

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 328 OF 2016
IN
CRIMINAL APPEAL NO. 178 OF 2016

Mr. Shafiq Ahmed Vasiulla Shaikh

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Ms. Zainab Bee Khan Advocate for the applicant
Mr. Rajesh More APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : MARCH 16, 2016.

PC :

Heard. This is an application under section 389 of Code of Criminal Procedure, 1973 seeking suspension of substantive sentence. Applicant herein is original accused no. 1 in Sessions Case No. 308 of 2014. Applicant was facing charges for offence punishable under section 302 r/w 34 of Indian Penal Code. Learned Additional Sessions Judge, City Civil and Sessions Court, Mumbai vide Judgment and Order dated 12/02/2016 has been pleased to acquit both the accused for offence punishable under section 302 r/w 34 of Indian Penal Code. Applicant herein is convicted for offence punishable under

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section 326 of Indian Penal Code and is sentenced to suffer rigorous imprisonment for 5 years and fine of Rs. 5,000/- in default to suffer simple imprisonment for 2 months. Applicant was not on bail during the pendency of trial. Applicant is in custody from 28/12/2013.

2) Learned counsel for the applicant submits that applicant was in custody for more than 2 years and that he has almost undergone half of the sentence imposed upon him. Learned counsel further submits that applicant has been acquitted of the charge under section 302 of Indian Penal Code and is convicted for offence punishable under section 326 of Indian Penal Code. That the appeal is good on merits. That the sentence imposed upon the applicant is a short term sentence. That it is not likely that the appeal would be heard in the near future.

3) In view of this, applicant deserves to be enlarged on bail during the pendency of appeal.

4) Hence, following order.

ORDER

(i) Application is allowed.

(ii) The substantive sentence imposed upon the applicant is hereby

suspended.

- (iii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 15,000/- and one or two sureties in the like amount and upon payment of fine.
- (iv) Applicant be released on provisional cash bail for a period of 6 weeks from today during which period applicant shall furnish fresh bail bonds.
- (v) Applicant shall not seek extension of time to furnish bail bonds.
- (vi) Applicant shall report to Sessions Court, Mumbai, once in six months, as directed by the Sessions Court, till the conclusion of appeal.
- (vii) Upon failure to attend any two consecutive dates, prosecution would be at liberty to seek cancellation of bail.
- (viii) Applicant shall furnish his residential address, cellphone/landline no. and other details to the investigating agency.
- (ix) Application stands disposed of.
- (x) Parties to act on authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J.)