

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1403 OF 2014

IN

CRIMINAL APPEAL NO.787 OF 2014

SUNIL SHIVANAND SWAMI

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Shri Jaydeep Mane, Advocate for the Applicant.

Shri Deepak Thakre, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 26th OCTOBER 2015.

P.C. :

1 The appeal filed by the appellant challenging his conviction in respect of an offence punishable under Section 376 of the IPC and the sentence of Rigorous Imprisonment for 10 years and a fine of Rs.500/- imposed upon him, has already been admitted. By this application, the applicant / appellant prays that

pending the hearing and final disposal of the appeal, the substantive sentence imposed upon him be suspended, and that, he be released on bail.

2 I have heard Shri Jaydeep Mane, the learned counsel for the applicant / appellant, and Shri Deepak Thakre, the learned APP for the State. I have gone through the evidence of the prosecutrix, a copy of which is annexed to the application. I have also glanced through the other evidence. I have carefully gone through the impugned judgment.

3 The prosecutrix, at the material time, was of 22 years. She was married, but had been staying separately from her husband. According to her, the applicant / appellant had sexual intercourse with her on a number of occasions, which she permitted, as the applicant / appellant had pretended that he would be marrying her.

4 The learned trial Judge observed (paragraph 18 of the judgment) that the applicant / appellant had knowledge that the prosecutrix was married, and that, he still induced her to have sexual intercourse with him, on the pretext of marriage, and that, the promise which he had made to her, was false to his knowledge.

5 Apart from the other contentions that are being raised, and which would need to be taken into consideration, it appears that the basic question would be, whether the facts alleged by the prosecutrix would establish an offence punishable under Section 376 of the IPC. This would require serious consideration.

6 The applicant / appellant was on bail during the trial. He has remained in custody for a period of more than one year after his conviction. It is nobody's case that the applicant / appellant had misused the liberty that was granted to him during the trial.

7 The appeal cannot be taken up for hearing forthwith, as paper book and record and proceedings are not yet received.

8 In the circumstances, I am inclined to allow the application.

9 Pending the hearing and final disposal of the appeal, the substantive sentence imposed upon the applicant / appellant shall stand suspended, and the applicant / appellant shall be released on bail in the sum of Rs.15,000/-, with one surety in like amount, on the condition that he shall report to the trial court on the first Monday of every calendar month, till the disposal of the appeal.

 Should the trial court be closed on any given Monday, the applicant / appellant shall report to the trial court on the next working day.

(ABHAY M. THIPSAY, J.)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment / Order.**