

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

951 CRIMINAL APPLICATION NO.3082 OF 2023
IN
CRIMINAL REVISION NO.239 OF 2023

NILESH KRUSHNA FALLE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Zaware Suvarna M.
APP for Respondent : Ms P.V. Diggikar

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: August 22, 2023

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PER COURT :-

1. Heard learned counsel for the applicant.
2. By this application, the applicant is seeking suspension of substantive sentence passed by learned Judicial Magistrate, First Class, Ahmednagar dated 09.01.2018 in R.C.C.no. 889 of 2013 and confirmed by the learned Sessions Judge, Ahmednagar in criminal appeal no.16 of 2018 vide judgment and order dated 18.07.2023 and his release on bail.
3. Learned advocate submits that the trial court as well as appellate Court recorded findings on assumption and presumption. The evidence is not sufficient to record conviction of the applicant. She would submit that no medical evidence is provided in support of the allegations regarding assault. She would submit that short sentence is imposed

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against applicant and there are arguable grounds in the revision, which require consideration.

4. Learned APP opposed the application on the ground that the applicant had not surrendered, therefore prayer for grant of bail may not be considered.

5. The issue whether prayer for suspension of the sentence after confirmation of the conviction by the appellate Court can be considered in revision is subject matter of reference before the Larger Bench. By the time the decision of Larger Bench comes, the view taken by the earlier Courts can be followed. Hence, following order is passed.

ORDER

- (i) The Criminal Application is allowed.
- (ii) Pending the hearing and final disposal of Criminal Revision Application No.239 of 2023, the applicant Nilesh Krushna Falle in RCC No.889 of 2013 be released on bail on furnishing PB. of Rs.25,000/- (Rs. Twenty Five thousand) with one solvent surety of the like amount.
- (iii) The substantive part of the sentence passed against the applicant vide impugned judgment and order by Judicial Magistrate First Class, Court No.8 Ahmednagar in Regular Criminal Case No.889 of 2013 dated 9.1.2018 and confirmed in appeal No.16 of 2018 is hereby suspended till disposal of this criminal revision application.
- (iv) Bail be furnished before the learned Trial Court.

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(v) Application is accordingly disposed off.

(S. G. CHAPALGAONKAR, J.)

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