

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

**CRIMINAL APPLICATION NO. 2884 OF 2017
IN
CRIMINAL APPEAL NO. 212 OF 2017**

Amjad s/o Kathalu Qureshi

..... APPLICANT

V E R S U S

The State of Maharashtra

..... RESPONDENT

.....

Mr. P.P.More, Advocate for Applicant.

Mr. S.Y.Mahajan, A.P.P. for Resp. - State.

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CORAM : V.L.ACHLIYA, J.

DATE : 27th JUNE, 2017

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ORDER :

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

2. Heard learned counsel for the applicant, A.P.P. for the respondent – State and further perused record and proceedings.

3. The applicant was tried for committing offences punishable u/ss 324,376,452 of the Indian Penal Code with an allegation that on 06/09/2012 at about 4.30 a.m., the applicant along with one person Manjur Ali Shah made house trespass and forcibly committed sexual intercourse with the prosecutrix and during the course also assaulted her. On conclusion of trial, trial Court has convicted the applicant for the said offences. For committing offence punishable u/s 376 of the Indian Penal Code, the applicant is sentenced to suffer rigorous imprisonment for 8 years and to pay fine of Rs. 5,000/-. Maximum sentence awarded is of 7 years for committing offence punishable u/s 376 of the Indian Penal Code. Being aggrieved, the applicant has preferred Appeal.

4. Learned counsel for the applicant strenuously contended that arguable case has been made out in Appeal. It is pointed out that the prosecutrix has admitted that her husband was suspecting that she had affair with the applicant. It is also brought on record that the husband of the prosecutrix had lodged missing report as she left the house without informing her husband. It is contended that though the prosecutrix has denied the suggestion that she was with the applicant at Hyderabad

and she had affair with the applicant, still defence story deserves to be accepted as probable. It is further pointed out that immediately after lodging complaint and implicating the applicant and Manjur Ali Shah, the complainant visited police station and got recorded supplementary statement, in which she has stated that she has falsely implicated Manjur Ali Shah and he was not involved in the case. By referring over-all facts of the case and the evidence on record, it is contended that the prosecutrix had affair with the applicant and her husband had suspicion against her affair with the applicant. He submits that the husband of the prosecutrix had beaten the prosecutrix and made her to lodge false complaint against the applicant.

5. On the other hand, learned A.P.P. supported the Judgment and order passed by the trial Court and submits that the prosecutrix has supported prosecution case. He submits that though the defence has claimed that husband of the prosecutrix put lock out side the house and the prosecutrix had called the applicant by making phone call and with the help of duplicate key, the lock was removed and room was opened, but the defence has not examined any witness including the person who

prepared duplicate key and opened the room. He, therefore, submits that looking to the nature of offence and sentence awarded, the applicant may not be enlarged on bail.

6. Having appreciated the submissions advanced in the light of reasons and findings recorded by the trial Court and particularly the testimony of the prosecutrix, I am of the view that the case is made out to entertain the application. The prosecutrix was major in age. There are number of circumstances brought on record through the cross examination of the prosecutrix, which make out the case to accept the defence story to be probable. During the trial, the applicant was on bail. In this view, I am 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 applicants.

[2] Applicant Amjad s/o Kathalu Qureshi be enlarged on bail on his furnishing bail in the sum of

Rs. 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 Ambajogai (City) police station, district Beed on 4th Sunday in each month in between 5.00 to 8.00 p.m.

[ii] The applicant shall not leave Ambajogai city, district Beed without intimating the Police Inspector of Ambajogai (City) police station, district Beed

[iii] The applicant shall not indulge in the commission of any criminal offence.

[iv] The applicant shall furnish the names and addresses of his three (3) 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 Ambajogai (City) police

station, district Beed 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 stands cancelled. Compliance report be sent to this Court.

[V.L.ACHLIYA, J.]