



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3712 OF 2024
IN
CRIMINAL APPEAL NO. 199 OF 2022

Ataram Kena Badole
Age : 44 years, Occu: Nil,
R/o: Gujarwadi, Tq. Bhagwanpura,
Dist. Badwani (MP) ... Applicant

Versus

The State of Maharashtra
Through Police Station Officer,
Yawal Police Station, Taluka Yawal,
Dist. Jaogaon. ... Respondents

.....
Mr. Syed R. Azizoddin, Advocate for the Applicant.
Mr. K. K. Naik, APP for Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 18.10.2024

Pronounced on : 22.10.2024

ORDER :

1. Applicant has pressed into service instant application with prayers for suspension of sentence and grant of bail on principal ground that out of five years conviction, he has undergone almost three years imprisonment.

2. Learned counsel for the applicant seeks reliance on certificate

issued by jail authorities. Therefore, pointing to the same, it is his submission that appeal has been preferred. That, for the last almost three years, he is behind bars. If his present application is not considered, then it would become infructuous. He pointed out that by virtue of several judicial pronouncements, it has been held that if more than half the sentence is already undergone, then, it should be a criteria for the appellate court to release the appellant on bail by suspending the sentence.

3. Learned APP, who opposed the application, pointed out that conviction has been recorded for offence under Section 399 of IPC and the applicant was seen possessing arms i.e. revolver along with live cartridges, and the same are seized. He pointed out that learned trial Judge particularly convicted applicant under the provisions of the Arms Act. He further submitted that merely undergoing three years imprisonment would not entitle applicant to get the benefit of suspension. He also expressed apprehension of applicant misusing the liberty if relief at all is considered and granted by this Court.

4. After hearing both sides, instant application seems to be a second attempt. Previous application was also for suspension of sentence and grant of bail and this Court, by order dated 08.05.2024,

has already turned down the request for both, suspension of sentence and grant of bail.

5. It appears that second attempt is taken on the ground that applicant has undergone almost three years imprisonment out of five years awarded to him. In previous order, this Court has particularly considered gravity of the offence and the serious charge of being guilty for possessing arms. As pointed out, there is conviction for offence under Section 3/25 of the Arms act. It is true that applicant has apparently undergone almost three years of incarceration and his appeal is also pending. However, this Court is ready to hear the appeal finally if the applicant so desires. As it is not a case that there are no prospects of immediately hearing the appeal, if the appellant desires, his matter can be taken out of turn. For all above reasons, the prayers are turned down. Accordingly, following order is passed :

ORDER

The application is dismissed.

[ABHAY S. WAGHWASE, J.]