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CRI APPLN 31 of 2024

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

**CRIMINAL APPLICATION NO. 31 OF 2024
IN APPEAL/12/2024**

. Krushna Laxman Gedam
Aged: 41 years, Occu.: Labourer,
& Labour, R/o. Kothari (Chikhali),
Tq.Kinwat, Dist.Nanded.Applicant

Versus

1. The State of Maharashtra
Through the Police Station Officer,
Kinwat Police Station,
Dist.Nanded.
2. XYZ,
Age: Major, Occu.: Education,
R/o. Kothari (Chikhali),
Tq.Kinwat, Dist.Nanded.Respondents

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Advocate for Applicant : Mr.Sachin Salgare h/f. Mr.Ganesh P. Shinde
APP for Respondent no.1 : Mr.S.M.Ganachari

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 05 JANUARY, 2024

PRONOUNCED ON : 09 JANUARY, 2024

ORDER :-

1. Issue notice to the respondent-State. Learned APP waives service of notice for the respondent-State.
2. Heard.

3. Present application is for suspension of sentence and grant of bail during pendency of Criminal Appeal No.12 of 2024.

4. It is pointed out by the learned Counsel for the applicant that applicant was chargesheeted for commission of offence under Section 354 of the Indian Penal Code (IPC) and was finally convicted vide judgment and order dated 24-03-2023 by the learned Additional Sessions Judge (POCSO), Nanded in Special (POCSO) Case No.86 of 2022. That Applicant is sentenced to suffer one year simple imprisonment as well as to pay fine. Learned Counsel further submitted that it is fairly settled legal position that in cases where sentence is for short term, during pendency of appeal, if any, the sentence is required to be suspended and rejection can be only for exceptional reasons. He seeks reliance on ruling of Hon'ble Apex Court in the case of *Kiran Kumar v. State of M.P.* [2001 AIR SCW 5130]. While concluding he submitted that he has a very strong case on merits and as appeal would take long time to be heard and decided, he seeks relief as prayed for.

5. Above application is opposed by learned APP on the ground that conviction has been recorded upon evidence of victim. Charge is proved and therefore, it is not a fit case for relief as prayed for.

6. It appears from the record that, on being chargesheeted by Kinwat Police Station, he was tried by learned Additional Sessions Judge (POCSO), Nanded. Learned trial Judge, after holding him guilty for charge of 354 of the IPC, has sentenced him to suffer simple imprisonment for one year and to pay fine. It is submitted before this Court that fine amount has been deposited.

7. Considering the nature of allegations and the duration of sentence, relief as prayed deserves to be granted. Accordingly, I proceed to pass following order :

ORDER

(I) Criminal Application stands allowed.

(II) The substantive sentence imposed on the applicant in Special (POCSO) Case No.86 of 2022 by the learned Additional Sessions Judge (POCSO), Nanded on 24-03-2023 stands suspended till the final hearing and disposal of Criminal Appeal No.12 of 2024.

(III) The applicant Krushna S/o Laxman Gedam be released on P.R. Bond of Rs.15,000/- (Rs. Fifteen thousand only) with one solvent surety in the like amount.

(IV) The applicant shall not commit any criminal activity.

(V) The applicant shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the trial Judge to fix dates for his subsequent appearances.

(VI) In case of two consecutive defaults on the part of the applicant to remain present before the trial Court, the trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

(VII) Bail before the trial Court.

(ABHAY S. WAGHWASE)
JUDGE