



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4790 OF 2024
IN
CRIMINAL APPEAL NO. 372 OF 2024

Mahesh Baban Zaware
Age : 45 years, Occu: Business,
R/o. Gargundi, Taluka Parner,
Dist. Ahmednagar
(At present at Nashik Central Prison,
Nashik)

... Applicant

Versus

The State of Maharashtra

... Respondent

.....
Mr. Abhijit S. More, Advocate for the Applicant.
Mrs. Chaitali Choudhari Kutti, APP for Respondent-State.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 12.12.2024

Pronounced on : 19.12.2024

ORDER :

1. This successive application for suspension of sentence and grant of bail during pendency of appeal is filed on the ground of parity. Earlier application bearing Criminal Application No. 1657 of 2024 filed by applicant, along with applications of other accused, seeking same relief was rejected by this Court by common order dated 10.05.2024.

2. Learned counsel for the applicant pointed out that, one of the co-accused, namely, Anup s/o Pravin Parekh, whose application was also rejected by the above mentioned common order dated 10.05.2024, had approached the Hon'ble Apex Court by filing Criminal Appeal No. 4520 of 2024 and the said Appeal has been allowed by order dated 08.11.2024. While allowing the said appeal, learned counsel submits that, the Hon'ble Apex Court considered that sentence awarded is of five years; out of which 7 months is already undergone; and the appellant has shown his bonafide by depositing a sum of Rs.9,10,000/-.

3. Learned counsel further submitted that, the present applicant is also similarly situated, as sentence awarded to his is also of five years, out of which, he has already undergone more than 7 months imprisonment and he has also deposited entire amount which was borrowed by him. That, the certificate of no dues issued by the concerned society in favour of the present applicant is also annexed at Exhibit "B".

4. Learned counsel also invited attention to the orders of Division Bench of this court dated 22.10.2024 and submits that even some of

the accused, who are sentenced to suffer imprisonment for life, are also beneficiaries of suspension of sentence and grant of bail.

5. Learned APP opposed the relief on the ground that this is successive attempt, and that there is no change in circumstances to warrant fresh re-consideration.

6. After considering the above submissions, it transpires that present application is by accused Mahesh Baban Zaware, who was booked and tried for offence punishable under Sections 420 r/w 34, 465, 467 r/w 471 r/w 34 and 120-B of IPC vide Sessions (MPID) Case No. 323 of 2011 and by order dated 10.04.2024, he has been held guilty by learned Additional Sessions Judge, Ahmednagar and sentenced to suffer rigorous imprisonment for five years.

7. Admittedly, his previous attempt to seek suspension of sentence and grant of bail was turned down by this Court. Said order is of 10.05.2024. Thereafter, another accused, namely Anup, seems to have approached Hon'ble Apex Court and his prayers seem to be granted by the Hon'ble Apex Court by order dated 08.11.2024. Statement is made across the bar that present applicant stands on equal footing as like such accused. Therefore, ground of parity has

been pressed into service and present application is put forth on the ground of change in circumstances. Consequently, though this Court initially rejected and refused the prayers, now more than seven months have lapsed and similarly placed co-accused having become beneficiary of order of Hon'ble Apex Court, present applicant being similarly placed and being borrower like such co-accused, he too deserves similar treatment. Accordingly following order is passed :

ORDER

- I. Criminal Application stands allowed.
- II. The substantive sentence imposed on the applicant Mahesh Baban Zaware in Sessions (MPID) Case No. 323 of 2011 by the Additional Sessions Judge, Ahmednagar on 10.04.2024 stands suspended till the final hearing and disposal of Criminal Appeal No. 372 of 2024.
- III. The applicant be released on P.R. Bond of Rs.50,000/- (Rupees Fifty Thousand Only) with one solvent surety 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.]

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