



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2010 OF 2024
IN APEAL/562/2024

Anwar Khan Nasir Khan Pathan,
Age : 44 years, Occu. : Labour,
R/o. Undirkheda, Parola,
At Present Hazar Basti, Behind Alhera
High School, Dhule.

... Applicant

Versus

The State of Maharashtra
Through Police Inspector,
Parola Police Station,
Tq. Parola, Dist. Jalgaon.

... Respondent

...
Advocate for Applicant : Mr. Prasad Balasaheb Kadam
APP for Respondent - State : Mrs. Chaitali Chaudhari - Kutti

...

CORAM : ABHAY S. WAGHWASE, J.

DATED : 22 NOVEMBER 2024

PER COURT :-

1. Vide above application, prayers are raised for suspension of sentence and grant of bail as a result of conviction recorded by learned Additional Sessions Judge, Amalner, District Jalgaon in Sessions Case No.76 of 2019.

2. It is submitted that, applicant was charge-sheeted and tried for offence punishable under sections 394 and 397 read with section 34 of Indian Penal Code (IPC) and on trial

held guilty and further sentenced to suffer seven years imprisonment. Learned counsel pointed out that, alleged occurrence is of January 2018. That, judgment of conviction is rendered on 20.02.2021 and since said judgment, applicant is behind the bars i.e. for more than six years and as such he has already undergone more than half of the sentence. It is submitted that, there are allegations that he and co-accused committed above offence, but it is further pointed out that, in this case, investigating machinery and prosecution did not conduct T.I. parade. That, even alleged *muddemal* was not before trial court. That, conviction is rendered in absence of such crucial factors, and therefore, appeal has been preferred. That, applicant has every hope of succeeding in the same, but as appeal is of 2024, it is pointed out that, much more time would be required to hear the appeal, more particularly, out of seven years, applicant has behind the bar for more than six years and hence above reliefs are prayed for.

3. In answer to above, learned APP submitted that, on full-fledge trial, conviction is rendered. That, there are allegations of applicant using article like tommy. Learned trial court examined 10 witnesses and only thereafter rendered

conviction. She pointed out that, barely few months have remained for completion for seven years and for all above reasons, she prays to reject the application.

4. After considering the submissions and on going through the evidence, it seems from the papers and judgment that applicant Anwar and one Sunil, who are residents of Parola and Dhule respectively were booked for commission of offence under sections 394 and 397 read with section 34 of IPC on allegations that, on 13.01.2018, they intercepted vehicle of informant, attacked him by tommy, they were under influence of liquor and they forcibly snatched informant's mobile phone, wallet containing driving license, Voter ID, PAN card and cash of Rs.1200/-. On above charges, they have faced trial before learned Additional Sessions Judge, Amalner, who conducted trial vide Sessions Case No. 76 of 2019 and on evidence of 10 witnesses, by judgment and order dated 20.02.2021, present applicant and co-accused Sunil are convicted for offence punishable under sections 394 and 397 read with section 34 of IPC and are sentenced to suffer imprisonment for seven years and to pay fine. Fine amount is not paid yet and this is pointed out by learned APP.

5. On going through the impugned judgment, as pointed out, it is emerging that, there is no T.I. parade conducted. Learned APP fairly admitted that, description of accused is not provided in the FIR by informant. Learned APP also did not refute the submission that *muddemal* was not before the court. Therefore, there are points which need to be re-appreciated in appeal. Further, applicant is behind the bars since more than six years and has already suffered more than half of the sentence and appeal being of 2024, there are no immediate prospects of hearing the appeal. In the light of above discussed circumstances, case is made out for grant of relief. Hence, the following order is passed.

ORDER

- I. Criminal Application stands allowed.
- II. The substantive sentence imposed on the applicant Anwar Khan Nasir Khan Pathan in Session Case No.76 of 2019 by learned Additional Sessions Judge, Amalner, Dist. Jalgaon on 20.02.2021 stands suspended till the final hearing and disposal of Criminal Appeal No. 562 of 2024.
- III. The applicant be released on P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with two solvent sureties in the like amount.

IV. The applicant shall not commit any criminal activity.

V. The applicant shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the trial Judge to fix dates for his subsequent appearances.

VI. In case of two consecutive defaults on the part of the applicant to remain present before the trial court, the trial court to inform this court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of bail granted to the applicant.

VII. Bail before the trial court.

[ABHAY S. WAGHWASE, J.]