



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2064 OF 2024
IN
CRIMINAL APPLICATION NO. 1788 OF 2023
IN
CRIMINAL APPEAL NO. 419 OF 2023

Balu Hariba Waghmare
Aged Major, Occu: Nil,
R/o: Almala, Tq. Ausa,
District Latur.

... Applicant

Versus

1. The State of Maharashtra
2. Superintendent of Jail
Central Prison of Aurangabad.

... Respondents

.....

Mr. Jitendra S. Jain, Advocate for the Applicant (appointed).
Mr. A. A. A. Khan, APP for the respondents.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 08.07.2024

Pronounced on : 15.07.2024

ORDER :

1. Applicant, a convict for offence under Section 304-I of the Indian Penal Code [IPC] in Sessions Case No. 72 of 2021, has preferred Criminal Appeal No. 419 of 2023 questioning the judgment and order of his conviction dated 27.02.2023 by the learned Additional Sessions Judge, Latur. During pendency of his appeal, applicant had filed application, bearing Criminal Application No. 1788 of 2023 for suspension of sentence and grant of bail and the

same is allowed by this court by order dated 10.07.2023. Clause (iii) of para 6 of the said order dated 10.07.2023 reads as under :

iii) The applicant be released on bail on executing P.B. and S.B. of Rs.50,000/- with one solvent surety of the like amount.

2. Vide instant application, the applicant seeks relaxation/modification of the above condition, on the ground that since he himself is behind bars and there is no family member or relative available, he could not comply the above condition.

3. Learned counsel for the applicant submits that presently, applicant is in Central Prison, Aurangabad. That, he is from poor class of society and was doing labour work to maintain the family consisting of wife, two daughters and old parents as his dependents. That, the sentence awarded to him is of six years and since he is in custody from 09.05.2021, he has already completed three years and two months imprisonment and is still behind bars in spite of grant of bail, as he could not furnish sureties as directed, due to lack of funds as well as non availability of any relative to furnish surety bond. For all above reasons, learned counsel seeks relaxation as above.

4. Learned APP opposes the relief.

5. Heard both sides.

6. It seems that in spite of grant of relief of bail during pendency of appeal, the applicant is still continued to be in jail due to his inability to arrange funds for personal recognizance bond as well as non-availability of any relative ready to furnish surety bond.

7. The Hon'ble Supreme Court, in ***SMWP (Criminal) No. 4/2021*** [2023 LiveLaw (SC) 76], on 31.01.2023 while dealing with the issue of under-trial prisoners or convicts continuing to be in custody despite having been granted bail on account of their inability to fulfill the conditions, has issued certain directions to avoid delay in release of such prisoners/convicts. The direction at sr. no. 5, which is relevant in the present case reads as under :

“5) In cases where the under-trial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties.”

8. Keeping the above direction in mind and considering the plight of the applicant as well as the fact that he has already undergone

more than half of the sentence, it would be just and appropriate to release the applicant on temporary bail for a period of one month to enable him to furnish P.B. and S.B. of Rs.25,000/- during his such release. Accordingly, I proceed to pass the following order:

ORDER

- I. The application is allowed.
- II. The condition imposed on the applicant vide clause (iii) of para 6 of the order dated 10.07.2023 is hereby relaxed/modified.
- III. The applicant be released on temporary bail for one month.
- IV. The applicant shall furnish P.B. and S.B. of Rs.25,000/- **within one month** of his release. In case the applicant is not in a position to furnish surety as directed, he may furnish cash security of Rs.25,000/- in the alternate.
- V. The application is accordingly disposed off.
- VI. Fees of the counsel appointed to represent the applicant be paid by the High Court Legal Services Sub-Committee, Aurangabad as per Rules.

[ABHAY S. WAGHWASE, J.]