

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 792 OF 2015
IN
CRIMINAL APPEAL NO. 1380 OF 2012

Kiran @ Bokya Raju Kamble. ... Applicant.
Versus
The State of Maharashtra. ... Respondents.

Mr. Harshwardhan, advocate for Applicant.

Ms. P.P. Shinde, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 17, 2015

P.C.:

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

2 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. 2 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.

3 This is a successive bail application. The applicant had filed Criminal Application No. 1082 of 2014 under Section 389 of the Code of Criminal Procedure for temporary bail. The same was granted vide Order dated 23/2/2015.

4 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 for the applicant submits that the applicant has not misused the liberty granted to him vide order dated 23/2/2015. 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.

5 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 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 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.

6 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)