



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.2051 OF 2024
IN
CRIMINAL APPEAL NO.478 OF 2024**

. Irfan Sharif Khan,
Age- 32 years, Occupation- Labour,
R/o. Irani Galli, Shivaji Nagar, Parli (V),
Tq. Parali (V), Dist. Beed .. Applicant

Versus

. The State of Maharashtra .. Respondent

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Advocate for Applicant: Mr. Sudarshan J. Salunke
APP for Respondent/State: Mr. Ranjeet D. Raut
...

CORAM : ABHAY S. WAGHWASE, J.
Reserved on : 21.06.2024
Pronounced on : 27.06.2024

ORDER:

1. This is an application for suspension of sentence and grant of bail on account of conviction recorded by the learned Additional Sessions Judge, Ambajogai in Sessions Case No.24/2016, dated 04.05.2024, convicting applicant for offence under sections 353, 332, 336 of the Indian Penal Code, 1860 (IPC).

2. In support of above relief, learned counsel for the applicant submits that the applicant was tried by the learned trial court for above

offence. That, maximum sentence awarded is 3 years for offence under section 332 and for remaining offence there is sentence of 2 years and 3 months and to pay fine. Fine amount is paid. Learned counsel for the applicant submits that the applicant has preferred appeal against the said judgment and award of conviction. Appeal is of the year 2024 and it would take long time to be heard. The applicant has a good case on merits and considering the above, he submits that relief for suspension of sentence and appeal be granted.

3. Strongly opposing the above, learned APP pointed out that the applicant has not only obstructed the police official from performing duty but has also stoned complainant causing injury on the head. That, he is habitual offender and history-sheeter. That, for not attending matter during trial, N.B.W. was required to be issued and he was required to be taken in custody. There is detailed discussion to that extent in the trial court's judgment at paragraph no.39. For above reasons, learned APP submits that the applicant does not deserve the relief of suspension of sentence and grant of bail.

4. Heard both the sides. Perused the papers.

5. It appears that present applicant was held guilty for offence under sections 353, 332, 336 of IPC and he is acquitted from charges

under section 333 of IPC. Allegations were that, on 17.01.2015, present applicant assaulted police official PW-1, who was a Police Naik while discharging duty. It appears that the present applicant was being searched by police party in Irani Galli in connection with offence punishable under section 392 of ICP. When police team visited the house of the accused he ran to the terrace and from the terrace he started pelting bricks, which hit on the head of PW-1 and he fainted down. On his complaint, accordingly, crime is registered bearing Cr. No.07/2015. During trial, prosecution has adduced evidence of 6 witnesses. Trial culminated into conviction and, hence, instant application is filed for suspension of sentence and grant of bail during pendency of appeal challenging the above judgment and conviction.

6. Perused paragraph no.39 of the judgment, wherein there is discussion by the trial court about abscondence of accused during pendency of trial and N.B.W. was required to be issued. It appears that, there are several crimes already registered against him for commission of offence under section 306 of IPC and crime of similar nature i.e. for offence under sections 353, 379, 420, 392 etc. vide Cr. Nos.209/2017, 11/2018, 156/2017 and 241/2018.

By catena of judgments the Hon'ble Apex Court has time and again held that while extending relief of such nature, court is expected to

remain mindful of the nature of accusations, nature of crime, manner in which it is committed, its gravity and further desirability of releasing accused after conviction.

In the judgment of **Ash Mohammad. Vs. Shiv Raj Singh alias Lalla Babu and Another**, reported in **(2012) 9 SCC 446**, the Hon'ble Apex Court in para 30 observed as under:

“30. We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy. There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed. They are to be weighed in the scale of collective cry and desire. The societal concern has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter we are inclined to think that the social concern in the case at hand deserves to be given priority over lifting the restrict on liberty of the accused.”

7. Taking the above legal position into consideration, here firstly applicant is found to have criminal antecedents. He has previously also committed crime of similar nature. He has misused liberty and his presence was obtained by the learned trial judge by taking steps of issuing Non Bailable Warrant. He has pelted stone on police officers to

evade arrest. Consequently, in the considered opinion of this court, though sentence is of 3 years, this court does not deem it a fit case to grant bail or suspend sentence. Hence, following order:

ORDER

The Criminal Application stands dismissed.

[ABHAY S. WAGHWASE, J.]

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