaikh i/by Mr. Mohd. Umar Kazi, Advocate for the Applicants/Appellants.

Mr. Y. M. Nakhwa, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 5th JUNE, 2023.

PER COURT:

1. The Applicants/Appellants are convicted for offence punishable under Sections 4 r/w Section 25(1-B) (b) of the Arms Act, 1959 and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.10,000/- each. They are also convicted for offence under Section 37(1) r/w Section 135 of the Maharashtra Police Act, 1951 and sentenced to suffer rigorous imprisonment for one year and to pay file of Rs.5000/- each. Both the sentences are directed to run concurrently.

2. The trial Court has suspended the sentence of imprisonment on the date of conviction till 8th June, 2023.

3. Learned Advocate for the Applicants submitted that the Applicants were on bail during the trial. They have not misused the facility of bail. The sentence is of short term.

4. Learned A.P.P. on instructions submitted that, three cases were registered against Applicant No.1. Amongst them two cases were registered for offence under Section 399 of Indian Penal Code (for short "IPC"). There is sufficient evidence against the Applicants.

5. Learned Advocate for the applicants submitted that, two cases registered against Applicant No.1 for offence under Section 399 of IPC includes the present case wherein the applicant is acquitted for offence under Section 399 of IPC and convicted only under the Arms Act. The second case is pending before the concerned Court and third case is registered under Section 324 of IPC.

6. The sentence is of short term. The appeal may not come up for hearing immediately. The sentence has been suspended by the trial Court for temporary period. The applicants were on bail during trial. The discrepancies in evidence urged by applicant

needs to be considered while hearing appeal. Hence, case for suspension of sentence of imprisonment pending appeal is made out.

ORDER

- i. Interim Application No.1912 of 2023 is allowed;
- ii. During the pendency of Criminal Appeal No.605 of 2023, the sentence of imprisonment imposed vide Judgment and order dated 08.05.2023 passed by learned Additional Sessions Judge, Kalyan, in Sessions Case No.255 of 2012 is suspended and the applicants are directed to be released on bail on executing PR. Bond in the sum of Rs.20,000/- each with one or more sureties in the like amount;
- iii. The applicants shall attend the trial Court once in six months on first Saturday of the month till the final disposal of the appeal;
- iv. In the event, there are two consecutive defaults in attending the trial Court, the said fact may be brought to the notice of this Court and in such eventuality, the prosecution will be at liberty to prefer an application for cancellation of bail;
- v. Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)