

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 2974 OF 2022
IN REVN/264/2022**

**AYAMAT @ AHEMAD S/O SATTAR SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.K.N. Shermale, Advocate for the applicant.
Mrs.G.L. Deshpande, APP for the respondent/State.

**CORAM : KISHORE C. SANT, J.
DATED : 08.09.2022**

PC :-

01. Heard learned Advocate Mr.K.N. Shermale for the applicant for some time. He placed reliance on the order passed by this Court in Criminal Application No.2743 of 2019 (Fazal Khalil Ahemad Shaikh Vs. Nandkishor Ramnivasji Agrawal & Anr.) dated 12.06.2020. He submits that it is not always necessary to direct the applicant to surrender to the custody for approaching this Court, seeking suspension of sentence, when he is not in the custody. He has taken this Court through other judgments.

02. From the judgments, necessary conclusion seems to be that it is not always necessary for an applicant to surrender before he approaches the superior Court with a prayer for suspension of sentence. In this case, he fairly

accepts that the learned Sessions Court had no authority to suspend the sentence, once it had dismissed the appeal.

03. The learned APP also relied upon judgments in the cases of State of Haryana Vs. Hasmat, 2004 Cri.L.J.3840, Vivek Rai & Another Vs. High Court of Jharkhand & Ors., (2015) AIR (SCW) 1017 and Sunil Kumar Vs. State of Haryana, AIR 2012 SC 1754. In the case of Vivek Rai (Supra), the Hon'ble Apex Court has held that the High Court always has discretion to exempt the appearance of the parties before the case is considered for suspension of sentence. In the judgment in the case of Sunil Kumar (Supra), the Hon'ble Apex Court has held that the Court becomes functus officio after delivery of the judgment. The Court does not have power to pass any order thereafter. As already stated, it is accepted by the learned Advocate for the applicant that the learned Sessions Court has no power to suspend the sentence. Considering that there is only short sentence, the sentence awarded by the learned Judicial Magistrate, First Class, Kaij vide order dated 29.11.2017 in SCC No.468 of 2013 and confirmed by the learned Additional Sessions Judge, Ambajogai vide order dated 10.08.2022 in Criminal Appeal No.87 of 2017 is required to be suspended. Hence, the following order :-

ORDER

01. The Criminal Application is allowed.
02. The order of sentence awarded by the learned Judicial Magistrate, First Class, Kaij vide order dated 29.11.2017 in SCC No.468 of 2013 and confirmed by the learned Additional Sessions Judge, Ambajogai vide order dated 10.08.2022 in Criminal Appeal No.87 of 2017 is hereby suspended.
03. The applicant shall be released on bail on his executing PR bond of Rs.15,000/- (Rupees Fifteen Thousand) with one solvent surety in the like amount.
04. The bail be furnished before the Trial Court.
05. The parties to act upon authenticated copy of this order.

[KISHORE C. SANT, J.]