

IN THE COURT OF SESSIONS JUDGE, GADCHIROLI
(In-charge Court)

(Presided over by Rajendra N. Mehare)

Criminal Appeal No.13/2019
(CNRMHGA01-000199-2019)**Exh.5**

1. **Sanjivani Dipak Barkale,**
Aged about 28 yrs. Occu. Housewife,
2. **Dipak Eknath Barkale,**
Aged about 31 yrs. Occu. Service,
Both R/o. 3/5 Jerry Wheel, Goms Colony,
Nutan Nagar, Kanjurmarg (W) Mumbai,
Tah and Dist. Mumbai., .. **Applicants**

.versus.

State of Maharashtra
Through Police Station Officer,
P.S. Gadchiroli, Tah. and
District - Gadchiroli .. **Non-applicant**

O R D E R (BELOW EXH.5)(Passed on this 5th day of February 2019)

1] Instant application has been filed for suspension of sentence and releasing the appellant Sanjivani Dipak Barkale and Dipak Eknath Barkale on bail under Section 389 of Code of Criminal Procedure inter-alia contending that appellants/accused Sanjivani Dipak Barkale and Dipak Eknath Barkale were prosecuted before learned Chief Judicial Magistrate Court for the offence punishable under Section 419, 468, 471, 420 read with Section 34 of the IPC, read with Section 66 (C) and (D) of the Information Technology Act. Said case was conducted on merit and by way of impugned judgment, appellants/accused were

convicted for above mentioned offences. Its operative order is reproduced here in order to consider in what manner learned trial Court had punished the appellant/accused.

1) Accused No.1 Sanjiwani W/o Dipak Barkale and Accused No.2 Dipak Eknath Barkale are hereby convicted for offence punishable under Section **419** read with Section 34 of the Indian Penal Code, 1860 vide Section 248(2) of the Code of Criminal Procedure, 1973.

Each of the accused is hereby directed to suffer Rigorous Imprisonment for 3 years and to pay a fine of Rs.5,000/- each, in default to suffer further Simple Imprisonment for one month.

2) Accused No.1 Sanjiwani W/o Dipak Barkale and Accused No.2 Dipak Eknath Barkale are hereby convicted for offence punishable under Section **468** read with Section 34 of the Indian Penal Code, 1860 vide Section 248(2) of the Code of Criminal Procedure, 1973.

Each of the accused is hereby directed to suffer Rigorous Imprisonment for 7 years and to pay a fine of Rs.10,000/- each, in default to suffer further Simple Imprisonment for one month.

I/c. Sess.Judge,
Gadchiroli

3) Accused No.1 Sanjiwani W/o Dipak Barkale and Accused No.2 Dipak Eknath Barkale are hereby convicted for offence punishable under Section **471** read with Section 34 of the Indian Penal Code, 1860 vide Section 248(2) of the Code of Criminal Procedure, 1973.

Each of the accused is hereby directed to suffer Rigorous Imprisonment for 7 years and to pay a fine of Rs.10,000/- each, in default to suffer further Simple Imprisonment for one month.

4) Accused No.1 Sanjiwani W/o Dipak Barkale and Accused No.2 Dipak Eknath Barkale are hereby convicted for offence punishable under Section **420** read with Section 34 of the Indian Penal Code, 1860 vide Section 248(2) of the Code of Criminal Procedure, 1973.

Each of the accused is hereby directed to suffer Rigorous Imprisonment for 7 years and to pay a fine of Rs.5,000/- each, in default to suffer further Simple Imprisonment for one month.

5) Accused No.1 Sanjiwani W/o Dipak Barkale and Accused No.2 Dipak Eknath Barkale are hereby convicted for offence punishable under Section **66 (C)** of the Information Technology Act, 2000 vide Section 248(2) of the Code of Criminal Procedure, 1973.

Each of the accused is hereby directed to suffer Rigorous Imprisonment for 3 years and to pay a fine of Rs.1,00,000/- each, in default to suffer further Simple Imprisonment for one month.

6) Accused No.1 Sanjiwani W/o Dipak Barkale and Accused No.2 Dipak Eknath Barkale are hereby convicted for offence punishable under Section 66 (D) of the Information Technology Act, 2000 vide Section 248(2) of the Code of Criminal Procedure, 1973.

Each of the accused is hereby directed to suffer Rigorous Imprisonment for 3 years and to pay a fine of Rs.1,00,000/- each, in default to suffer further Simple Imprisonment for one month.

7) The sentences shall run concurrently.

