

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

***CRIMINAL INTERIM APPLICATION NO. 742 OF 2021
(For Suspension of Sentence & Bail)***

***IN
CRIMINAL APPEAL NO. 192 OF 2021
WITH
CRIMINAL APPEAL NO. 192 OF 2021***

Ajay Bharat Shinde	...Applicant/Appellant
Versus	
The State of Maharashtra & Anr.	...Respondents

Mr. Kuldeep Patil for the Applicant/Appellant

Ms. S. V. Sonawane, A.P.P for the Respondent No.1–State

Mr. Umesh R. Mankapure for the Respondent No.2

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 7th APRIL 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks suspension of sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.

3 Learned counsel for the applicant submits that the prosecution has failed to prove that the prosecutrix was a minor at the time of the alleged incident. He submits that the evidence on record shows that the prosecutrix had gone with the applicant on her own accord and that it was a case of consent. The prosecution has not brought on record the birth certificate / the school leaving certificate / the bonafide certificate or any other document to show the age of the victim. He submits that in this light of the matter, the conviction of the applicant is unsustainable in law.

4 Learned counsel for the respondent No. 2 as well as the learned A.P.P oppose the application. They submit that the prosecution had proved that the prosecutrix was a minor aged 16 years at the time of the incident. Learned counsel for the respondent No. 2 has also filed an affidavit of the respondent No. 2 stating therein that after the incident, his daughter (prosecutrix) got married and is settled in Karnataka; that after the marriage of the prosecutrix, when the applicant was released on bail during the pendency of the trial, the applicant had visited the village where the prosecutrix was married and raised hue and cry and that such incidents had occurred on three occasions. He has stated that when he attempted to file a complaint at Kavathemahankal, the complaint was not taken on the ground that the incident had taken place at Karnataka. He has further stated that he

had not filed a complaint in Karnataka, as his daughter's marriage was at stake. Respondent No. 2 has, on affidavit, further stated that despite repeated requests to the applicant, the applicant was interfering in the married life of his daughter (prosecutrix) and that if released on bail, he would continue to repeat the same.

5 The evidence of PW 1 (father of the prosecutrix) and PW 3 (prosecutrix) *prima facie* discloses that she was a minor at the time of the alleged incident. The applicant was about 21 years of age at the relevant time. No doubt, it appears that there was some relationship between the applicant and the prosecutrix, however, consent would be immaterial, if it is found that the prosecutrix was a minor at the time of the alleged incident.

6 Having regard to the aforesaid as well as the affidavit of the respondent No. 2 as stated aforesaid, this is not a fit case to suspend the applicant's sentence and enlarge him on bail.

7 Accordingly, the application is dismissed.

8 However, the hearing of the appeal is expedited. Applicant is permitted to file private paper-book, if he so desires. As soon as the private

paper-book is ready, liberty is granted to the applicant/appellant to mention the matter and have the appeal listed on board for final hearing.

REVATI MOHITE DERE, J.