

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 667 OF 2017
IN
CRIMINAL APPEAL NO. 407 OF 2017**

1 Kailas Rajaram Arote ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Niranjana Mogre, advocate for Applicant.

Ms. Pallavi Dabholkar, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : MAY 2, 2017**

P.C.:

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

2 This is an application under section 389 of the Code of Criminal
Procedure, 1973 seeking suspension of substantive sentence imposed
on the applicant. The applicant herein is convicted for offence
punishable under section 201 read with section 34 of the Indian Penal

Code in Sessions Case No. 39 of 2011 by Additional Sessions Judge, Nashik vide Judgment and Order dated 13/4/2017 and has sentenced to suffer R.I. for 3 years and to pay fine of Rs. 5,000/- I.d. to suffer S.I. for 6 months.

3 The learned Counsel for the applicant submits that the sentence imposed upon the applicant is a short term sentence. It is further submitted that the applicant was on bail during the pendency of the trial and he was in custody from 12/7/2010 to 24/7/2010. The learned Sessions Judge has suspended the substantive sentence for a period of four weeks. The applicant has not committed breach of any conditions imposed upon him.

4 Reliance can be placed upon the Judgment of the Apex Court in the case of **Kiran Kumar v/s. State of M.P. reported in 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 this, the application deserves to be allowed. Hence the following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence imposed upon the applicant is suspended. The applicant be released 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 herein shall report to the Additional Sessions Judge, Nashik once in 6 months on the date specified by the concerned Court. Upon failure to attend two consecutive dates by the applicant, the prosecution is at liberty to move for cancellation of bail.

6 The Application is disposed of on the above terms.

(SMT. SADHANA S. JADHAV,J)