

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

8 CRIMINAL APPLICATION NO.1903 OF 2020
IN APEAL/561/2020

YOGESH BALASAHEB KUSALKAR
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Appellant : Mr. Kakde Yuvraj V.
APP for Respondent - State : Mr. S. W. Munde
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27th October, 2020

ORDER :

. Heard learned Advocate for the applicant/appellant and learned APP for respondent – State.

2. Present application has been filed for suspension of sentence. Present applicant has been convicted in Sessions Case No.189 of 2018 by learned Additional Sessions Judge, (Court No.8), Ahmednagar on 23-09-2020. He has been convicted for the offence punishable under Section 307 of Indian Penal Code and thereby sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.500/-, in default, to suffer rigorous imprisonment for three months. Further, he has been convicted for the offence punishable under Section 384 of Indian Penal Code and thereby sentenced to suffer rigorous imprisonment

for one year.

3. In order to cut short, it is to be mentioned that both the learned Advocates have made submissions in support of their respective contentions.

4. Perusal of the copies of evidence made available would show that the medical evidence appears to be not corroborating ocular evidence. The prosecution story which has been reflected through P.W.1 Bharat - the informant would show that he was attacked by accused. Accused had fired bullet from pistol, however, the medical practitioner P.W.7 Dr. Sandip in his examination-in-chief itself have stated that according to his opinion, fracture will not be caused by gun shot. He also opined that the fracture is possible by running, falling or in accident. It appears that the prosecution has not put questions in the nature of cross to the medical officer and, therefore, the effect of these discrepancies is required to be considered at the time of final hearing. Though it also appears that the accused is in jail since 16-06-2018 i.e. almost from the date of his arrest and was never released on bail, yet, the sentence that has been imposed on him is small sentence and in view of the decision in *Kiran Kumar Vs. State of M. P [(2001) 9 SCC 211]*, the benefit is required to be given to the applicant. The sentence deserves to be suspended till the final disposal and hearing of the appeal. Hence, the following order :-

ORDER

- I) The application stands allowed.
- II) The sentence imposed on the applicant / appellant in Sessions Case No.189 of 2018 by learned Additional Sessions Judge, (Court No.8), Ahmednagar is hereby suspended till the final hearing and disposal of Criminal Appeal No.561 of 2020.
- III) The applicant/appellant – Yogesh Balasaheb Kusalkar be released on P. R. Bond of Rs.30,000/- (Rupees Thirty Thousand only) with two sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.
- IV) The applicant/appellant shall not commit any criminal activity.
- V) The applicant/appellant to remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, starting from the date he tenders a bail papers and, thereafter, the trial Judge to fix dates for his subsequent appearances.
- VI) In case of two consecutive defaults on the part of applicant/appellant to remain present before the trial Court, the trial Court to inform this Court about the same, and in that case the

prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant/appellant.

VII) Bail before trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm