

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL REVISION APPLICATION (REVN) NO.41 OF 2023

Arun Shamrao Sontakke

.VS.

The State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Shri M. V. Rai, Advocate for the applicant

Shri A. R. Chutke, APP for the State

CORAM : G.A. SANAP, J.

DATE : FEBRUARY 20, 2023.

Heard.

2. Issue notice to the non-applicant, returnable within **four weeks.**
3. Learned APP waives service of notice on behalf of the State.

CRIMINAL APPLICATION NO. 47 OF 2023

4. Heard.

5. Issue notice to the non-applicant, returnable within **four weeks.**

6. Learned APP waives service of notice on behalf of the State.

7. This is an application for suspension of substantive sentence awarded by the learned Chief Judicial Magistrate, Wardha vide order dated 31.12.2018 and confirmed and modified by the learned Additional Sessions Judge, Wardha vide order dated 17.02.2023. Learned Chief Judicial Magistrate, Wardha had convicted the applicant for the various offences as follows :

i. For the offence punishable under Section 354 of the Indian Penal Code sentenced to undergo RI for two years and also to pay fine of Rs.10,000/- and in default to suffer 30 days rigorous imprisonment.

ii. For the offence punishable under Section 354 A(1) (i) (ii) of the Indian Penal Code sentenced to undergo rigorous imprisonment for two years and also to pay fine of Rs.10,000/- and in default to suffer 30 days rigorous imprisonment.

iii. For the offence punishable under Section 354 D of the Indian Penal Code sentenced to undergo simple imprisonment for two years and also to pay fine of Rs.5,000/- and in default to suffer 15 days rigorous imprisonment.

iv. For the offence punishable under Section 451 of the Indian Penal Code sentenced to undergo simple imprisonment

for one year and also to pay fine of Rs.5,000/- and in default to suffer 15 days rigorous imprisonment.

v. For the offence punishable under Section 506 of the Indian Penal Code sentenced to undergo simple imprisonment for one year and also to pay fine of Rs.5,000/- and in default to suffer 15 days rigorous imprisonment.

8. In the appeal the learned Sessions Judge partly allowed the appeal, but modified the substantive sentence as follows:

i. For the offence punishable under Section 354 of the Indian Penal Code and sentenced to suffer and undergo simple imprisonment for one year and also to pay fine of Rs.10,000/- and in default to suffer 30 days simple imprisonment.

ii. For offence punishable under Section 354 A(1) (i) (ii) of the Indian Penal Code sentenced to undergo rigorous imprisonment for three months and also to pay fine of Rs.10,000/- and in default to suffer 30 days simple imprisonment.

iii. For the offence punishable under Section 354 D of the Indian Penal Code sentenced to undergo simple imprisonment for one years and also to pay fine of Rs.5,000/- and in default to suffer 15 days simple imprisonment.

iv. For the offence punishable under Section 451 of the

Indian Penal Code sentenced to undergo simple imprisonment for six months and also to pay fine of Rs.5,000/- and in default to suffer 15 days simple imprisonment.

v. For the offence punishable under Section 506 of the Indian Penal Code sentenced to undergo simple imprisonment for six months and also to pay fine of Rs.5,000/- and in default to suffer 15 days simple imprisonment.

9. Learned Advocate for the applicant submits that on 17.02.2023 the applicant has been taken in custody. It is pointed out that the applicant is suffering from kidney cancer and therefore, after taking him into custody, he has been admitted in the hospital. Learned Advocate submits that the applicant is 72 years old and he is suffering from the above ailment. Learned Advocate for the applicant further pointed out that the applicant has deposited entire fine amount i.e. Rs.35,000/-. Learned Advocate, therefore, submits that in view of the grounds pleaded in the revision application, the substantive sentence may be suspended. According to him, the applicant has good case on merits.

10. Learned APP has opposed this application. It is submitted that considering the nature of the pleadings, the court may pass appropriate order.

11. Multiple grounds are pleaded in the revision application to challenge the order passed by the learned Additional Sessions

Judge. The applicant has been convicted and sentenced on multiple counts. The revision application, in view of the factual position, would be required to be heard on merits. The hearing of the revision may take its own time. The question is whether in the above facts, the applicant can be kept behind bar.

12. On going through the record and proceedings and particularly the quantum of the substantive sentence and the ailment of the applicant, in my view, it would be in the interest of the justice to suspend the substantive sentence. The applicant has already deposited the fine amount.

13. Accordingly, it is ordered that the modified substantive sentence passed by the learned Additional Sessions Judge vide order dated 17.02.2023, on all the counts, shall remain stayed during the pendency of this revision application.

14. The applicant- Arun Shamrao Sontakke be released on bail on his furnishing PR bond of Rs.15,000/- and one surety in the like amount.

15. The criminal application stands, **disposed of**.

(G. A. SANAP, J.)

Namrata