

Dusane

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

**INTERIM APPLICATION NO.4483 OF 2023
IN
APPEAL NO.1401 OF 2023**

Kisan Sukhdeo Durge & Anr.

...Applicants

V/s.

The State of Maharashtra

...Respondent

Mr. Ashutosh Thipsay a/w Mr. Prabhakar M. Jadhav for
Applicant.

Mr. A.R. Patil, APP for State.

CORAM: MADHAV J. JAMDAR, J.

DATE: 21st December 2023

P.C.:

1. The Interim Application is moved for suspension of substantive sentence and grant of bail during pendency of Criminal Appeal.

2. The Appeal is already admitted by order dated 11th December 2023.

3. By the Judgment and Order dated 31st May 2023 passed by the learned Additional Sessions Judge, Pune in Sessions Case No. 866 of 2016, the Applicants were convicted for the offence punishable under Section 307 read with Section 34 of the *Indian*

Penal Code, 1860 and both were sentenced to suffer rigorous imprisonment for 7 years, fine of Rs.5,000/- and, in default to suffer simple imprisonment for one month.

4. The medical papers which are annexed to the Appeal as well as to the Interim Application show that the Applicant No.2 is suffering from intellectual disability.

5. In the light of the decision of the Supreme Court in the case of ***Bhagwan Rama Shinde Gosavi Vs. State of Gujarat¹***, the prayer for suspension of sentence pending Appeal is required to be considered by the Appellate Court liberally unless there are exceptional circumstances.

6. Perused the record. Admittedly, the sentence is a short sentence and the Appeal preferred by the Applicant is not likely to be heard in the near future. The Applicants were enlarged on bail during trial and Applicant No.2 is an intellectually disabled person. No exceptional circumstances are there on record to deny the relief to the Applicants.

7. Accordingly, in view of the facts and circumstances of this case, the Applicant deserves to be released on bail. Hence, the following order:

1 (1999) 4 SCC 421

ORDER

(i) Substantive sentence of imprisonment imposed *vide* Judgment and Order dated 31st May 2023 passed by the learned Additional Sessions Judge Pune in Sessions Case No. 866 of 2016 is suspended during the pendency of the Appeal.

(ii) The Applicant No.1 Kisan Sukhdeo Durge and Applicant No. 2 Madhav Kisan Durge be released on bail on executing P.R. bonds in the sum of Rs.10,000/- each with one or two sureties in the like amount.

(ii) The Applicant to furnish their permanent/ present residential address and contact details to the Police Inspector of Shirur Police Station, District Pune.

8. The Interim Application is disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)