

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

**INTERIM APPLICATION NO.1053 OF 2020
IN
CRIMINAL APPEAL NO.334 OF 2020**

Mukesh Prakash Salunkhe	.. Applicant/Appellant
<i>Versus</i>	
State of Maharashtra	.. Respondent

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Ms.Apeksha Vora A/W. Mr.Sidharth Samantaray, Advocate for the Applicant/Appellant.

Mr.Arfa Sait, APP for the Respondent – State.

PSI Warik, Pairavi Officer, Vinoba Bhave Nagar Police Station, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 26, 2022.

P.C. :

Not on Board. Mentioned. Taken on Board.

2 This application is restored by separate order passed in Interim Application Stamp No.3498 of 2022.

3 The applicant has been convicted for the offence punishable under Section 326 of IPC vide judgment and order dated 29th January, 2020, passed by the Court of learned Additional Sessions Judge, Greater Bombay in Sessions Case No.134 of

2012/Sessions case No.604 of 2014. The applicant has challenged the judgment of conviction by criminal Appeal No.334 of 2020. The Appeal has been admitted by this Court by order dated 1st December, 2021. The applicant had filed Interim Application No.1053 of 2020, for suspension of sentence and grant of bail.

4 Interim Application No.1053 of 2020, was listed for hearing on 15th December, 2021. Since none was present for applicant/appellant, and, even on earlier date of hearing, there was no appearance on behalf of the applicant/appellant, the application was dismissed for want of prosecution. Subsequently, Appeal was listed on 15th February, 2022. Directions were issued to the trial Court to take appropriate steps for taking the appellant in custody since there was no suspension of sentence of imprisonment by this Court.

5 Pursuant to the aforesaid, the applicant/appellant has been arrested on 23rd February, 2022, and, he has been taken in custody. Presently, he is detained at Mumbai Central Prison (Arthur Road Jail).

6 Learned counsel for the applicant/appellant submits that non appearance of the advocate was on account of inadvertence. The

Appeal preferred by the co-accused are admitted by this Court, and, the sentence of imprisonment awarded by the trial Court has been suspended. The applicant is now in custody. The trial Court has suspended sentence as per Section 389 of Cr.P.C.

7 Learned APP submitted that the applicant was convicted by the trial Court *vide* order dated 29th January, 2020. Although Interim Application No.1053 of 2020, was preferred for suspension of sentence, the said application was not pursued and for absence of advocate representing the applicant/appellant, the application was dismissed for want of prosecution. Pursuant to the order dated 15th February, 2022, the trial Court has taken steps and the applicant has now been taken in custody. In the event the sentence is suspended, stringent conditions be imposed on the applicant.

8 The applicant has been convicted for the offence punishable under Section 326 of IPC. The maximum sentence imposed by the trial Court for conviction is for a period of three years. The co-accused who were convicted for similar offence have preferred Appeal challenging the conviction. The said Appeal is admitted. The said accused also preferred application for suspension of sentence and which has been allowed and they have been released on bail.

9 Considering the aforesaid circumstances and the fact that the applicant is now in custody from 23rd February, 2022, this application can be allowed on certain terms and conditions. The sentence was suspended by the trial Court on the date of conviction, however, apparently, there were no orders of this Court suspending the sentence after preferring the Appeal before this Court.

10 Hence, I pass the following order:

:: ORDER ::

- (i) Interim Application No.1053 of 2020, allowed;
- (ii) The sentence of imprisonment vide judgment and order dated 29th January, 2020, passed by the Court of learned Additional Sessions Judge, Greater Bombay *vide* judgment in Sessions Case No.134 of 2012/Sessions case No.604 of 2014, is suspended and the applicant/appellant, is directed to be released on bail on executing P.R. Bond in the sum of Rs.20,000/-, with one or more sureties in the like amount;
- (iii) Applicant is permitted to furnish cash surety in the sum of Rs.20,000/-, for the period of 10 weeks, in lieu of surety;

- (iv) Applicant shall report trial Court once in six months on first Saturday of the month, till the pendency of Appeal;
- (v) Applicant shall file an Undertaking before this Court within one week after his release on bail, stating that as and when the Appeal is listed for hearing, he will remain present before the Court and pursue the Appeal;
- (vi) Interim Application No.1053 of 2020, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)