



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

989 CRIMINAL WRIT PETITION NO. 1677 OF 2023

BALAJI @ BALU S/O GANPATI PAWAR
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for the Petitioner : Mr. P. P. More.

APP for Respondent/State : Mr. R. B. Dhaware.

...

CORAM : **SHIVKUMAR DIGE, J.**

DATE : 26th July, 2024.

P.C.:

. By this petition, the petitioner has challenged the order dated 30th October, 2023 passed by learned Additional Sessions Judge-4, Latur below Exhibit-4 in Criminal Appeal No.22 of 2023 i.e. the application for suspension of sentence.

2 It is the contention of the learned counsel for petitioner that the petitioner has been convicted by the learned Chief Judicial Magistrate, Latur, for the offence punishable under Section 201 of the Indian Penal Code (for short "the IPC") for three years simple imprisonment and fine of Rs.5000/- and for the offence punishable under Section 409 of the IPC for a term of four years simple imprisonment and fine of Rs.20,000/-. The learned counsel further submitted that the petitioner had filed application under Section 398 of

the Code of Criminal Procedure for suspension of sentence during the pendency of the appeal before the learned Sessions Judge. The said application has been rejected by the Sessions Court on the ground that there are serious allegations in the FIR about disappearing the office record by the appellant. Nothing is appearing on record to show that the conviction is not sustainable. The learned counsel for petitioner submitted that the petitioner has undergone more than three years sentence, out of four years sentence. The Sessions Court should have considered this fact, but it is not considered. Hence, he requested to allow the petition.

3 It is the contention of the learned APP that the petitioner has been convicted by the Trial Court on the basis of available evidence on record. While passing the impugned order, the Sessions Court has considered all the facts and has passed well reasoned order. No interference is required in it and requested to dismiss the petition.

4 I have heard both the learned counsel. Perused the impugned order. While passing the order, the learned Sessions Court observed that, from the contents of FIR and material produced, it appears that the petitioner has misappropriated huge amounts received by way of grants from the head office of the corporation.

There is nothing, which is very apparent or gross on the face of record so as to come to the *prima-facie* satisfaction that conviction may not be sustainable.

5 On that ground the Sessions Court has rejected the application for suspension of sentence. In my view, the total sentence awarded against the petitioner is four years, out of which the petitioner has undergone three years sentence. The petitioner has preferred an appeal against the sentence awarded to him. Considering this fact, the Sessions Court should have allowed the application for suspension of sentence. In view of the above, I pass the following order:-

ORDER

- I. The criminal writ petition is allowed.
- II. The impugned order dated 30th October, 2023 passed by learned Additional Sessions Judge-4, Latur below Exhibit-4 in Criminal Appeal No.22 of 2023, is hereby quashed and set aside.
- III. The sentence awarded to the petitioner is suspended till the hearing of Criminal Appeal No.22 of 2023.

[SHIVKUMAR DIGE, J.]