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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1814 OF 2020
IN
CRIMINAL APPEAL NO.538 OF 2020

Mayur s/o Kailashchand Khandelwal = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT

Mr.YG Somani, Advocate for Applicant;
Mr.AM Phule, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 15th October, 2020.

PER COURT:-

1. Heard learned Advocate and learned APP appearing for respective parties.

2. In this Criminal Application, the applicant prays for suspension of substantive sentence and releasing him on bail during pendency and final hearing of the Criminal Appeal.

3. The applicant is an accused in Special Case (Atro) No.12/2015, who has been convicted by learned Special Judge, Jalna vide judgment and order dated 7th September, 2020, for the offence punishable under section 354A(1)(i)(ii) of IPC and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.2,000/-, in default,

R.I. for three months.

4. It is vehemently submitted on behalf of the applicant that the trial court failed to appreciate that there are no iota of evidence to convict the accused for the offence charged against him and the Court below failed to appreciate the ingredients of Section 354-A(i)(ii) of IPC and there is no evidence as such. The learned Advocate further argued that the sentence awarded to the applicant by the learned Special Judge is a short term sentence. The learned Advocate further submits that the appeal involves other legal points/issues, which the applicant/appellant intends to agitate and address them at the time of final hearing of the appeal and the applicant have every hope of success in the appeal. Consequently, the applicant prays for enlarging him on bail by suspending the substantive sentence awarded by the learned Special Judge on such terms and conditions as this Court may deem fit and proper.

5. Per contra, learned APP resisted the application and supported the reasons assigned by the learned Special Judge while convicting and imposing the sentence against the applicant. The

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learned Special Judge has properly scanned the evidence brought on record. It is, therefore, submitted that the application being sans merit, deserves to be dismissed and it be dismissed accordingly.

6. In view of the decision in the case of Kiran Kumar Vs. State of M.P. - (2001) 9 SCC 211, the sentence imposed upon the applicant seems to be short term sentence, benefit will have to be extended to the applicant-appellant when he has demonstrated that the material and significant points raised by him in the appeal are required to be considered at the time of final hearing of the appeal. Further, the applicant has deposited the fine amount. Therefore, it can be said that case is definitely made out for releasing the applicant on bail by suspending the substantive sentence during pendency and final disposal of the appeal. Hence, following order,-

ORDER

i. The Criminal Application stands allowed.

ii. The substantive sentence imposed on the applicant by learned Special Judge, Jalna vide judgment and order

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dated 7th September, 2020 in Special (Atro) CASE No.12/2015, is hereby suspended till hearing and final disposal of the appeal.

iii. The applicant be released on executing PR and SB of Rs.15,000/ (Rupees fifteen thousand) each.

iv. The applicant shall not commit any criminal activity.

v. The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and, thereafter, the Trial Judge to fix dates for subsequent appearances.

vi. In case of two consecutive defaults on the part of the applicant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

vii. Bail before the Trial Court.

(SMT. VIBHA KANKANWADI, J.)