2] According to appellants/both accused, both accused have deposited fine of Rs.2,30,000/- each in the office of trial Court. Thereafter, they are sent in jail. According to appellants, there was no cogent and reliable evidence against appellants/accused before learned Magistrate Court. Despite it, they were convicted illegally. Therefore, it is absolutely essential to examine the legality of impugned judgment. Lastly, it is prayed for being suspended the sentences and accused be released on bail till decision of appeal. Therefore, it is prayed for allowing the application Exh.5.

3] Learned A.P.P. Shri.Kumbhare appeared before this Court and opposed application Exh.5 and prayed for rejecting the same on the ground that accused/appellants have committed serious offence. Impugned judgment is based on cogent and reliable evidence. Considering the record available before this Court, they are not entitled to get the relief in respect of suspension of sentence and for releasing them on bail, as prayed in their application. Lastly, it is prayed for rejecting the application - Exh.5.

4] I have heard both the parties and perused case papers. The instant application is filed under Section 389 of the Code of Criminal Procedure for suspension of sentence and for grant of bail till decision of appeal. Needless to say that Section 389 of the Code of Criminal Procedure applies to convicted persons. Section 389(1) of the Code of Criminal Procedure empowers the appellate Court to suspend execution of sentence and when convicted accused are in confinement, then to grant bail pending appeal to it. The main consideration for entertaining application under Section 389 of the Code of Criminal Procedure is - (a) whether there are any prima facie grounds disclosed for substantial doubt about the conviction, and (b) Other is whether disposal of appeal is likely to take unreasonable period.

I/c. Sess.Judge,
Gadchiroli

5] Learned Counsel of appellants/accused has pointed out that there was no compliance of section 65 B of Evidence Act, despite it learned trial court has relied upon electronic documents. He has pointed out from the record that report of concerned handwriting expert was not favorable to the prosecution, but such material aspect was not considered by learned trial Court. According to him, material witnesses were not examined by prosecution and important witness P.W.9 Arun was not supporting to the prosecution case. Despite it, findings were recorded by learned trial Court against accused persons. On the basis of these material and various grounds raised in their appeal memo, learned counsel of accused has submitted that impugned judgment passed by learned trial court is not legal and proper and they are not based on reliable and cogent evidence. From the material

placed before me, it prima facie appears that there are substantive grounds available to the appellants for preferring appeal and for being considered the same while deciding the appeal. In other words, it can be certainly stated that arguable case is available to the appellants.

6] From the controversial arguments of the parties, it also appears that appellants have challenged impugned judgment passed by learned trial court on various grounds. Questions raised in the application and in appeal memo need to be decided on merit. Perusal of record shows that accused/appellants have deposited fine amount in the court and to that effect receipts are placed on record. It also appears that appellants have minor children, to look after them. This appellate Court has sufficient numbers of old cases, they are required to be decided first. Therefore, owing to this difficulty, appeal cannot be disposed of expeditiously. Therefore, in this situation, time would be required for adjudicating appeal on merit by calling record and proceeding from the court of learned Magistrate. That apart, the opportunity of putting the grievances in the appeal is required to be given to the appellants. Thus, in my view, execution of impugned judgment passed on dated 04.02.2019 regarding their conviction by learned Magistrate is required to be suspended till the decision of this appeal. Similarly, accused persons need to be released on bail till decision of case, inasmuch as they appear to be released on bail in trial Court and no record is available that they have misused bail. In the given set of facts and circumstances, relief claimed by accused/appellants Sanjivani Dipak Barkale and Dipak Eknath Barkale in Exh.5 application, needs to be allowed. In sum and substance,

application Exh.5 needs to be allowed. In the result, following order is passed.

ORDER

1. Application Exh.5 is allowed.
2. Sentence passed against appellants **Sanjivani Dipak Barkale** and **Dipak Eknath Barkale** by learned Chief Judicial Magistrate, Gadchiroli in the impugned judgment dated 04.02.2019 in Reg. Cri. Case no.4/2016 is hereby suspended and appellants/accused Sanjivni Dipak Barkale and Dipak Eknath Barkale be released on execution of P.R. of Rs.20,000/- each with one solvent surety each in like amount or two sureties of Rs.10,000/- each of total amount of Rs.20,000/- each till the decision of main appeal, on the condition that they shall not misuse bail.
3. Inform to learned Magistrate accordingly.

Date: 5.2.2019

Sd/-
(R. N. Mehare)
I/c Sessions Judge, Gadchiroli