

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

**CRIMINAL BAIL APPLICATION NO. 275 OF 2019
IN
CRIMINAL APPEAL NO. 296 OF 2019**

Mr. Sonendra Dinkar Kakade .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr. Rajaram V. Bansode for the Applicant.
Ms. P.N. Dabholkar, APP for the Respondent/State.

CORAM: P. N. DESHMUKH, J.

DATED : 27th SEPTEMBER, 2019.

P.C:-

This application is for suspension of sentence and for bail filed by the accused, who came to be convicted for the offence punishable under Section 376 of Indian Penal Code and is sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.10,000/-, in default of payment of fine, simple imprisonment for six months.

2. It appears to be the case of prosecution that applicant as well as prosecutrix were known to each other since they were residing in the same vicinity and as such became friends which friendship further developed in their love affair and as such in the month of June, 2012 and at around 20 days thereafter, both of them indulged in physical relations in a hotel. It is the case of prosecution that during such meetings, applicant took two passport size photographs of complainant and after having developed such physical relations with her, on one occasion, demanded Rs.5,000/- saying that he was in need of such amount, extending threats to part away with such amount, else he would make her photographs viral on Internet and defame her.

3. It is further case of prosecution that complainant, accordingly paid Rs.4,500/- and thereafter Rs.25,000/- as demanded by applicant on the count of illness of his mother and thus, for providing her medical treatment. Such amount was alleged to be paid by

complainant by pledging her gold ornaments with the Goldsmith and thereby paying amount to complainant. Thus, according to the prosecution's case, total amount to the extent of Rs.1,50,000/- was parted away by the complainant.

4. It is further case of prosecution that in the last week of May, 2013, prosecutrix, however revealed that applicant was already married and was having children and therefore, the report came to be lodged.

Learned Counsel by referring to the evidence of prosecutrix, who is admittedly 24 years old, contended that from her evidence, it is established that she was consenting party to the act of sexual intercourse as on both the occasions in June, 2012 and in the first week of July, 2012, she submitted herself for her indulging in such act on her own, willingly. From the evidence of prosecutrix, submissions advanced on his behalf appears to be convincing as she has stated that on both the occasions, as she was called by applicant, she visited the Lodge and has further deposed of accused demanding Rs.5000/- and

thereafter in August, 2012, Rs. 25,000/- for providing medical treatment to his mother. According to her evidence, approximately Rs.1,50,000/- was paid by her as accused had extended threats to otherwise make her photograph viral on Internet.

5. Considering the evidence of prosecutrix as already stated above, who admittedly is major and since is found to be consenting party, offence so far as rape is concerned, prima facie cannot said to be established as there is no such act is alleged to be performed by appellant, without her wish. So far as, case of complainant of applicant demanding money on extending threats as aforesaid is concerned, evidence of prosecutrix would reveal that for making payment of major amount of Rs.25,000/- and further amounts to the extent of Rs.1,50,000/-, she took her gold ornaments consisting of Mangalsutra, ear tops, gold chain from her mother and pledged with the Goldsmith and had arranged for the funds. Admittedly, neither mother of prosecutrix is examined, nor any Goldsmith is examined during the

investigation and as such, there is nothing on record to rely upon said evidence of prosecutrix. In that view of matter, and in fact, as it is found that applicant is acquitted of the charge punishable under Sections 420, 389, 506 of Indian Penal Code and as there is no evidence establishing offence of rape, though Learned APP submitted that inspite of instructions called from the concerned Police, no instructions are received and as record reveals that on earlier two occasions, time is granted to prosecution to obtain instructions which according to Learned APP, however, not received nor for want of instructions, Learned APP is able to make if prosecution has preferred appeal against the impugned judgment for enhancement, application is liable to be allowed as applicant is sentenced for lessor punishment, subject to applicant's paying fine amount of Rs. 10,000/- as per order.

ORDER

(a) Applicant shall be released on bail on his executing P.R. bond in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand Only) with one surety in the like amount.

(b) While on bail, applicant shall attend Kolsewadi Police Station, Kalyan, District Thane on the first day of each month, initially for the period of six months and thereafter quarterly on the first day of such month, pending appeal.

(P. N. DESHMUKH, J.)