

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 744 OF 2013
IN
CRIMINAL APPEAL NO. 374 OF 2012

Salim Jamshed Ali Shaikh @ Kanya ...	Applicant
vs.	(Orig. Accused No.1)
The State of Maharashtra ...	Respondent

Mr. Dilip Mishra a/w Mr. Ayaz Khan, Advocate for the applicant.
Mr. Arfan Sait, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 21st December, 2015.

P.C.

The applicant herein has filed this application seeking suspension of substantive sentence on 4.6.2013. This Court (Coram: Sadhana S. Jadhav, J.) by an order dated 9.7.2013, had passed an order that “the application be heard along with appeal. The appeal be listed for final hearing after admission board on 25th July,2013.” The matter was listed on 18.7.2014 before Hon'ble Justice P.D.Kode. None appeared for the appellant. Since there was an order passed by the predecessor Bench that the application be heard along with appeal, it appears that the Hon'ble Court had proceeded with the hearing.

2. The learned APP had made submission that the matter be

adjourned to 25.8.2014. The matter was then adjourned at the request of the learned APP. In the meanwhile, the matter was listed for final hearing. On 25.11.2012 itself, at the time of admission of the appeal, this Hon'ble Court (Coram: A.M.Thipsay, J.) had permitted the appellant to file a private paper book. The matter was listed for hearing on 20.6.2014. None appeared for the appellant. On 27.6.2014 also none appeared for the appellant. On 11.7.2014, this Court (Coram: P.D. Kode, J.) had observed that he learned counsel for the appellant wants to file short synopsis witnesses-wise for assisting the Court and the matter was adjourned. Although the matter was fresh, it was added to the list of final hearing on 18.7.2014. None appeared for the appellant. On 15.11.2014, none appeared for the appellant. This Court (Coram: Smt. Anuja Prabhudessai, J.) issued notice to the Superintendent of Jail to produce the appellant in the Court on the next date, in all probabilities to give a notice to the accused that he is not being represented. On 15.11.2014, before Hon'ble Justice Anuja Prabhudessai also, none had appeared on behalf of the appellant. On 12.12.2014, the appellant was produced from the prison. The appeal was thereafter listed for final hearing on 16.1.2015. On 25.6.2015, Hon'ble Justice A.R.Joshi had observed that "at the request of learned Counsel for the appellant, stand over to 16th July, 2015".

3. Today, the learned counsel for the applicant seeks suspension of substantive sentence on the ground that the applicant has put in approximately 6 years in prison i.e. more than half of the sentence which is imposed upon him and therefore prays that the substantive sentence be suspended.

4. The learned APP has placed reliance upon a Judgment of the Hon'ble Apex Court in the case of **Union of India vs. Abdul Momin (2006) 2 SCC (Cri) 130** where the appeal was pending before the Apex Court. The respondent had not appeared despite issuance of non-bailable warrant. In that view, the Hon'ble Apex Court had refused to show any indulgence. Although the facts are different, this Court is of the opinion that only in the eventuality that the Court is not able to take up the matter for final hearing in the near future, the sentence deserves to be suspended. It is true that Section 436A of the Criminal Procedure Code contemplates that where the convict has put in more than half sentence in jail, the substantive sentence deserves to be suspended. In the present case, it appears that the learned counsel appearing for the appellant had taken no steps to argue the matter finally, although it was listed on more than 10

occasions. It would therefore be not proper to enlarge the applicant on bail only because he has put in more than half of the sentence imposed.

5. In view of this, the application seeking suspension of substantive sentence, which was filed on 4.6.2013, deserves to be rejected.

The application is accordingly rejected.

6. The appeal be listed for final hearing on 14.1.2016.

7. The learned counsel for the appellant. is at liberty to file the written synopsis in the Registry.

(SMT.SADHANA S.JADHAV, J.)