



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL REVISION APPLICATION NO.188 OF 2024
WITH APPLN/2921/2024 IN REVN/188/2024

Baban S/o Vithoba Yadav
VERSUS
The State Of Maharashtra

...
Advocate for Applicant : Mr. Gite Ravi Balasaheb
APP for Respondent/State : Mr. S.B. Narwade

...
CORAM : S.G. MEHARE, J.
DATED : JULY 23, 2024

PER COURT:-

1. Issue notice to the State.
2. Learned APP waives service of notice for the State.
3. The appeal of the applicant against conviction has been dismissed by the learned Additional Sessions Judge, Majalgaon for default and want of prosecution by order dated 05.06.2024. The learned Additional Sessions Judge observed that the applicant failed to deposit the paper book charges since 2017. Then the matter was listed for final arguments, still, he remained absent. The counsel for the applicant made a statement before the Court that he was not in contact with the applicant. On the date of hearing, the applicant was absent. Hence, the learned Sessions Court observed that the applicant has lost the interest in the prosecution of the appeal. For these reasons, the appeal stands dismissed.
4. The law is well settled that the criminal appeal cannot be dismissed for default in appearance. Firstly, the Court has to issue

warrant against the convict, if he has not appeared. But instead of doing so, the Court passed the impugned order. The Hon'ble Supreme Court in the case of Parasuram Patel and Another Vs. State of Orissa, (1994) 4 SCC 664, relied upon by the learned counsel for the applicant, laid down the law that criminal appeal cannot be dismissed for default in appearance. The Court must decide the matter on merit even in the absence of the appellant(s) or his/their counsel. *Prima facie*, the impugned order is illegal. Hence, it is quashed and set aside.

5. In view of the order of quashment of the impugned order, all orders passed earlier have been automatically restored. The applicant be released on bail on his previous bail bonds, on the condition that he shall attend the appeal and co-operate with the Court to decide the appeal since, it was pending since 2017.

6. He shall furnish his current address and cell phone number to the Court with an undertaking that he would not change it till the appeal is concluded.

7. In the above terms, criminal revision application stands allowed.

8. Criminal Application No.2921 of 2024 stands disposed of.

(S.G. MEHARE, J.)