

(2017) 12 BOM CK 0022
In the Bombay High Court
Case No : 228 of 2017

SURESH S/O. HANMANTRAO SONWANE

APPELLANT

Vs

THE STATE OF MAHARASHTRA

RESPONDENT

Date of Decision : 07-12-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 437-A](#) -
[Indian Penal Code, 1860](#), [Section 409](#) -
Criminal breach of trust by public servant, or by banker, merchant of agent

Citation : (2017) 12 BOM CK 0022

Hon'ble Judges : The State Of Maharashtra

Advocate : Girish L. Awale, A.V. Deshmukh.

Judgement

1. The revision applicant was prosecuted by the Court of Judicial Magistrate, First Class at AUSA in Regular Criminal Case No.206 of 2009 for the offences punishable under Sections 408 & 409 of the Indian Penal Code. The trial Court convicted the applicant for both the said offences and sentenced him to suffer for each of the said offence Rigorous Imprisonment for two years with fine of Rs.5,000/-. Against the order of conviction passed by the trial Court, the applicant preferred the Criminal Appeal No.55 of 2015. The learned Additional Sessions Judge, Latur vide order passed on 12.07.2017 has dismissed the said appeal. Aggrieved by, the applicant has filed the present Revision Application.

2. Along with the Revision Application, the applicant has filed the Criminal Application No.4951 of 2017 seeking suspension of the execution of the sentence imposed upon him by the Courts below and consequently to release him on bail.

3. On perusal of the order passed by the learned Additional Sessions Judge, it is revealed that, the learned Additional Sessions Judge while dismissing the appeal filed by the applicant has passed further order that the bail bonds of the accused would continue till further period of 6 months under Section 437A of the Code of Criminal Procedure (hereinafter referred to as the "Code").

4. The order passed by the learned Additional Sessions Judge as aforesaid is patently illegal. Section 437A of the Code reads thus :

"437A. Bail to require accused to appear before the next appellate Court.(1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months.

(2) if such accused fails to appear, the bond stand forfeited and the procedure under section 446 shall apply."

From the language of Section 437A of the Code, it is apparent that, the said provision is applicable only in cases, where the trial Court acquits the accused and it would not be applicable on conviction of the accused. Vide the aforesaid order, the learned Additional Sessions Judge has indirectly suspended the sentence after decision of the appeal. It has to be stated that, the Code does not confer any inherent jurisdiction on the lower appellate Court to directly or indirectly suspend the sentence after decision of the appeal. As held by this Court in the case of Dilip s/o. Ramchandra Umare Vs. State of Maharashtra, 1996 CRI. L.J. 72, there is no specific power conferred on the lower appellate Court under the Code to suspend the sentence on decision of appeal against the Judgment of conviction and sentence. There is neither any power of suspension of sentence nor grant of bail implicit in the lower Appellate Court after decision of the appeal against the Judgment of conviction and sentence, nor such power is inherent. Once the lower appellate Court hears and decides the appeal against the conviction and sentence passed by the trial Court, it becomes functus officio and ceases to have any power to suspend the sentence or grant bail even temporarily to enable the accused to approach High Court by filing revision application and to obtain appropriate orders from High Court.

5. Even earlier in some matters, it has been noticed that, the Sessions Judges, Additional Sessions Judges, or lower appellate Courts are passing the orders invoking Section 437A of the Code and thereby releasing the convicted accused on bail under the said provision. It is reiterated that, Section 437A of the Code is applicable only in cases, where the trial Court acquits the accused after conclusion of the trial or the appellate Court in an appeal against conviction acquits the accused. The said provision is inserted in the Code so as to secure the appearance of the accused before the next appellate Court, if any appeal is preferred against the order of his/her acquittal.

6. In the present matter, the learned Additional Sessions Judge, Latur has admittedly dismissed the appeal filed by the present applicant and has thereby confirmed the order of conviction passed by the trial Court. As mentioned herein above, the Code does not confer any inherent jurisdiction on the lower appellate

Court to directly or indirectly suspend the sentence after decision of the appeal. As such, the learned lower appellate Court must have taken the applicant in custody and must have sent him to jail to undergo sentence imposed upon him; instead the learned Additional Sessions Judge has passed an erroneous order that, the bail bonds of the accused would continue till further period of 6 months. It is apparent that, the learned Additional Sessions Judge has misunderstood the provision under Section 437A of the Code. The said order, therefore, needs to be set aside and quashed. Hence, the following order.

ORDER

- i) Subclause (2) of the order dated 12th July, 2017 passed in Criminal Appeal No.55 of 2015 decided by the Additional Sessions Judge, Latur whereby it has been directed that, the bail bonds of the accused / appellant would continue till further period of six months under Section 437A of the Criminal Procedure Code, is quashed and set aside.
- ii) The applicant namely Suresh s/o. Hanmantrao Sonwane shall surrender before the trial Court within two weeks from the date of this order.
- iii) If the above named applicant fails to surrender before the trial Court within the stipulated period, the trial Court shall take coercive steps for securing his presence and send him to jail for undergoing the sentence of imprisonment imposed on him.
- iv) The application filed by the applicant seeking suspension of the execution of the sentence imposed upon him and for his release on bail shall be listed for hearing only after surrender of the applicant before the trial Court.