

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

**947 CRIMINAL APPLICATION NO.1324 OF 2020
IN APEAL/427/2020**

**SYED AREF S/O. SYED WAHAB
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

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**Advocate for Applicant : Kadam Vishant P
APP for Respondent State: S.W.Mundhe
Adv. Mrs. Bharti Nalawade Gunjal for R.no. 2**

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**CORAM : MANGESH S. PATIL, J.
DATE : 21.01.2021**

PC. :-

This is an application under Section 389 of the Cr.P.C. seeking suspension of substantive sentence pending appeal.

2] The applicant-appellant has been convicted for offence punishable under Section 376 (2) (n) of the I.P.C and sentenced to suffer R.I. for 10 years and to pay a fine of Rs.5000/- in default to suffer further R.I. for 6 months.

3] The learned advocate for the applicant-appellant would submit that as can be seen from the testimony of the prosecutrix, she was major and has had voluntarily entered into relationship with the applicant-appellant. It was a consensual relationship, which was going on for a long time. At no point of time she made any grievance about he having forcibly committed sexual intercourse. It is only after having maintained such relation for a long time, she has chosen to file the F.I.R. Considering the fact that she is major, there

was no force used to insist her to have sexual intercourse, coupled with the fact that the appeal is not likely to be heard in the near future, the applicant may be granted bail by suspending the substantive sentence more so when he was already on bail during the trial.

4] The learned advocate for the prosecutrix opposes the request. She submits that there is enough evidence corroborating prosecution version. The prosecutrix has specifically stated as to how she was deceived into having the relationship under a false promise to marry. The conduct of the applicant-appellant is also unbecoming. He had not even cared or turned up to help her when she became pregnant. The child was born prematurely but succumbed. She would submit that inducing a woman to have sexual relation under a promise of marriage has been held to be rape by the Supreme Court in the case of Anurag Soni V/s State of Chattisgad 2019(2)Crimes 162 (S.C.). The learned advocate therefore, submits that since the offence is serious and the applicant-appellant has been punished to suffer 10 years of R.I. the application may be rejected.

5] Without intending to comment upon veracity or otherwise of the prosecution story, suffice to observe that the prosecutrix was major and had maintained sexual relationship with the applicant-appellant over a period of time and to the extent that she had become pregnant. Considering this fact coupled with the fact that the applicant-appellant was on bail during the trial, there appears no exceptional reason to refuse to suspend the sentence and grant bail pending appeal.

6] The Application is allowed. The substantive sentence shall stand

suspended pending appeal.

7] The applicant-appellant shall be released on the same bail and subject to the same terms and conditions with fresh bail bonds. Bail before the trial Court.

[MANGESH S. PATIL, J.]

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