

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.146 OF 2023

IN
CRIMINAL APPEAL NO.78 OF 2023

Deepak s/o Ashok Rahulkar and others

Vs.

The State of Maharashtra through Police Station Amdapur, District Buldhana

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. S. Mardikar, Senior Advocate a/b Mr. A. B. Moon, Advocate for applicants.
Mr. M. J. Khan, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08/06/2023

1. By this application, the applicants are seeking suspension of sentence and to release them on bail under Section 389 of the Code of Criminal Procedure Code.

2. The applicants/accused are prosecuted for the offence punishable under Sections 143, 144, 147, 148, 307, 324, 328, and 452 read with Section 149 of the Indian Penal Code. By the impugned judgment, all the applicants/accused are convicted for the offence punishable under Section 307 read with Section 149 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years each and to pay fine of Rs.1000/- each in default to suffer simple imprisonment for one month each. The applicants /accused are further

convicted for the offence punishable under Section 452 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years each and to pay fine of Rs.1000/- each in default to suffer simple imprisonment for one month each. The applicants/accused are further convicted for the offence punishable under Section 328 of the Indian Penal Code and no separate punishment has been imposed upon them. The applicants/accused are further convicted for the offence punishable under Section 148 of the Indian Penal Code and they sentenced to suffer rigorous imprisonment for one year each and to pay fine of Rs.1000/- each in default to suffer simple imprisonment for one month each. No separate punishment has been imposed upon them for the offence punishable under Sections 143, 144, 147 and 324 of the Indian Penal Code.

3. Being aggrieved and dissatisfied with the Judgment and order of sentence present appeal is preferred by the appellants/accused on the ground that the learned trial Court had not considered the evidence in proper perspective. In fact it was the case of the attempt of administrating the poison. The scientific evidence is not available, however learned trial Court had not considered the same. The applicants have every chance of success in the present appeal. The applicants were on bail through out the trial and they have not

misused their liberty during the trial. They are permanent residence of village Kavala Tq. Chikhli Dist Buldhana and will abide by all the conditions imposed by this Court. If the sentence is executed then the appeal will become infructuous as there is no chance of disposal of the appeal in the near future.

4. The said application is strongly opposed by the State on the ground that the offences were proved against the present applicants if they are released on bail it will be difficult to secure their presence if appeal is decided against the applicants.

5. Perused the application and the impugned judgment of the trial Court. It is apparent that the applicants were on bail through out the trial and they have not misused their liberty during the trial. Admittedly, the appeal will take its own time for final decision. In the meantime, the sentence is executed then appeal will become infructuous. The applicants are not convicted and sentenced to imprisonment more than ten years or life imprisonment. Fine amount is already deposited.

6. In view of that, application deserves to be allowed by imposing certain conditions. Hence, I proceed to pass following order:-

(i) Criminal Application is allowed.

(ii) The execution of the sentence is suspended till the conclusion of the appeal.

(iii) The applicants/accused are released on bail on executing PR bond in the sum of Rs.15,000/- each with one solvent surety in the like amount.

(iv) The applicants/accused shall attend the Court of Additional Sessions Judge No.1, Buldhana on 5th of every month and the Additional Sessions Judge shall record their presence.

(v) The applicants/accused shall submit their mobile/phone number and detailed address with the address proof.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate