

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

**903 CRIMINAL APPLICATION NO.1603 OF 2023
IN APEAL/360/2023**

**DEEPAK ANIL KUMBHARE
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Appellant : Mr. Munde Sambhaji G.
APP for Respondent – State : Mr. P. M.Kulkarni
...

CORAM : KISHORE C. SANT, J.

DATED : 25.04.2023

PER COURT :

01. The applicant is original accused, who is convicted by the learned Additional Sessions Judge, Beed by judgment and order dated 10.04.2023 in an appeal against the acquittal. He is convicted for the offences punishable under Section 326, 506(I) of the Indian Penal Code. He is sentenced to suffer two years rigorous imprisonment and to pay fine of Rs. 10,000/- and in default to suffer R.I. for two months and for one year rigorous imprisonment and fine of Rs. 5,000/- and in default to suffer R.I. for one month respectively.

02. The applicant has filed an appeal challenging the said judgment and order, the appeal is admitted by separate order by this Court. The applicant in this application has prayed for suspension of

sentence on the ground that the sentence is short period. During the trial he was on bail and that he had further secured in an acquittal in the trial Court.

03. Considering the submissions, this Court finds that sentence needs to be suspended as the appeal is not likely to be heard in near future.

04. However, a difficulty is expressed by the learned APP that after the judgment is passed by the learned Sessions Judge, neither his sentence is suspended nor he has surrendered before the trial Court. This Court finds that the sentence can be suspended only after the applicant is surrendered, therefore, as his sentence is not suspended. As in the appeal, appellate Court does not have empower to suspend the sentence under Section 389 of the Cr.P.C. This Court, therefore, pass the following order :

ORDER

- (i) The appellant shall be released on bail in connection with judgment and order passed by the learned Additional Sessions Judge dated 10.04.2023 in Criminal Appeal No. 04/2021 for the offences punishable under Section 326 and 506(I) of the Indian Penal Code, on his surrendering

before the trial Court on furnishing P.R. bond and surety in the amount of Rs. 15,000/- and solvent surety in the like amount. After the appellant is released on bail his sentence shall stand suspended till the appeal is pending before this Court on the condition that the appellant shall furnish his address, cell phone number and other contact details, in case, if change any of the details he shall inform the same to the concerned police station.

- (ii) With this, the application stands allowed and disposed of.

(KISHORE C. SANT, J.)

shp/-