

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1936 OF 2018
IN
CRIMINAL APPEAL NO.1435 OF 2018

Javed Basha Shaikh. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr. Sagar Tambe I/b. Mr. Ritesh Thobde, advocate for applicant.

Mr. S. S. Pednekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : DECEMBER 3, 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 sentence imposed upon the applicant. The applicant herein is convicted by the Additional Sessions Judge, Solapur for offence punishable under section 354(A)(1)(i) of the Indian Penal Code and sentenced to suffer R.I. for 3 years and to pay fine of Rs. 5,000/- I.d. to suffer S.I. for one year by Additional Sessions Judge, Solapur vide Judgment and Order dated 29/10/2018 in Sessions Case No. 115 of 2015.

3 It is the prosecution case that on 14/10/2013, the applicant herein had expressed his love for the complainant who was about 17 years of age. That he had attempted to outrage her modesty.

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4 The learned Counsel submits that the applicant was on bail during the pendency of the trial and he has not committed breach of the conditions imposed on him while on bail. The applicant is sentenced to a short term sentence.

5 In view of the Judgment of the Hon'ble Apex Court in the case, 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. Hence, he would be entitled to be enlarged on bail during pendency of the appeal. It is made clear that suspension of sentence shall not be construed as suspension of conviction.

6 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) The substantive sentence imposed upon the applicant vide Judgment and Order dated 29/10/2018 in Sessions Case No. 115 of 2015 by the Additional Sessions Judge, Solapur is hereby suspended.

(iii) The applicant 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.

(iv) The applicant shall report to Sessions Court, Solapur once in 6 months on the date assigned by the concerned Court. Upon failure to attend the concerned court on two consecutive dates, the Sessions Court

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shall report the same to the High Court and the prosecution is at liberty to file application for cancellation of bail.

7 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]