

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1874 OF 2018
IN
CRIMINAL APPEAL NO. 1358 OF 2018

Suresh Vishram Ahire. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr. Mahendra N. Sandhyanshiv, advocate for applicant.

Mr. Y.M. Nakhwa, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : NOVEMBER 28, 2018.

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, 1908 seeking suspension of substantive sentences imposed upon him by Sessions Judge, Nashik vide Judgment and Order dated 28/9/2018 in Sessions Case No. 188 of 2018 thereby convicting the applicant for the offence punishable under section 354 of the Indian Penal Code and section 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 and awarding sentence of 3 years of R.I. and fine of Rs. 500/- I.d. to suffer R.I. for 3 months on each count. All the

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sentences are to run concurrently.

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 condition imposed upon him. The fine amount is paid. The substantive sentence imposed upon the applicant has been stayed by the Sessions Judge in order to enable the applicant to file an appeal.

4 In any case, the applicant has been sentenced to a short term sentence. 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 applicant would be entitled to be enlarged on bail as this Court is hearing appeal of the year 2012 and 2014, where the accused are in jail. In view of this, the application deserves to be allowed. It is made clear that the suspension of substantive sentence shall not be construed as suspension of conviction.

5 Hence following order is passed :

ORDER

(i) The application is allowed.

(ii) The substantive sentence imposed upon the applicant vide Judgment and Order dated 28/9/2018 passed by Sessions Judge, Nashik

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in Sessions Case No. 188 of 2018 is suspended. He be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more solvent sureties in the like amount.

(iii) The applicant shall mark his presence before the Sessions Court, Nashik once in 6 months on the date specified by the Sessions Court, Nashik. Upon failure to attend on two consecutive dates, the Sessions Court, Nashik shall report the same to the High Court and the prosecution is at liberty to file application for cancellation of bail.

6 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]