

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 376 OF 2016
IN
CRIMINAL APPEAL NO. 213 OF 2016

Raghunath Sahebrao Kale	...	Applicant
vs.		(Orig. Accused No.4)
The State of Maharashtra	...	Respondent

Mr. Veerdhawal Kakade a/w Mr. Prabhakar M. Jadhav, Advocate for the appellant.

Ms. A.A. Mane, APP, for the State.

Mr. A.M. Shinde, Police Naik, Akulj Police Station, Solapur.

CORAM: SMT. SADHANA S. JADHAV, J.

DATE : 3rd May, 2016.

P.C.

This is an application under Section 389 OF Cr.P.C. seeking suspension of substantive sentence.

2. The learned APP has submitted that she has not received any report as far as the criminal antecedents of the applicant is concerned.

3. The learned counsel for the applicant submits that the applicant was an accused in Sessions case No.21 of 2010, where he was prosecuted for the offence punishable under Section 302 of IPC. The learned counsel

submits that the applicant has been acquitted in Sessions Case No.21 of 2010. In the present case, the original accused Nos., 1,2, 3, 5 and 6 are acquitted of the offences punishable under Sections 395 and 397 of IPC.

4. At this stage, the learned APP has placed on record a report by P.I. of Akluj Police Station which does not state that the applicant has criminal antecedents. The learned Sessions Judge has also held that the finger prints of the applicant on the left side of cupboard has matched with the finger prints of accused Raghunath Kale i.e. the present applicant.

5. The learned counsel for the applicant submits that the date of incident is 16.7.2009. The applicant was arrested on 19.7.2009. The learned counsel submits that there is no cogent and convincing evidence to show that the finger prints of the accused were taken and actually matched with the finger prints taken at the scene of offence as the finger prints expert has submitted that he had received the photographs of the finger prints and sample.

6. The learned counsel for the applicant further submits that the sentence imposed upon the applicant is a short-term sentence.

7. Reliance can be placed upon the Judgment of the 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.

8. In view of this, the application seeking enlargement on bail deserves to be allowed.

ORDER

(i) The application is allowed.

(ii) The substantive sentence imposed upon the applicant is hereby suspended. He be enlarged on bail on furnishing P.R.Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

(v) The applicant shall report to the Court of Addl. Sessions Judge, Malshiras, once in six months on the dates as may be specified by the said Court. In case of failure to attend on any two consecutive dates, the prosecution shall be at liberty to move for cancellation of bail order.

Application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)