

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 1497 OF 2018
IN
CRIMINAL APPEAL NO. 1090 OF 2018**

Vijay Vishwas Kamble	.. Applicant
v/s.	
State of Maharashtra	.. Respondent

Mr. Priyal G. Sarda for the applicant
Ms. M.H. Mhatre, APP for respondent State

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 26th FEBRUARY, 2020

P.C.

1. This is an application for suspension of execution of the substantive sentence pending the appeal.

2. Heard the learned Counsel for the appellant. The appellant has been convicted by the Additional Sessions Judge, Pune under Section 376 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years with fine of Rs.1,000/-, in default simple imprisonment for 3 months. He has further been convicted under Section 392 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for 7 years and fine of Rs.1,000/-, in default

simple imprisonment for 3 months. The substantive sentences were directed to run concurrently.

3. Learned Counsel for the appellant has drawn my attention to the fact that out of 7 years imprisonment, the appellant has already undergone 4 years as he came to be arrested on 26.02.2016 and has been in jail during trial. Thus, he has completed 50% of the substantive sentence awarded by the trial Court. Learned Counsel has, therefore, placed reliance on a judgment of the Hon'ble Supreme Court in case of *Kamal Vs. State of Haryana, (2004) 13 SCC 526*. The ratio laid down by the Hon'ble Supreme Court is that the cases in which, the appellant has already served a substantial period of sentence, then unless there are some special reasons, his further detention in jail pending the appeal, would not be justified.

4. Learned APP submits for passing necessary orders.

5. In the light of the aforesaid observations, the prayer needs to be granted as the appeal may not be heard in near future and in view of the fact that the appellant has already undergone more than 50%

of the sentence awarded by the trial Court. As such, following order is expedient :-

ORDER

(i) Pending the hearing and disposal of the appeal and pending execution of substantive sentence, the appellant be enlarged on bail on he furnishing a PR. bond in the sum of Rs. 15,000/- with one or two sureties in the like amount to the satisfaction of the Additional Sessions Judge, Pune / Special Judge, Pune.

(ii) The appellant shall not leave the jurisdiction of that Court without seeking prior permission and shall attend this Court as and when directed.

(iii) The appellant shall not influence the victim or any of the prosecution witnesses and also shall not commit similar or any other offence. If the appellant commits breach of any of the aforesaid conditions, liberty to the prosecution to seek cancellation of his bail.

6. The application stands disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)