

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**907 CRIMINAL APPLICATION NO.2057 OF 2022
IN APEAL/462/2022**

FAIJAN KALIM BAGWAN
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Sapkal Sandip R.
APP for Respondent-State : Mr. B. V. Virdhe
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 06-07-2022

ORDER :

1. Present application has been filed for suspension of sentence.
2. Heard learned Advocate for the applicant Mr. S. R. Sapkal and learned APP Mr. B. V. Virdhe for respondent-State.
3. The applicant is the original accused in Sessions Case No.228 of 2019. He has been convicted by learned Additional Sessions Judge, Ahmednagar on 10-06-2022 as under :-

“(2) Accused Faijan Kalim Bagwan is hereby convicted to have committed offence punishable under Section 354-A (1) (iv), 354-D (1)(i), 451 and 506 (II) of Indian Penal Code as per provisions of section 235 (2) of Code of Criminal Procedure.

(3) Accused Faijan Kalim Bagwan is sentenced to suffer Rigorous Imprisonment for Six (6) months and to pay a

fine of Rs.4,000/- (Rupees Four Thousand only) under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 354-D (1) (i) of Indian Penal Code. In default of payment of fine, he is further sentenced to suffer Rigorous Imprisonment for two months.

(4) Accused Faijan Kalim Bagwan is sentenced to suffer Rigorous Imprisonment for Six (6) months and to pay a fine of Rs.4,000/- (Rupees Four Thousand only) under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 451 of Indian Penal Code. In default of payment of fine, he is further sentenced to suffer Rigorous Imprisonment for two months.

(5) Accused Faijan Kalim Bagwan is sentenced to pay a fine of Rs.4,000/- (Rupees Four Thousand only) under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 354-A (1) (iv) of Indian Penal Code. In default of payment of fine, he is further sentenced to suffer Rigorous Imprisonment for two months.

(6) Accused Faijan Kalim Bagwan is sentenced to pay a fine of Rs.4,000/- (Rupees Four Thousand only) under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 506 (II) of Indian Penal Code. In default of payment of fine, he is further sentenced to suffer Rigorous Imprisonment for two

months.....”

4. The learned Advocate appearing of the appellant is relying up on the admissions given by the prosecutrix as well as the defects in recording the electronic evidence and its seizure by the Investigating Officer and submitting that those aspects have not been considered by the learned Additional Sessions Judge.

5. Per contra, the learned APP is supporting the evidence scanned by the concerned Judge and it is stated that the conviction awarded to the appellant is based on sound reasons which need not be disturbed.

6. In view of the fact that the sentence that has been awarded to the appellant can be said to be small sentence in view of decision in *Kiran Kumar v. The State of M.P. (2001) 9 SCC 211*, and the fact that the appellant wants to point out the discrepancies in the evidence as well as non consideration of the admissions, then case is made out to suspend the sentence till the final hearing and disposal of criminal appeal. Hence, following order.

ORDER

- 1) The application stands allowed.
- 2) The substantive sentence imposed against the appellant in Sessions Case No.228 of 2019 by the learned Additional Sessions Judge, Ahmednagar, on 10-06-2022 stands suspended till the final hearing and

disposal of Criminal Appeal No.462 of 2022.

3) The applicant/appellant Faijan s/o Kalim Bagwan be released on P.R. of Rs.30,000/- (in words rupees thirty thousand only) with two sureties of Rs.15,000/- each (in words rupees fifteen thousand only).

4) Applicant/ appellant shall not indulge in any criminal activity.

5) 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.

6) In case of two consecutive defaults on the part of 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 appellant.

7) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.