

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

CRIMINAL APPLICATION (APPA) NO. 642/2023
IN
CRIMINAL APPEAL NO. 409/2023

NADEEM ASHPAK @ GOLU MOHD. ABDUL SHAFI AND ANOTHER.
VS
STATE OF MAH. THR. PSO OF PS FREZARPURA DIST. AMRAVATI.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr VR.Hamand, counsel for the applicants/appellants.
Mr M.J.Khan, APP for the non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/06/2023.

1. This is an application for grant of suspension of sentence and for releasing them on bail.
2. The appellants were prosecuted for the offence punishable under Sections 353, 294, and 506 read with Section 34 of the Indian Penal Code. On the basis of evidence adduced before the Court, the learned trial Court held both the appellants are guilty and suffered R.I. for one year each and to pay a fine of Rs. 5000/- and in default to suffer simple imprisonment for three months for the offences punishable under Section 353 read with Section 34 of the Indian Penal Code.
3. Being aggrieved and dissatisfied with the order of sentence, the present appeal is preferred by the

appellants on the ground that the learned trial Court had not considered the evidence before the Court and wrongly applied Section 34. There was no evidence as to the common intention between the two appellants. The evidence of the witness is suffering from infirmities but the learned trial Court has ignored the same. The appellants have every chance of success in the present appeal but the appeal will take its own time for its final decision. In the meanwhile, if the sentence is executed then the appeal will become infructuous.

4. The said application is strongly opposed by the State, on the ground that the learned trial Court has appropriately appreciated the evidence on record and rightly convicted the appellants there is no ground to suspend the sentence.

6. Heard learned counsel for the respective parties. Perused the material on record. Admittedly, the appeal will take its own time for its final decision. The sentence is of one year, if the sentence is executed then the appellants will lose his right to appeal, and the appeal become infructuous. In view of that the application deserves to be allowed. Hence, I proceed to pass following order.

a) Criminal Application is allowed.

- b) The appellants are released on bail on executing P.R. Bond of Rs. 15,000/- each with one solvent surety of like amount.
- c) The execution of the sentence is hereby suspended till the final decision of the appeal.

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- 1. Heard.
- 2. **Admit.**
- 3. Call for Record and Proceedings.
- 4. Appeal be placed before the Court after preparation of paper-book.

JUDGE