

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

**INTERIM APPLICATION NO. 2635 OF 2021
IN
CRIMINAL APPEAL NO.890 OF 2021**

Amol Vithal Sonkamble ..Appellant

v/s.

The State of Maharashtra ..Respondent/s

Mr. Ritesh Thobde for the Appellant.
Mr. N.B.Patil, APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 23rd NOVEMBER, 2021.**

P.C.

1. By this application filed under Section 439 of Cr.P.C. the Applicant has prayed for suspension of sentence imposed by judgment dated 23.11.2017 in Sessions Case No.46 of 2010. By the impugned judgment the Applicant has been held guilty of offence under Section 376(1) of IPC and has been sentenced to undergo maximum sentence of imprisonment for 7 years with fine of Rs.5000/- I.d. to suffer imprisonment for one month.

2. Heard the learned Counsel for the applicant and the learned APP for the State. Learned Counsel for the Applicant has placed

reliance on the decision of the Apex Court in ***Kiran Kumar vs. State of M.P (2001) 9 SCC 211*** wherein the Appellant was convicted for offence under Section 460, 376, 325 and 506 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. In view of the said judgment and considering the fact that the Applicant has been sentenced imprisonment for 7 years which is a short term imprisonment, this is a fit case for suspension of sentence pending the disposal of the appeal on merits. Hence the application is allowed on the following terms and conditions:-,

- i) Substantive sentence imposed against the Applicant by judgment dated 23.11.2017 in Sessions Case No.46 of 2010 is suspended pending hearing of the appeal;

- ii) The Applicant is ordered to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twentyfive Thousand Only) with one or two solvent sureties in the like amount, to the satisfaction of the Trial Court;
- iii) The applicant shall report to the Trial Court once in two months on the day/ date specified by the Trial Court, till the Appeal is finally disposed on;
- (iv) The applicant shall keep the trial Court informed of his current address and mobile/contact numbers 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 application seeking cancellation of bail.
- . Application is accordingly disposed of.

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signed by
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SALGAONKAR
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(ANUJA PRABHUDESSAI, J.)