

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

**CRIMINAL APPLICATION NO. 2761 OF 2017
IN
CRIMINAL APPEAL NO. 219 OF 2017**

Gajanan @ Nagorao
S/o Uttamrao Waghmare

..... APPLICANT

V E R S U S

The State of Maharashtra
& Anr.

..... RESPONDENTS

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Mr. K.J.Suryawanshi, Advocate for Applicant.

Mrs. S.S.Raut, A.P.P. for Resp. - State.

Mr. N.T.Tribhuwan Advocate for R - 2.

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CORAM : V.L.ACHLIYA, J.

DATE : 10th JULY, 2017

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ORDER :

1. The applicant has moved this application seeking suspension of sentence and release on bail during pendency of Appeal, for the reasons set out in detail in the

application as well as grounds raised on the appeal memo.

2. Heard the learned counsel for the applicant, A.P.P. for the respondent – State and learned counsel for the respondent No.2 and further perused record and proceedings.

3. The applicant along with co-accused No. 2 to 5 tried for committing an offence punishable under section 306, 304-B, 323, 498-A, 504 r.w. 34 of the Indian Penal Code. On conclusion of the trial, the accused No. 2 to 5 are acquitted of all the offences charged against them. The applicant/accused No.1 also acquitted under section 306, 304-B, 323, 504 r.w. 34 of the Indian Penal Code. However, the applicant is convicted under section 498-A of the IPC and section 3 and 4 of the Dowry Prohibition Act. Being aggrieved the applicant has preferred this appeal and pending disposal of the appeal prayed for suspension of the sentence and release on bail.

4. In nut-shell, it is contention of the learned counsel of the appellant that accused No.1 the appellant have a very good case in succeed into the appeal. It is

pointed out that though there was no charge framed under section 3 and 4 of the Dowry Prohibition Act the trial court has convicted the applicant. It is contended that in order to attract the offence under section 3 and 4 of the Dowry Prohibition Act there must be demand of dowry on the part of the accused. He submits that the meaning of the word dowry has been defined under section 2 of the said Act which only covers the demand of the dowry in consideration of the marriage. He submits that post demand even if proved not covered by definition of the dowry given under the said Act. In this back ground the learned counsel for the applicant submits the applicant have good chance to succeed in the appeal. During the pendency of the trial the applicant was on bail. He has not misused the liberty granted during the trial.

5. On the other hand the learned APP opposed the application with contentions that there is sufficient evidence to prove the guilty of the applicant under section 498-A of the Indian Penal Code as well as section 3 and 4 of the Dowry Prohibition Act. She submits that non framing of charge under section 3 and 4 of the Dowry Prohibition Act not vitiated the conviction under the said

provisions of the law.

6. Having appreciated the submissions advanced, I am of the view the case is made out to entertain the application. There appears to be force in the submission of the learned counsel. In absence of charge under section 3 and 4 of the Dowry Prohibition Act the conviction should not have been awarded under the said provision of the law. Such contention of the applicant deserves to be considered in appeal. During the trial, applicant was on bail. There is no case that he has misused the conditions of the bail. The maximum sentence awarded is of Rigorous Imprisonment for five years. In case the application is not allowed there is every likelihood that appeal may be infructious. I am therefore, inclined to allow the application and pass the following order.

ORDER

[1] Pending disposal of the appeal, the execution of substantive sentence stands suspended subject to deposit of fine amount by the applicant.

[2] Pending disposal of the appeal, applicant be enlarged on bail on his furnishing bail in the sum of

50,000/- [Rupees Fifty Thousand] with one or two sureties in like amount on following conditions.

[i] Pending disposal of the Appeal, the applicant shall appear and record his appearance before the Police Inspector of Ardapur Police Station, district Nanded once in a month he shall attain the police station last date each of the month in between 10 to 11 a.m.

[ii] The applicant shall not contact with complainant and witnesses.

[iii] The applicant shall not leave Nanded city without intimating the Police Inspector of Ardhapur Police Station, district Nanded.

[iv] The applicant shall not indulge in the commission of similar offence.

[v] The applicant shall furnish the names and addresses of his three close relatives.

[3] In case of breach of any condition, the bail

granted to the applicant shall be liable to be cancelled.

[4] Police Inspector of Ardhapur Police Station, district Nanded is directed to submit the report in respect of compliance of conditions after every six months.

[5] Bail to be furnished in the trial Court within the period of suspension as ordered by the trial Court or within one week from the date of order. Failure to furnish the bail within the stipulated period, the order of grant of bail shall stand cancelled. Compliance report be sent to this Court.

[6] Criminal Application stands disposed of in above terms.

[V.L.ACHLIYA, J.]

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