

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

***CRIMINAL INTERIM APPLICATION NO. 797 OF 2021
IN
CRIMINAL APPEAL NO. 201 OF 2021***

Shailendra Arun Kulkarni	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. G. K. Ingale for the Applicant

Mr. P. H. Gaikwad-Patil, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 1st APRIL 2021

P.C. :

1 Heard learned counsel for the parties.

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

3 The applicant, vide judgment and order dated 13th January 2021, passed by the learned Additional Sessions Judge, Nashik, in Sessions Case No. 219 of 2016, has been convicted and sentenced as under:

- for the offence punishable under Section 376(n) of the Indian Penal Code, to suffer rigorous imprisonment for 10 years and to pay fine of Rs.10,000/-, in default of payment of fine, to undergo further simple imprisonment for 6 months.

4 Perused the papers with the assistance of the learned counsel for the parties. It appears that the prosecutrix was a major and that in 2005 when she was working as an Instructor in a Typing Institute, she met the applicant. The evidence of the prosecutrix/complainant (PW 1) shows that their acquaintance developed into a love relationship, after which, they became friendly. The prosecutrix has stated that the applicant wanted to marry her and that she agreed to the said proposal. She has stated that on the assurance of marriage, she had physical relations with the applicant and continued to do so even thereafter. She has stated that she did not raise any objection to the relationship, as the applicant had assured to marry her. She has further stated that thereafter, the applicant started avoiding her and despite her asking the applicant to marry her, he refused, pursuant to which, she lodged a police complaint.

5 Learned counsel for the applicant submits that the relations were consensual and that there was no promise to marry the prosecutrix. He submits that the applicant was on bail pending trial and that the applicant has not abused or misused the liberty granted to him. Whether or not, an offence under Section 376 is made out, is a matter, which will be decided in appeal, after considering the evidence on record, in detail. The appeal has been admitted by a separate order passed today and the same is not likely to come up for hearing in the immediate near future.

6 *Prima facie*, the applicant has made out a case for suspension of his sentence and grant of bail. Accordingly, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his appeal, on the following terms and conditions :

ORDER

- i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount;
- ii) The applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till his appeal is finally disposed of;

iii) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of applicant's bail.

7 The application is accordingly disposed of.

8 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.