



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

**906 CRIMINAL APPLICATION NO.3698 OF 2023
IN APEAL/907/2023 WITH APEAL/907/2023**

**UMESH @ KISAN RAMESH @ ROSHAN BHOSALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Mr. Anil M.Gaikwad, Advocate for the applicant.
Mr. N.D. Batule, A.P.P. for respondent No.1 – State.
Mr. R.D. Sanap, Advocate for respondent No.2 (appointed).
...

CORAM : SANDIPKUMAR C. MORE, J.

DATED : 5th December 2023.

ORDER:-

1. It appears that the objection taken by office is not proper since the name of respondent No.2 on the notice form where her thumb impression is obtained, is properly mentioned. Since the respondent No.2 remained absent despite service, learned Counsel Mr. Sanap is appointed to represent her cause.
2. Heard rival submissions.
3. The applicant, who is the original accused, is seeking suspension of his substantive sentence of imprisonment for three years for the offence punishable under Section 452 and 394 of the Indian Penal Code in Sessions Case No. 66/2022.

4. The learned Counsel for the applicant submits that the applicant/accused has been sentenced to suffer rigorous imprisonment for only three years i.e. for fixed term and he has already undergone sentence of imprisonment for about two years till now.

5. The learned A.P.P. as well as learned Counsel for respondent No.2 strongly opposed the application on the ground that the conviction is recorded by the learned Trial Court after considering the entire evidence on record. They also pointed out that the recovery of gold ornaments of respondent No.2 was made at the instance of this applicant/accused.

6. However, it appears that the present applicant / accused has already undergone imprisonment for the period of 2 years out of his total imprisonment awarded of three years. Moreover, he has also paid the fine amount. Therefore, considering the short period of sentence, following order is passed.

ORDER

- (i) The application is hereby allowed and substantive sentence of imprisonment for three years, for the offence punishable under Section 452 and 394 of the Indian Penal Code imposed upon the applicant in

Sessions Case No. 66/2022 under judgment and order dated 16.09.2023 by Addl. Sessions Judge-5, Ahmednagar, is hereby suspended during the pendency of this appeal.

- (ii) Applicant be released on bail on execution of his P.R. bond of Rs. 25,000/- with one or more solvent sureties in the like amount.
- (iii) Bail in lower Court.
- (iv) The fees of the learned Counsel for respondent No.2 who is appointed by Legal Services Authority, be quantified to Rs. 2000/-.
- (v) Application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)