

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1614 OF 2018
IN
CRIMINAL APPEAL NO. 1141 OF 2018

Mujmmil Abdul Raheman Tolkar. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr. Harshad Sathe, advocate for applicant.

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

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JANUARY 29, 2019.

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. The applicant herein is seeking suspension of substantive sentence imposed upon him by Additional Sessions Judge, Mangaon-Raigad vide Judgment and Order dated 14/8/2018, wherein the applicant is convicted for the offence punishable under section 395 of the Indian Penal Code and sentenced to suffer R.I. for 5 years and to pay fine of Rs. 15,000/- I.d. to suffer R.I. for 6 months.

Talwalkar

3 The present applicant is original accused No. 5 in Sessions Case No. 58 of 2016. Perused the evidence adduced by the prosecution. As far as the present applicant is concerned, the prosecution placed implicit reliance upon substantive evidence of P.W. 1. She has stated that on 22/5/2016 she was drying her clothes in the balcony of her house when she saw some people wandering in the area and had kept vigilance on her house. It is alleged that in the afternoon, there was a knock at the door. Upon enquiry, it was the present applicant who informed her that he wanted to give invitation card. During that time, the accused Nos. 1 and 2 had rushed inside the house, threatened her of dire consequences, asked for the keys of the cupboard and were trying to flee from the spot when the neighbours had reached the house. P.W. 1 was able to catch hold of original accused Nos. 1 and 2. She had caused bite injuries on their wrists. According to her, the present applicant was not on the spot as he had fled away.

4 The applicant herein was granted bail under section 167(2) of the Code of Criminal Procedure, 1973. The applicant was on bail during the pendency of the trial and has not committed breach of any conditions imposed upon him. The sentence imposed upon the applicant is a short term sentence. In view of the Judgment of the Apex **Kiran Kumar v/s. State of M.P. 2001 AIR SCW 5130**, the applicant

deserves to be enlarged on bail during the pendency of the appeal.

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 14/8/2018 in Sessions Case No. 58 of 2016 is hereby suspended. He be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more solvent sureties in the like amount.

(iii) The applicant shall report to Court of Session, at Mangaon-Raigad once in 6 months on the date specified by the concerned Court. Upon failure to attend on two consecutive dates, the Sessions Court, Mangaon-Raigad 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.]