

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

**CRIMINAL APPLICATION NO. 2996 OF 2016
IN
CRIMINAL APPEAL NO. 351 OF 2016**

Amol Bhanudasrao Parve ...APPLICANT

versus

The State of Maharashtra ...RESPONDENT

.....

Mr. Shrikant G. Kawade, Advocate for applicant
Mr. A.D.Namde, APP for respondent – State

CORAM : K.K. SONAWANE, J.

DATED : 6th JUNE, 2017.

Order :-

1. The appellant - applicant preferred present application seeking relief to suspend sentence imposed on him by learned Additional Sessions Judge, Ambajogai in Sessions Case No. 32 of 2014. Appellant - applicant was charge sheeted for the offence punishable under sections 376(1), 450 and 506-II of the Indian Penal Code (for short "IPC"). After appreciating the evidence on record, learned Additional Sessions Judge, Ambajogai held guilty to the accused and imposed resultant sentence of rigorous imprisonment for seven years and to pay a fine of Rs.1000/- (Rupees One Thousand) for the offence punishable under section 376 (1) of the IPC and rigorous imprisonment for two years and

to pay a fine of Rs. 500/- (Rupees Five Hundred) for the offence punishable under section 450 of the IPC and rigorous imprisonment of two months and to pay a fine of Rs.2000/- (Rupees Two Thousand) for the offence punishable under section 506-II of the IPC.

2. Being aggrieved by findings of the learned Additional Sessions Judge, Ambajogai, appellant - applicant preferred appeal to redress his grievance *inter-alia* filed application to suspend the sentence pending appeal and in the meanwhile he be released on bail.

3. The learned counsel appearing for the applicant-appellant vehemently submits that the learned trial Court did not appreciate the facts and circumstances of the case in its proper perspective and committed error in convicting the applicant-accused for the charge of rape on the prosecutrix. The appellant is youngster of 21 years old. He is earning member of the family. There are old aged parents at home. He has no criminal antecedents. The applicant-appellant was on bail during the trial before the Sessions Court. He has not misused the liberty granted to him. The appellant has also deposited the fine amount imposed by the learned Additional Sessions Judge. The learned counsel prayed to allow the application and suspend the sentence imposed by the learned Additional Sessions Judge, Ambajogai in

Sessions Case No. 32 of 2014, so also he be released on bail pending the appeal.

4. The learned APP raised objections and contends that the learned trial Court has appreciated the entire evidence of prosecution witnesses in proper manner. There is no perversity or error in the impugned judgment and order of conviction passed by the learned trial Court. The applicant and prosecutrix both are resident of the same vicinity in the village. Therefore, it would not just and proper to release the appellant on bail and he prayed for rejection of application.

5. I have considered the rival submissions made on behalf of learned counsel appearing for the appellant and learned APP for the State. I have also perused the findings expressed by the learned trial Court. Admittedly, appellant has held guilty for the offence punishable under section 376(1), 450 and 506-II of the IPC. It is also not in dispute that appellant was on bail during the trial and he has not misused the liberty. There were no allegation of tampering of evidence pending the trial before learned Sessions Judge. Obviously, appellant is youngster of 21 years old and there should not be pretrial incarceration by way of punishment. The appellant has a legal right to file appeal against impugned judgment and order of conviction and resultant sentence to redress his grievance. In such circumstances, it

would not proper to keep him behind bar pending appeal. I do not find any impediment to allow the application and to release the applicant-appellant on bail pending the appeal.

6. In such circumstances, the application is allowed and impugned sentence imposed on the applicant vide judgment and order of conviction dated 07-05-2016, in Sessions Case No. 32 of 2014 by learned Additional Sessions Judge, Ambajogai is hereby suspended pending the appeal. In the meanwhile, applicant be released on bail on furnishing PR bond of Rs. 25,000/- with one solvent surety of like amount before the learned trial Court. It is stipulated that applicant-appellant shall not leave the jurisdiction of learned trial Court without prior permission.

7. The criminal application stands disposed of accordingly.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK