

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 651 OF 2014
IN
CRIMINAL APPEAL NO. 1380 OF 2012

Abhijeet Pradeep More & anr ... Applicants.
Versus
The State of Maharashtra. ... Respondents.

Mr. Kuldeep U. Nikam, advocate for Applicants.

Mr. Bhushan Deshmukh h/f. Mr. Uday Warunjikar, advocate for original complainant.

Ms. R.M. Gadhavi, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 3, 2015

P.C.:

1 Heard the learned Counsel for the applicants and the learned APP for State. Perused the papers.

2 The learned Counsel for the applicant No. 1 submits that inadvertently, name of the applicant No. 2 is mentioned in the cause title. Hence, the name of the applicant No. 2 be deleted forthwith.

3 This is an application under Section 389 of the Code of Criminal Procedure, 1973 seeking suspension of substantive sentence. The present applicant happens to be the original accused No. 1 in Session Case No. 172 of 2012 by Judgment and order dated 20/12/2012. The present applicant is convicted for offence punishable under Section 326 and 506 read with Section 34 of the Indian Penal Code. The applicant is sentenced to suffer R.I. for 5 years and fine of Rs. 2000/- I.d. to suffer two months simple imprisonment for offence under section 326 of the Indian Penal Code. The applicant is sentenced to suffer R.I. for 5 years and fine of Rs. 2000/- I.d. to suffer two months S.I. for offence under Section 506 of the Indian Penal Code by the Ad-hoc District Judge -2 & Addl. Sessions Judge, Pune.

4 This is a successive bail application. The applicant had filed Criminal Application No. 137 of 2013 under Section 389 of the Code of Criminal Procedure. Upon perusal of the evidence adduced by the

prosecution, this Court was not inclined to grant bail and hence, on 15th April, 2013, the application was withdrawn with further liberty to renew the prayer for bail in the eventuality that the appeal is not finally heard by 4th week of August, 2013. The applicant was granted liberty to file private paper book. The same has been filed on record.

5 The learned Counsel for the applicant submits that the applicant has been in jail since 6/12/2011. The applicant has served the substantive sentence of about 3 and ½ years. The applicant has almost undergone more than half of the sentence imposed upon him. The learned Counsel has placed reliance upon the judgment of the Hon'ble Apex Court in the case of **Kiran Kumar v/s. State of M.P. 2001 AIR SCW 5130** for seeking suspension of substantive sentence during the pendency of the appeal which cannot be heard at the earliest thereby causing the prayer to become infructuous.

6 In view of the above observations, the application deserves to be allowed.

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence imposed upon the applicant No. 1 vide Judgment and Order dated 20/12/2012 in Sessions Case No. 172 of 2012 is hereby suspended. He be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more sureties in the like amount.
- (iii) The applicant No. 1 shall report to the Court of Sessions, Pune once in 6 months on the date specified by the concerned Court. Upon failure to report to the concerned Court, prosecution is at liberty to move for cancellation of bail.
- 7 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)