

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

**CRIMINAL APPLICATION NO.2451 OF 2023
IN
CRIMINAL APPEAL NO. 598 OF 2023**

**MANOJ ATMARAM DESALE
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Patil Vijay Bhalerao
APP for Respondent: Mr. S. P. Deshmukh

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CORAM : S. G. MEHARE, J.

DATE : 02.08.2023

PER COURT :

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent State.

2. The applicant is seeking the suspension of the sentence imposed upon him for the offence punishable under Section 307 of the Indian Penal Code.

3. The learned counsel for the applicant would submit that no offence punishable under Section 307 of the IPC is made out. However, the fact has not been properly appreciated and the applicant has been erroneously convicted for the offence punishable under Section 307 of

the Indian Penal Code. The applicant was granted bail during the trial. The applicant has a good case on merits. The appeal may take its time to conclude. The conviction is of a short term for five years. Hence, the sentence may be suspended.

4. The learned A.P.P. has strongly opposed the application. He would argue that the prosecution has proved the case beyond reasonable doubt. Considering the role attributed to the applicant and evidence on record he has been correctly convicted for the offence punishable under Section 307 of the Indian Penal Code. Hence, he does not deserve suspension.

5. In the case of **Kiran Kumar Vs. State of Madhya Pradesh (2001)9 SCC 211** the Hon'ble Supreme Court held that "normal rule is that when the appeal of a person is convicted and sentence is pending, the sentence passed on him should be suspended unless any exceptional reason existing therein required denial of the same".

6. Perused the impugned judgment and order. There appear no exceptional reasons existing that require denial of the suspension of the sentence. That apart, it is a short term sentence. The applicant has a roots in village Dhargaon. In appeal the evidence has to be re-

appreciated Hence, considering the legal and factual aspects the application deserves to be allowed.

ORDER

- (i) The application is allowed.
- (ii) The implementation, execution, operation of the sentence imposed on the applicant, to suffer rigorous imprisonment for five years for the offence punishable under Section 307 of the Indian Penal Code by the learned Additional Sessions Judge, Jalgaon in his judgment and order in Sessions Case No. 62 of 2019 dated 30th June 2023 stands suspended till conclusion of the appeal.
- (iii) The applicant shall be released on bail on executing P.B. and S.B. of Rs. 50,000/- with solvent surety of the like amount.
- (iii) The bail before the learned Additional Sessions Judge, Jalgaon.

(S. G. MEHARE)
JUDGE