

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

**CRIMINAL APPLICATION NO.1374 OF 2018
IN
CRIMINAL APPEAL NO.1001 OF 2018**

Kishor Waman Mhatre Applicant/
(Ori. Accused)

Vs.

The State of Maharashtra Respondent

Mr. Sanjeev Kadam i/by Mr. Vinod N. Naik for the Applicant.
Mr. S.S. Pednekar, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 14th December 2018

P.C.:

1 Heard the respective counsel.

2 This is an application under Section 389 Code of Criminal Procedure. The applicant herein is convicted by the Additional Sessions Judge, Raigad, in Special Case No.51 of 2016, for the offences punishable under Sections 366, 506, 376, 417 of the Indian Penal Code. The applicant is convicted under Section 366 of Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.10,000/-, in default to suffer rigorous

imprisonment for one year, under Section 506 of Indian Penal Code sentenced to suffer rigorous imprisonment for one year, under Section 376 of Indian Penal Code sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.50,000/-, in default to suffer rigorous imprisonment for one year and under Section 417 of Indian Penal Code sentenced to pay a fine of Rs.10,000/-, in default to suffer simple imprisonment for two months and that the sentences are to run concurrently.

3 Perused the evidence on record. PW-1 is the victim. She was about 24 years old at the time of incident. According to her, she was being harassed by one Nilesh Patil. She had been to the police station to lodge a report. In the police station, she met the present applicant, who informed her that he is an active worker of Bhartiya Janata Party. He also assured her that Nilesh Patil happens to be his friend and in future he would not harass her. She reposed faith in the present applicant and therefore did not lodge the report against Nilesh Patil. According to her, the applicant had approached her on many occasions and had expressed his compassion and sympathy on

her. Thereafter he had also expressed his love for her. They had met on several occasions.

4 It appears from her evidence that the applicant had taken her to various places. He had assured her that he would get married to her and therefore at that stage under the impression that he was to get married to her, there was consensual sex. According to the prosecutrix, she had conceived pregnancy and thereafter the applicant had refused to marry her.

5 At the trial, the prosecution has examined Dr. Mukund Taljaram Talathi, who had examined the victim. She had visited his clinic alongwith the present applicant when she had missed her menstruation. He has admitted in the cross-examination that she was not pregnant. In the cross-examination, it is admitted that since the applicant had assured her of marriage, she had trusted him.

6 Learned counsel for the applicant submits that in fact it is a case of breach of promise. The applicant is in custody since 16th

July 2016. Prima facie, upon perusing the evidence, it appears that the applicant deserves bail during the pendency of the appeal. However, it is made clear that suspension of substantive sentence shall not be construed as suspension of conviction. Hence, the following order.

ORDER

- i) The application is allowed and stands disposed of.
- ii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.
- iv) The applicant shall report to the Court of Sessions at Mangaon once in six months on the date assigned by the Sessions Judge.
- v) Upon failure to attend any two consecutive dates, the Sessions Court shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

(Smt. Sadhana S. Jadhav, J)