

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.70 OF 2019
IN
CRIMINAL APPEAL NO.59 OF 2019
WITH
CRIMINAL APPEAL NO.59 OF 2019

Sanaul Ansar Shaikh	Applicant-Appellant
versus	
The State of Maharashtra	Respondent

CRIMINAL APPEAL NO.881 OF 2019

The State of Maharashtra	Appellant
versus	
Sanaul Ansar Shaikh	Respondent

None present for applicant-appellant in Criminal Application No.70 of 2019 and Criminal Appeal No.59 of 2019.

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

Mr.Rodrigues, API, ATS, Nagpada, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th January 2022

PC :

1. This is an application for suspension of sentence and grant of bail during pendency of Criminal Appeal No.59 of 2019 preferred by the applicant challenging the judgment and order dated 13th December 2018 passed by Additional Sessions Court in Sessions Case No.299 of 2020. The applicant was convicted for the offence under Section 489(C) of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of four years and to pay fine of Rs.1,000/- in default to suffer simple imprisonment of one month.

2. The appellant-applicant was on bail during trial. On the date of conviction he preferred application before Trial Court for suspension of sentence to enable him to prefer an appeal before higher court. The Trial Court by order dated 13th December 2018 allowed the application preferred by the applicant and suspended the sentence in accordance with Section 389(3) of Cr.PC.

3. Learned APP is right in submitting that Trial Court has committed an error in suspending sentence since the appellant was sentenced to undergo imprisonment for four years.

4. The relief granted by the Trial Court was extended by this Court from time to time and appellant has continued to be on bail. Pursuant to the observations of this Court, the State had preferred an appeal viz Criminal Appeal No.881 of 2019 challenging the acquittal order passed by Trial Court in respect of the offences for which he was acquitted. This Court had also initiated action under Section 390 of Cr.PC while admitting the appeal preferred by State.

5. This application has been pending in this Court since 2019. It is noted that sentence of imprisonment is of short term. The applicant was on bail during pendency of appeal. Learned APP submits, on instructions, that there are no other criminal antecedents. Section 489(C) of IPC is a bailable offence. Considering the factual aspects of the matter, sentence of imprisonment can be suspended during pendency of appeal preferred by applicant.

6. Hence, I pass following order :

ORDER

- (i) Criminal Application No.70 of 2019 is allowed and disposed;
- (ii) During pendency of Criminal Appeal No.59 of 2019 preferred by applicant-appellant, the judgment and order dated 13th December 2018 passed by Additional Sessions Judge, Greater Mumbai in Sessions Case No.299 of 2019 is suspended and the applicant is granted bail on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) To enable the applicant to furnish sureties in accordance with this order, the applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of ten weeks.

(PRAKASH D. NAIK, J.)

MST