



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1354 OF 2024

IN

CRIMINAL APPEAL NO. 199 OF 2022

Ataram Kena Badole,
Age 44 years, Occupation Nil,
R/o: Gujarwadi, Taluka Bhagwanpura,
District Badwani (MP).

... Applicant

Versus

The State of Maharashtra
Through Police Station Officer,
Yawal Police Station, Taluka Yawal,
District Jalgaon.

... Respondent

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Mr. A. R. Syed, Advocate for the Applicant.
Mrs. Chaitali Choudhari Kutti, APP for Respondent State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 03.05.2024

Pronounced on : 08.05.2024

ORDER :

1. This is an application for suspension of sentence and grant of bail on account of conviction recorded by learned Additional Sessions Judge, Jalgaon in Sessions Case No. 156 of 2012.

2. In support of relief, learned counsel pointed out that charge was framed for commission of offence punishable under Section 399

of IPC and Section 3/25 of the Arms Act, 1959. He pointed out that though allegations and charge was of dacoity, only three persons were found. Therefore, when essential requirement of five persons is missing, charge was misplaced and misdirected. He pointed out that there is improper appreciation of evidence as well as law and sentence awarded is of five years. It is further pointed out that offence is of 2012. Applicant is behind bar since long and hence, learned counsel prays for relief of suspension of sentence and grant of bail.

3. Learned APP opposed on the ground that, on complete appreciation, charge of Section 399 was proved. There is serious offence and hence relief is sought to be denied.

4. After considering the submissions of both sides and on going through the papers, it seems that applicant was tried for commission of offence punishable under Section 399 of IPC and Section 3/25 of the Arms Act before learned Additional Sessions Judge, Jalgaon vide Sessions Case No. 156 of 2012. In trial court, prosecution seems to have rested its case on the evidence on in all 7 witnesses. PW1 Pooja, while in the company of her mother, spotted one accused who was said to be armed with revolver. Weapon is said to be seized along with live cartridge. Merely because out of five persons, two managed

to vanish, would not be sufficient to discard the otherwise established charge. Taking the nature of accusations as well as nature and gravity of the offence into consideration, relief as prayed cannot be granted. No ground is made out for exercising power under Section 389 of Cr.P.C. Hence, following order is passed:

ORDER

The application is dismissed.

[ABHAY S. WAGHWASE, J.]

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