



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

906 CRIMINAL APPLICATION NO. 3275 OF 2024
IN APEAL/722/2024

DATTATRAYA RAMKISAN AARSUL
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Urgunde Suhas P.
APP for Respondents: Mrs. Ashlesha S. Deshmukh
...

CORAM : KISHORE C. SANT, J.
DATE : 08th AUGUST, 2024.

PER COURT :

1. Heard. This application is for suspension of sentence.

2. The applicant is convicted by the learned Special Judge (ACB) and Sessions Judge, Latur, District Latur, in Special Case No. 04 of 2012, for the offence punishable under sections 7 of the Prevention of Corruption Act and sentenced to suffer rigorous imprisonment for 3 years and to pay fine of Rs. 1,000/-, in default he is directed to suffer simple imprisonment for 6 months. He is also convicted for the offence punishable under section 13 (1) (d) r/w 13 (2) of the Prevention of

Corruption Act and is sentenced to undergo rigorous imprisonment for 4 years and to pay fine of rs. 1,000/-, in default he has to undergo simple imprisonment of 6 months.

3. Learned Advocate for the appellant fairly points out that though the major sentence awarded is of 4 years under section 13 (1) (d) r/w 13 (2) of the P. C. Act, the sentence is suspended by the learned Special Judge, Latur on the application of the applicant. He prays for continuation of suspension of sentence, pending appeal.

4. The learned APP for respondent State also submits that when the substantive sentence is for 4 years, it could not have been suspended. He prays for rejection of the application and submits that the prayer can be considered only after the applicant surrenders before the Special Judge, Latur.

5. As pointed out, this court has noticed that the learned Special Judge has suspended the sentence under section 389 of the Code of Criminal Procedure, it appears that the Special Judge has not considered the Section 389 properly

and suspended the sentence. The Sub Section 3 of Section 389, no doubt the learned trial Court has a power to suspend a substantive sentence. However, only in 2 conditions he can suspend the sentence, 1st where the sentence of imprisonment is not for a term exceeding 3 years and 2nd where the person is convicted for bailable offence and he is on bail. This power is only with a view to enable the accused to approach appellate Court.

6. This Court has gone through the **Section 389** of the Code of Criminal Procedure, which reads as under :

“389. Suspension of sentence pending the appeal; release of appellant on bail.—(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond:

1[Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten

years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this section on a Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,—

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for

life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.”

7. Thus, it is clear that in the present case the Special Judge could not have suspended the sentence. Hence, this Court deems it proper to direct the applicant to appear before the Special Judge 12.08.2024 and formally surrender before the Special Judge, Latur.

8. The learned trial Court shall immediately on such surrender, release him on fresh bail. Subject to this the application stands allowed. The substantive sentence shall stands suspended in terms of prayer clause (B) of the application.

9. The applicant be released on bail on furnishing PR bond and solvent surety in the sum of Rs. 15,000/- (Rs. Fifteen Thousand Only).

10. With this the Criminal Application stands allowed and disposed off.

**(KISHORE C. SANT)
JUDGE**

mahajansb/