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Cri.Appln-2955-25

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2955 OF 2025 IN REVN/248/2025

BABRUWAN HANMANTA BHOSALE AND ORS.

VERSUS

THE STATE OF MAHARASHTRA

...

- Mr. Sanjay Wakure, Advocate for the Applicants
- Mr. A. V. Lavte, APP for the Respondent/State

...

CORAM : ADVAIT M. SETHNA, J.

DATE : 12 AUGUST 2025

P. C. :-

1. A Praecipe is moved for Speaking to Minutes of order dated 5 August 2025.
2. Inadvertently, in Paragraph ii of the operative order, the word is wrongly typed as '**Applicant**' instead of '**Applicants**'.
3. Let the order be corrected and uploaded in above terms and made available to the parties.
4. Praecipe for Speaking to Minutes is accordingly disposed of.

(ADVAIT M. SETHNA, J.)

PRW

(This order dated 5 August 2025 stands corrected in view of the order dated 12 August 2025 passed on the motion for speaking to the minutes)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 2955 OF 2025
IN REVN/248/2025

Babruwan Hanmanta Bhosale & Ors.

Versus

The State of Maharashtra

Mr. Sanjay Wakure for the Applicant.
Mr. M. K. Goyanka, APP for the State.

CORAM : ADVAIT M. SETHNA, J.
DATE : 5 AUGUST 2025

P. C.:

1. Heard learned counsel for the parties.
2. This Application is filed with a prayer for suspension of the sentence against the Applicants imposed by the Judicial Magistrate First Class, Omerga, District Dharashiv (“**JMFC**”) by an order dated 6 December 2016, which was subsequently partly confirmed by the order of the Ld. Additional Sessions Judge, Omerga, District Dharashiv by an order dated 25 June 2025.

The relevant prayers in the Application read thus:-

“B. The conviction and sentence dtd 25.06.2025 passed by Ld. Addl. Sessions Judge, Omerga in Cri. Appeal no.02/2017, under section 323 r/w 34 I.P.C, sentencing applicants to suffer simple imprisonment for three (3)

Months and to pay fine of Rs: 500/-each in default to suffer simple imprisonment for 10 days, may kindly be suspended.

C. Pending hearing and final disposal of instant Revision petition substantive sentence imposed upon applicants may kindly be suspended and accordingly applicants may kindly be released on Bail.”

3. My attention is first drawn to the order of the JMFC dated 6 December 2016. The operative part of the said order reads thus:-

“1) Accused Babruwan Hanmanta Bhosale, Hariba Hanmanta Bhosale and Govind Babruwan Bhosale All R/o. Kunhali Tq. Omerga Dist. Osmanabad are convicted for the offence punishable under Sections 324 read with 34 of IPC vide section 248(2) of the Code of Criminal Procedure and sentenced to suffer simple imprisonment for one year and to pay fine of Rs. 500/-, each (Rupees Five Hundred each) in default to suffer simple imprisonment for one month.

2) Accused no.1 to 3 are acquitted of the offence punishable under section 504 read with 34 of IPC vide section 248(1) of the Code of Criminal Procedure.

3) The accused to surrender to their bail-bonds.

4) The copy of judgment be provided to accused free of costs.”

4. The above judgment and order of the JMFC was assailed by way of Appeal to the Sessions Court i.e. Additional Sessions Judge, Omerga. The

said Court by an order dated 25 June 2025 partly allowed the Criminal Appeal No.2 of 2017 of the present Applicants in the following terms:-

“1. Criminal Appeal No.2/2017 is partly allowed as follows -

2. Judgment in Regular Criminal Case No.99/2010 is hereby set aside.

3. Accused No.1 Babruwan Hanmanta Bhosal, accused No.2 Hariba Hanmanta Bhosale and accused No.3 Govind Babruwan Bhosale are acquitted of offence punishable under section 324 r/w.34 of Indian Penal Code.

4. Accused Babruwan Hanmanta Bhosale, Hariba Hanmanta Bhosale and Govind Babruwan Bhosale are convicted of the offence punishable under section 323 r/w.34 of Indian Penal Code and they are sentenced to suffer 3 months simple imprisonment and fine of Rs.500/- each in default to suffer 10 days simple imprisonment.

5. Accused Babruwan Hanmanta Bhosale, Hariba Hanmanta Bhosale and Govind Babruwan Bhosale are hereby acquitted of the offence punishable under section 504 r/w.34 of Indian Penal Code.

6. One wooden stick around 3 feet in length be disposed of after appeal period.

7. Record and proceeding be sent to the Court of learned Judicial Magistrate First Class, Omerga alongwith copy of this judgment.”

5. Having heard learned counsel for the Applicants, it appears that the Applicants are acquitted under Section 324 read with Section 34 but

convicted under Section 323 read with Section 34 and accordingly they are sentenced to suffer three months simple imprisonment as noted above. Mr. Wakure, learned Advocate for the Applicants has submitted that the ingredients of the offence under Section 323 under which the Applicants are convicted are not made out. In this regard he submits that there are no charges framed as far as Section 323 is concerned qua the present Applicants. This is a manifest error in the judgment and order passed by the trial Court and learned Sessions Court as submitted by Mr. Wakure.

6. Mr. Goyanka, learned APP on the other hand would oppose the Application qua suspension of sentence and submit that at this stage in light of concurrent findings and orders by two Courts below, there is no reason to intervene with the impugned judgments/orders. However, it is pertinent to note that the Sessions Court in Appeal proceedings has acquitted the Appellants under Section 324 but convicted them under Sections 323 for simple imprisonment for three months. Undoubtedly this is a short sentence. The Applicants were on bail throughout the period during the proceedings before the JMFC as well as the Appeal proceedings before the Sessions Court. It appears that there are no complaints against the Applicants with regard to their conduct in any manner whatsoever. The Applicants have duly deposited

the amount of fine before the JMFC as directed.

7. In view of all of the above, the following order would meet interest of justice:-

O R D E R

- i. Pending disposal of the Criminal Revision Application and until further orders, the substantive sentence of imprisonment of three months with fine of Rs.500/- under Section 323 read with Section 34 of the IPC confirmed by the Sessions Court, stands suspended.
- ii. The **Applicants** be released on bail on executing of P.R. Bond of Rs.25,000/- with one surety in the like amount.
- iii. Bail before the Trial Court.

[ADVAIT M. SETHNA, J.]