

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

CRIMINAL APPLICATION (APPA) NO.507 OF 2023

IN
CRIMINAL APPEAL NO.320 OF 2023

Ramesh s/o Damodar Kokne

Vs.

State of Maharashtra, through PSO, Murtizapur Rural, Tq. Murtizapur, Dist. Akola

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

Court's or Judge's orders

Mr. Mahesh V. Rai, Advocate for applicant.
Mr. I. J. Damle, AGP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 05/06/2023

1. By preferring the appeal, the appellant has challenged the Judgment and order of sentence passed in Sessions Case No.27/2022, decided on 06.04.2023 by which present appellant/accused was held guilty for the offence punishable under Section 436 of the Indian Penal Code, 1860 and sentenced to undergo rigorous imprisonment for six years and to pay fine of Rs.10,000/- in default of payment of fine, he was directed to undergo further rigorous imprisonment for one year.

2. It is further directed that out of the fine, an amount of Rs.7,000/- shall be paid to the informant Hiranman Chaurpagar, towards compensation, in view of Section 357(3) of the Code of Criminal Procedure, 1973.

3. As per contention of the appellant/accused the learned Sessions Judge has not appreciated the evidence in proper perspective and erroneously convicted the present appellant. In fact, there is no direct evidence against the present appellant therefore, appellant has every chance of success in the present appeal.

4. During the trial, the present appellant was on bail. He is permanent resident of Jambha Khurd, Taluka Murtizapur, and he obeyed the terms and conditions when he was released on bail, during the trial.

5. It is further contention of the appellant that, the appeal will take its own time for final decision. There is nobody to look after his family affairs. He had never misused the liberty and undertakes that he would abide by the conditions imposed by him and prayed for suspension the sentence and to release him on bail.

6. The said application is strongly opposed by the learned APP Mr. Damle for the State on the ground that on the basis of the direct evidence the accused /appellant was convicted and if he is released on bail, he will not be available for the hearing of the appeal and it would be difficult to secure his presence, if the Judgment and order passed by the Sessions Court is confirmed by

this Court and submitted that the application deserves to be rejected.

7. Heard learned Advocate Mr. Rai, for the appellant. He reiterated the contentions as per the application and submitted that during the trial appellant/accused has not misused the liberty. He is permanent resident of Jambha Khurd and will abide by all the conditions imposed by this Court.

8. Heard learned APP Mr. Damle for the State. He submitted that the appellant/accused is convicted and sentenced to suffer six years rigorous imprisonment, if he is released on bail, it will be difficult to secure his presence. In view of that, application deserves to be rejected.

9. Heard both the sides. Perused the appeal memo as well as the depositions of the witnesses placed on record. It is apparent that on the basis of the evidence adduced before the Court, the Sessions Court has convicted the appellant/accused. It is further apparent that during the trial, the appellant was on bail and he has not misused the liberty. Admittedly, the appellant is not convicted with imprisonment for more than ten years or life imprisonment. Considering that he was on bail during trial also, the application deserves to be allowed by imposing some conditions.

(i) The execution of the sentence is hereby suspended till the disposal of the appeal on payment of fine of Rs.10,000/-. Out of the said Rs.10,000/-, the amount of Rs.7,000/- shall be paid to the informant Hiranman Chaurpagar.

(ii) The appellant/accused is hereby released on bail on furnishing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The appellant shall attend the Court of Additional Sessions Judge, Akola on first day of every month and the Additional Sessions Judge shall record his presence on every first day of the month.

(iv) Criminal Application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate