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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.972 OF 2020
IN
CRIMINAL APPEAL NO.670 OF 2021
WITH
CRIMINAL APPEAL NO.670 OF 2021**

Mohd. Bilal Mohd. Mahabul Alam Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

....

Mr. Veerdhawal Kakade for the Applicant.

Mr. S.V. Gavand, APP for Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 24th NOVEMBER, 2021.

P.C.:-

This is an application under Section 389 of the Code of Criminal Procedure, 1973 for suspension of substantive sentence imposed on the Applicant-accused No.4 vide judgment dated 26/12/2018 passed by the learned Additional Sessions Judge, Thane, in Session Case No.293 of 2018 and to release the Applicant on bail. By the impugned judgment, the learned Judge held the Applicant-accused No.5 guilty of offences punishable under Sections 14(A)(a)(b) of Foreigners Act and 3 and 6 of Passport Act and sentenced him to undergo imprisonment for four years with fine of Rs.5,000/- i/d. to suffer simple imprisonment for six months.

2. Learned counsel for the Applicant has placed on record copy

of the order dated 11/06/2019 in Criminal Appeal No.608 of 2019 whereby this Court (Coram: Smt. Sadhana S. Jadhav, J.) suspended substantive sentence imposed on the co-accused (accused No.4) who has also been held guilty by the same judgment for the same offence.

3. In ***Kiran Kumar vs. State of M.P. (2001) 9 SCC 211*** the Appellant was convicted for offence under Section 460, 376, 325 and 506 of the IPC and maximum sentence imposed on him was imprisonment for a period of 7 years. His application for suspension of sentence was rejected by the High Court. While setting aside the said order, the Apex Court referred to the decision in ***Bhagwan Rama Shinde Gosai vs. State of Gujrat (1999) 4 SCC 421*** and held that when the person is convicted and sentenced to a short term imprisonment, the normal rule is that when the appeal is pending the sentence should be suspended and rejection is only by way of exception. It is further observed that if the short term is alleged to run out during the pendency of appeal, the appeal itself will become for all practicable purposes infructuous.

4. In view of the said judgment and considering the fact that the Applicant has been sentenced imprisonment for 4 years which is a short term imprisonment and that he is in jail since 23/03/2018, this is a fit case for suspension of sentence imposed on the Applicant pending

disposal of the appeal on merits. Moreover, the sentence imposed on the co-accused by the same judgment has been suspended by order dated 11/06/2019 in Criminal Appeal No.608 of 2019 passed by this Court (Coram: Smt. Sadhana S. Jadhav, J.). It is however seen that though this Court has suspended the sentence under Section 389 of the Cr.P.C, clause (i) of the operative part of the order states that the appeal has been allowed. This appears to be a typographical error. Learned APP to verify and to take steps to correct the typographical error, if any. Since the Criminal Appeal No.608 of 2019 arises from the same judgment, the same be tagged along with this appeal and listed on **06/12/2021**.

5. Under the circumstances, the application is allowed on the following terms and conditions:-

- (i) Substantive sentence imposed against the Applicant vide judgment dated 26/12/2018 in Sessions Case No.293 of 2018 is suspended pending disposal of the appeal;
- (ii) The Applicant is ordered to be released on bail on furnishing PR bonds in the sum of Rs.15,000/- with one or more sureties in the like amount.
- (iii) The Applicant shall report to the Trial Court once in three months on the day/date specified by the Trial Court, till

the appeal is finally disposed of.

(iv) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and /or change of residence or mobile details, if any, from time to time.

(v) If there are two consecutive defaults in appearing before the Trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

6. The application stands disposed.

(SMT. ANUJA PRABHUDESSAI, J.)