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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 1836 OF 2018
IN
CRIMINAL APPEAL No. 1314 OF 2018

Amol Madhukar Nikam ...Applicant
Vs.
The State of Maharashtra ...Respondent

Mr. R.D. Suryawanshi for Applicant
Mr. S.H. Yadav – APP for the State

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : NOVEMBER 29, 2018

P.C.:

1. This is an application under section 389 of the Criminal Procedure Code seeking suspension of the substantive sentence during the pendency of the appeal.

2. The Applicant herein is convicted for the offence punishable under section 498A of the Indian Penal Code and is sentenced to suffer R.I. for 2 years and pay fine of Rs.5,000/-, in default, S.I. for 15 days and for the offence punishable under section 306 of the Indian Penal Codee and sentenced to suffer R.I. for five years and to pay fine of Rs.5,000/- , in default, to suffer S.I. for 15 days by the Additional Sessions Judge, Nashik vide judgment and order dated 23rd October, 2018 in Sessions Case No. 257 of 2013.

3. The 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. That the fine amount is deposited. The Applicant is in custody since 23rd October, 2018. It is submitted that the sentence imposed upon the Applicant is a short term sentence and, hence, he is entitled to be enlarged on bail. The Court is hearing the appeals of the years 2012-2014 and, therefore, the present appeal may not be heard in near future. In view of the judgment of the Apex Court in the case of **Kiran Kumar vs. State of M.P. 2001 AIR SCW 5130**, the application seeking bail deserves to be allowed. However, it is made clear that suspension of substantive sentence shall not be construed as suspension of conviction. Hence, following order.

ORDER

(i) Application is allowed.

(ii) Substantive sentence imposed upon the Applicant is hereby suspended. The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.30,000/- and one or more solvent sureties in the like amount.

(iii) The Applicant shall report to the Court of Additional

Sessions Judge, Nashik once in six months on the scheduled date assigned by the Learned Sessions Judge.

(iv) Upon failure to attend any two consecutive dates, the Learned Sessions Judge shall send a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

Criminal application stands disposed of.

[SMT.SADHANA S. JADHAV, J.]

V.A. Tikam