

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 CRIMINAL APPLICATION NO.896 OF 2022

MAJID KHAN BISMILLA KHAN

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. A.S. Tilve, Advocate for the applicant

Mr. S.P. Deshmukh, Advocate for the sole respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29th JUNE, 2022

ORDER :

1 Present application has been filed for suspension of sentence by the applicant-appellant.

2 Heard learned Advocate Mr. A.S. Tilve for the applicant and learned APP Mr. S.P. Deshmukh for the respondent.

3 The applicant-appellant is facing conviction in Sessions Case No.284/2017 dated 26.02.2021 by learned Additional Sessions Judge, Aurangabad. He has been sentenced thus -

2 The accused Majid Khan Bismilla Khan is hereby convicted for the offence punishable under Section 489-A, 489-C and 489-D of the Indian Penal Code, 1860 vide Section 235(2) of the Code of Criminal Procedure, 1973.

3 The accused Majid Khan Bismilla Khan is ordered to suffer eight years rigorous imprisonment and to pay fine of Rs.20,000/-, and in default to suffer simple imprisonment for a period of six months, for the offence punishable under Section 489-A of the Indian Penal Code.

4 The accused Majid Khan Bismilla Khan is ordered to suffer three years rigorous imprisonment and to pay fine of Rs.10,000/-, and in default to suffer simple imprisonment for a period of three months, for the offence punishable under Section 489-C of the Indian Penal Code.

5 The accused Majid Khan Bismilla Khan is ordered to suffer eight years rigorous imprisonment and to pay fine of Rs.20,000/-, and in default to suffer simple imprisonment for a period of three months, for the offence punishable under Section 489-D of the Indian Penal Code.

6 Both the sentences shall run concurrently.

4 The appeal has been admitted by this Court on 24.06.2021. Along with the appeal the applicant had filed Criminal Application No.1185/2021 for suspension of sentence and after hearing both sides this Court by order dated 03.07.2021 had rejected the said application. Therefore, the present application is practically the second application for

suspension of sentence before this Court.

5 As aforesaid, this Court while deciding the earlier application for suspension of sentence has given reasons after going through the entire record. No doubt, while dismissing that application it was observed by the Court that if the appeal could not be heard within a period of eight months, the applicant would be at liberty to move the application for suspension of sentence and, therefore, it appears that the present application has been filed taking that liberty which was granted by the said order. However, the question remains is, while rejecting that application when this Court had considered all the material, then, whether it is open to this Court (subsequent Bench) to re-assess the evidence for the purpose of suspension of sentence. Taking into consideration the pendency of many cases it might not be possible for this Court to take up the appeal within eight months, but the appellant has also not filed any application for expeditious hearing of the appeal during the said period of eight months. Applicant cannot be allowed to take advantage of his own inaction and, therefore, the application stands rejected. The applicant is at liberty to file an application for expediting the hearing of the appeal.

(Smt. Vibha Kankanwadi, J.)