

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

**CRIMINAL APPLICATION NO.1673 OF 2018
IN
CRIMINAL APPEAL NO.1192 OF 2018**

Rupesh Ramesh Patil

Age : 24 years, Occ.: Labour,

R/o : At Post Tembhikhodave,

Taluka Palghar, Dist. Palghar

.... Applicant

Vs.

The State of Maharashtra

.... Respondent

Mr. Arun Rajput I/by Mr. Subodh N. Pathak for the Applicant.

Mr. V.V. Gangurde, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 14th December 2018

P.C.:

1 Heard the respective counsel.

2 This is an application under Section 389 Code of Criminal Procedure. The applicant herein is convicted by the Additional Sessions Judge, Palghar, vide judgment and order dated 29th August 2018 in Special Case No.2 of 2013, for the offences punishable under Sections 354, 509 of Indian Penal Code and under Section 8 of

Protection of Children from Sexual Offences Act, 2012. The applicant is sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.2,000/-, in default to suffer rigorous imprisonment for three months for the offence punishable under Section 354 of Indian Penal. The applicant is sentenced to suffer simple imprisonment for one year and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for one month for the offence punishable under Section 509 of Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.3,000/-, in default to suffer rigorous imprisonment for six months for the offence punishable under Section 8 of Protection of Children from Sexual Offences Act, 2012. The substantive sentences of imprisonment shall run concurrently.

3 Learned counsel for the applicant submits that the applicant was on bail during the pendency of the trial and has not committed breach of any conditions imposed upon him. It is also submitted that the applicant has been sentenced to a short term sentence and that there is no possibility of the appeal being finally

heard in the near future.

4 In view of the judgment of the Hon'ble Apex Court in the case of **Kiran Kumar v/s. State of M.P. 2001 AIR SCW 5130**, the substantive sentence imposed upon the applicant deserves to be suspended during the pendency of the appeal. In view of above, taking into consideration that the sentence imposed upon the applicant is a short term sentence, it would be a fit case for suspension of the substantive sentence. However, it is made clear that the suspension of substantive sentence would not amount to suspension of conviction. Hence, the following order.

ORDER

- i) The application is allowed and stands disposed of.
- ii) The substantive sentence imposed upon the applicant by the Additional Sessions Judge, Palghar vide judgment and order dated 29th August 2018 is hereby suspended.
- iii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.

iv) The applicant shall report to the Court of Additional Sessions Judge, Palghar once in six months on the date assigned by the Special Judge.

v) Upon failure to attend any two consecutive dates, the Sessions Court shall report the same to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

(*Smt. Sadhana S. Jadhav, J*)