

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.987 OF 2018
IN
CRIMINAL APPEAL NO.806 OF 2018**

Sheshram Ramdatta Mourya ... Appellant/Applicant
V/s.
State of Maharashtra ... Respondent

Mr.Ajinkya Badar for the Appellant/Applicant.
Mr.Y.M.Nakhwa for the Respondent.

**CORAM : PRAKASH D. NAIK, J.
DATE : JULY 27, 2018.**

P.C.:

1. This is an application for suspension of sentence. The applicant is convicted for offence under Sections 376(1), 452, 354 and 506 of Indian Penal Code, vide Judgment and order dated 21st June 2018. The applicant is sentenced to suffer R.I. for 7 years and to pay fine of Rs.10,000/- for offence under Section 376(1) of Indian Penal Code. He is also sentenced to suffer R.I. for one year for offence under Sections 452 and 354 of Indian Penal Code. He was also sentenced to suffer R.I. for 6 months for offence under section 506 of Indian Penal Code. Applicant was however acquitted for offence punishable under Section 323

of Indian Penal code. Learned counsel for the applicant submitted that the prosecutrix has not supported the prosecution case and she was declared hostile. There is no evidence to convict the applicant for the said offences. It is further submitted that taking the case of the prosecution as it is, apparently the relationship appears to be consensual and the offence under Section 376 of Indian Penal Code is not made out. It is submitted that during the pendency of trial the applicant was released on bail by the Sessions Court and he had not misused the facility of bail. Learned APP submitted that the Trial Court had taken into consideration the circumstances brought on record by the prosecution. Although the victim had turned hostile, there was evidence before the Court to convict the applicant. The prosecution relied upon the evidence of the husband and the other evidence which was adduced during the trial. The Trial Court has assigned cogent reasons for convicting the applicant.

2. Having heard both the sides, and perusing the documents on record, it is implicit that the first information report was lodged by the prosecutrix on 27th February 2016, and the alleged

incident had occurred 15 days prior to the lodging of the said complaint. The prosecutrix has not supported the prosecution and was declared hostile. She was cross-examined by the prosecution. However, according to the Advocate for the applicant, no incriminating evidence is brought on record in the cross-examination. The applicant was on bail during the trial. In the circumstances, the case for allowing this application and suspension of sentence is made out. Hence, I pass the following order.

ORDER

- i. Pending hearing and final disposal of Criminal Appeal No.806 of 2018, the sentence of imprisonment awarded by learned Additional Sessions Judge, Pune by judgment and order dated 21st June 2018, passed in Sessions Case No.532 of 2016 is suspended, and the applicant is directed to be released on bail on furnishing PR bond in a sum of Rs.20,000/- with one or more sureties in the like amount.
- ii. Parties to act on authenticated copy of this order.

(PRAKASH D. NAIK, J.)

Priya
Rajesh
Soparkar

Digitally signed
by Priya Rajesh
Soparkar
Date:
2018.07.31