



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 28 OF 2024

Baswant S/o Mukundrao Narwade ... Petitioner

VERSUS

The State Of Maharashtra ... Respondent

.....
Mr. S.N. Zakade, Advocate for Petitioner
Mr. A.R. Kale, APP for Respondent – State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th FEBRUARY, 2024

ORDER :

1. Petitioner is aggrieved by imposition of condition to deposit of Rs.2,00,000/- compensation for suspending his sentence of imprisonment.

2. Crime No.65 of 2012 was registered with Umri Police Station, District Nanded for offences under sections 465, 468, 471, 420 read with section 34 of the Indian Penal Code. The said crime was registered under the directions of learned Judicial Magistrate, First Class, Umri, under section 156 (3) of the Code of Criminal Procedure, against six accused persons, wherein petitioner is shown as accused at Sr. No.4. After completion of investigation, charge-sheet came to be filed in

the said crime on 17.07.2014. In the charge-sheet, petitioner is shown as accused No.3 and Shaikh Wahaboddin Karimsab shown as accused No.4. . Trial was conducted and the Trial Court has convicted accused Nos.1, 3 and 5 and sentenced them to suffer rigorous imprisonment for three years and compensation of Rs.10,00,000/- each is imposed on them.

3. Petitioner challenged his conviction by filing criminal appeal No.29 of 2023. In the said appeal, petitioner prayed for suspension of substantive sentence of imprisonment and compensation. Appellate Court suspended the substantive sentence of petitioner on condition to deposit an amount of Rs.2,00,000/- towards compensation. Petitioner is aggrieved by the said order.

4. Heard learned advocate for petitioner and learned APP for respondent – State. Perused the memo of criminal writ petition and annexures thereto.

5. It is the case of petitioner that Trial Court has held that petitioner being accused No.3 has signed the consent deed, whereas consent deed is not signed by him, but it is signed by Shaikh Wahaboddin S/o Shaikh Karimoddin, who is shown as accused No.4 in the charge-sheet, but he is acquitted by the Trial Court. According to the petitioner, this

has happened because while filing charge-sheet, petitioner is shown as accused No.3 in place of accused No.4 Shaikh Wahaboddin. Since he is not signatory to the consent deed, he could not have been convicted, as he had not played any role in the alleged crime. These aspects are ignored by Trial Court. The Sessions Court has also failed to appreciate it while imposing condition of deposit of compensation amount, on petitioner.

6. Learned APP has assisted the Court by pointing out the relevant documents and observations of the Trial Court as well as Sessions Court.

7. *Prima facie*, there appears substance in the contention of petitioner that original accused No.4 Shaikh Wahaboddin S/o Shaikh Karimoddin is signatory to the consent deed and he is not signatory, and therefore, the Trial Court has erred in convicting him instead of convicting Shaikh Wahaboddin S/o Shaikh Karimoddin.

8. In this view of the matter, the imposition of condition of deposit of Rs.2,00,000/- towards compensation while suspending his substantive sentence is onerous and uncalled for.

9. Writ petition is therefore allowed.

10. Condition imposed on the petitioner to deposit an amount of Rs.2,00,000/- towards compensation for suspending his substantive sentence of imprisonment is hereby quashed and set aside.

[NITIN B. SURYAWANSHI]
JUDGE