

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

CRIMINAL WRIT PETITION NO. 501 OF 2022

1. Paritosh Tarapad Poddar, aged 34 years,
occ. Tailoring, R/o M.V. 16, Tah. & Distt.
Malkangiri, (Orissa State)
2. Haridas Harivila Biswas, aged 29 years,
Occ. Education, R/o M.V. 16, Tah. &
Dist. Malkangiri, (Orissa State)

... PETITIONER

VERSUS

State of Maharashtra, through P.S.O.,
P.S. Gadchiroli, Tah. & Dist.
Gadchiroli.

... RESPONDENT

Mrs. Maira Ateeb, Advocate for the petitioners.
Shri H.D. Dubey, A.P.P. for the respondent.

CORAM : VINAY JOSHI, J.

DATED. : 26.08.2022.

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of both the learned Counsel
appearing for the parties.

3. The petitioners have been convicted by the Trial Court in

R.C.C. No.21 of 2018 for the offence punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code and Section 66(c) of the Information Technology Act. The Trial Court has imposed separate punishment for each offence, out of which the maximum sentence is imposed for the offence punishable under Section 420 of the Indian Penal Code to suffer rigorous imprisonment for six years with certain amount of fine. The Trial Court directed that all substantive sentences shall run concurrently. The total fine imposed under different counts is of Rs.80,000/-.

4. Being aggrieved and dissatisfied by the order of conviction, the petitioners have filed Criminal Appeal No.21 of 2020 challenging the order of conviction. In said appeal the petitioners have filed an application seeking suspension of execution of sentence in terms of Section 389(3) of the Code of Criminal Procedure, however the Appellate Court has declined to suspend the execution of substantive sentence.

5. Being dissatisfied by the said order, the petitioners have applied to this Court. It is the petitioners' contention that they have good case on merit. The Trial Court has not appreciated the evidence in proper perspective, which resulted into passing an order of conviction. Besides that, it has been argued that both petitioners are under trial

prisoners and they are in jail from 30.08.2018 and 26.02.2018 respectively, meaning thereby they have already suffered punishment more than one and half of the term, which has been imposed.

6. The State resisted the petition by contending that both petitioners are resident of other State and if they are release on bail, there are high chances of abscondance and they may not be available for the hearing of the appeal.

7. Perused the impugned judgment and the nature of evidence laid by the prosecution. The petitioners have already deposited entire fine amount of which photocopy of receipts have been tendered. The maximum sentence of imprisonment is for six years. The calculation shows that the petitioners are under trial prisoners and up-till now, they are in jail for the period of four years and six months. To my mind, this itself is a sufficient reason for suspension, because if ultimately the petitioner succeeds in appeal, then irreversible position may occur. As regards to the objection that the petitioners are hailing from State of Orissa, the care can be taken by imposing certain conditions.

8. In view of above, the petition is allowed. The Impugned order dated 22.12.2020 passed by the Additional Sessions Judge, Gadchiroli in Criminal Appeal No.21 of 2020 is hereby quashed and set

aside. Execution of substantive sentence stands suspended till the final disposal of the appeal on petitioners' furnishing solvent surety to the tune of Rs.1,00,000/- each to the satisfaction of the Trial Court.

9. The Trial Court shall issue the release warrant only after ensuring that the entire fine amount, has been deposited.

10. The petition stands disposed of in above terms.

(VINAY JOSHI, J.)

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