

Shambhavi
N. Shivgan

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

**INTERIM APPLICATION NO.652 OF 2020
IN
CRIMINAL APPEAL NO.475 OF 2020**

Ashok Krushna Mukane ... Applicant
Vs
The State of Maharashtra ... Respondents
...

Ms. Jayashri Gade-Salunkhe for the Applicant.

Mr. Yogesh Dabke, APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : 9th FEBRUARY, 2021.

P.C. :

This matter is mentioned at 2.30 p.m. for 'Speaking to the Minutes' of the order dated 5th February, 2021.

2 Accordingly, in the cause-title name of applicant shall be read and substituted as 'Ashok Krushna Mukane' and in paragraph 2 of the said order 'Sessions Case No.459 of 2009 shall be read and substituted as 'Sessions Case No.455 of 2014'.

(SANDEEP K. SHINDE, J.)

Corrected order reads thus:

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 652 OF 2020
(FOR SUSPENSION OF SENTENCE)
IN
CRIMINAL APPEAL NO. 475 OF 2020

Ashok Krushna MukaneApplicant/
Accused

V/s.

The State of MaharashtraRespondent

* * * *

Mr. Sachin Deokar i/by. Ms. Jayashri Gade-Salunkhe
and Mr. Jay Patil, Advocate for the applicant.

Mr. Yogesh Dabke, APP for State.

CORAM : SANDEEP K. SHINDE, J.

Friday, 5th February, 2021.

P.C . :

1. Heard learned Counsel for the appellant and learned APP for State.

2. The learned Additional Sessions Judge, by judgment and order dated 10th January, 2018 passed in Sessions Case No. 455/2014 convicted the appellant (accused no.1) for the offences punishable under Sections 376, 323, 506(II) of the Indian Penal Code and sentenced to suffer imprisonment for the period of seven years and fine of Rs.5,000/- with default stipulations.

3. Appellant as an under trial prisoner, after conviction has undergone imprisonment for three years, as against sentence for seven years.

4. The alleged incident of sexual assault had taken place on 10th October, 2013 at 3.00 p.m. On the next day, the prosecutrix was examined by P.W.9- Doctor attached to Civil Hospital at Thane, but found no evidence of physical and sexual assault. I have also perused the evidence of Ankush Pokla, the panch witness, who did not support the prosecution.

5. Be that as it may, the spot panchanama was drawn on 11th October, 2013, wherefrom broken pieces of bangles and few pieces of clothes were recovered. The complaint at Exhibit-66 infact suggests that, when prosecutrix was subjected to forceful sexual assault, she lost her mangalsutra over there. However, neither her mangalsutra nor her other ornaments were found on the spot. A fact cannot be overlooked that the alleged incident had taken place in the daylight at 3:00 p.m., a place just away from the main road. The tenor of evidence of the applicant on the face of it, does not inspire the confidence and

the attendant circumstances, do not further prosecution's case.

6. In consideration of the evidence and since the applicant has undergone imprisonment for three years and further the subject Appeal is not likely to be heard in the near future, the application is allowed and hence the following order :

O R D E R

(i) The substantive impugned sentence passed in Sessions Case No. 455/2014 by the learned Sessions Judge, Thane is suspended and applicant is directed to be released on bail on furnishing bond of Rs.25,000/- with one or more sureties in the like amount.

(ii) Pending Appeal, the applicant shall mark his presence to the concerned Court i.e. the Court of Additional Sessions Judge, Thane on first Monday of each month between 11:00 to

1:00 p.m. commencing from March, 2021 till further orders.

(iii) The applicant shall furnish particulars of his permanent residential address and contact details to the Investigating Officer within seven days from his release from jail.

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

7. The application is accordingly allowed and disposed of.

8. It is made clear that observations made hereinabove be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the other proceedings.

(SANDEEP K. SHINDE, J.)