



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

CRIMINAL WRIT PETITION NO. 312 OF 2024

Devendra S/o. Jagdish Shah,
Age : 35 years, Occ.: Nil,
R/o. 2-F, Rama Enclave, Shahid Ganesh
Chandra Road, Birati Kolkatta,
Police Station-Nimta, Dist. Chavis Parghana,
Kolkatta (West Bengal)

.. Petitioner
(Original Accused)

Versus

The State of Maharashtra,
Through Police Station Vazirabad,
Taluka and District Nanded.

.. Respondent

Mr. Suraj R. Bagal, Advocate for the Petitioner;
Mr. D. J. Patil, A.P.P. for Respondent

CORAM : S. G. MEHARE, J.

DATE : 10-07-2024

PER COURT :-

1. Heard the learned counsel for the petitioner.
2. The petitioner was convicted by the trial Court. He had preferred an appeal against the judgment of conviction and applied for suspension of sentence under Section 389 of the Code of Criminal Procedure (for short, "Cr.P.C."). However, the learned first Appellate Court did not satisfy that there are grounds to exercise powers to suspend the sentence in appeal. The petitioner has been convicted for five years.

3. Learned counsel for the petitioner submits that the petitioner has already undergone four and half years of conviction. He would complete his sentence if he were not released on bail. The defence of the petitioner was not properly appreciated. Hence, the discretion under Section 389 of the Cr.P.C. to suspend the sentence till the appeal is concluded could be exercised.

4. Learned A.P.P. for the respondent submits that the impugned order is well reasoned. The allegations against the petitioner are proven beyond reasonable doubt. There was documentary evidence proving the fraud played by the petitioner. The impugned order does not warrant any interference.

5. The first Appellate Court, while rejecting the application, has specifically observed that there is clear evidence against the petitioner that the amount of Rs.12,56,500/- had been misappropriated when he received the money for getting a job to the informant in the railway department with dishonest intention.

6. The accused has a right to appeal, but he cannot claim suspension of sentence as a matter of right. It was proved against the petitioner that he was the beneficiary of the money. The people have been cheated on under the promise to provide employment to the Government. The sentence undergone is also not a ground for granting the application under Section 389 of the Cr.P.C.

7. After having gone through the facts and the reasons for rejecting the application under Section 389 of the Cr.P.C., the Court is satisfied that there are no grounds to interfere with the impugned order. The offence is grave. The reasons for rejecting the petitioner's application appear legal, correct, and proper.

8. There is no substance in the petition. Hence, the Criminal Writ Petition stands dismissed at the admission stage.

(S. G. MEHARE)
JUDGE

rrd