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

***CRIMINAL APPLICATION NO.470 OF 2019  
IN  
CRIMINAL APPEAL NO.579 OF 2019***

|                                   |                |
|-----------------------------------|----------------|
| Prashant Gurunath Gaikwad         | ...Applicant   |
| Versus                            |                |
| The State of Maharashtra and Anr. | ...Respondents |

Ms. Anjali Patil, for the Applicant.

Mr. P. H. Gaikwad-Patil, A.P.P for the Respondent No.1 – State.

Ms. Shraddha Sawant, Appointed Advocate for the Respondent No.2.

***CORAM : REVATI MOHITE DERE, J.***

***DATE : 8<sup>th</sup> 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 his appeal.
3. The Applicant alongwith other co-accused vide Judgment and Order dated 10<sup>th</sup> January 2019, passed by learned Additional Sessions

Judge, Pune, in Special S.C. No. 299 of 2016, has been convicted and sentenced as under:-

- for the offence punishable under Sections 376 r/w 107 of the Indian Penal Code, to suffer rigorous imprisonment for 7 years and to pay fine of Rs.1,000/-, in default of payment of fine, to undergo simple imprisonment for 1 month;
- for the offence punishable under Sections 376(2)(f) r/w 107 of the Indian Penal Code, to suffer rigorous imprisonment for 10 years and to pay fine of Rs.1,000/-, in default of payment of fine, to undergo simple imprisonment for 1 month;
- for the offence punishable under Sections 376(D) r/w 107 of the Indian Penal Code, to suffer rigorous imprisonment for 20 years and to pay fine of Rs.2,000/-, in default of payment of fine, to undergo simple imprisonment for 2 months;
- for the offence punishable under Sections 506(II) r/w 34 of the Indian Penal Code, to suffer rigorous imprisonment for 1 year and to pay fine of Rs.500/-, in default of payment of fine, to undergo simple imprisonment for 15 days;
- for the offence punishable under Sections 11(i) and 12 of the Protection of Children from Sexual Offences Act to suffer rigorous imprisonment for 2 years and to pay fine of Rs.500/-, in default of payment

of fine, to undergo simple imprisonment for 15 days.

All the aforesaid substantive sentences were directed to run concurrently.

4. Learned Counsel for the applicant seeks suspension of sentence and enlargement on bail of the applicant, on the ground of parity. She submitted that identically placed co-accused – Ajay Dipak Jadhav has been enlarged on bail by this Court (Coram: Prakash D. Naik, J.) vide order dated 4<sup>th</sup> December 2020, passed in the application for suspension of sentence and enlargement on bail filed by co-accused - Ajay Dipak Jadhav. She submits that this Court vide the said order has in detail considered the evidence of the prosecutrix as well as the prosecutrix's mother on record and thereafter enlarged the applicant on bail.

5. Learned APP as well as learned appointed advocate for the respondent No.2 vehemently oppose the application.

6. Perused the papers as well as the order dated 4<sup>th</sup> December 2020, suspending the sentence and enlarging the co-accused - Ajay Jadhav on bail, pending the hearing and final disposal of his appeal. This Court (Coram: Prakash D. Naik, J.) has in detail considered the evidence on

record of the prosecutrix and her mother (complainant), the discrepancies and infirmities in the evidence. It is observed that the allegation of rape of victim was disclosed subsequently and having regard to the major omissions in the prosecutrix evidence as has come on record in the cross-examination, enlarged the co-accused - Ajay Jadhav on bail. The role of the applicant is similar to that of co-accused - Ajay Jadhav. It is not in dispute that the applicant was on bail pending trial, and that he has not misused or abused the liberty granted to him.

7. Considering the aforesaid, 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.25,000/- with one or more sureties in the like amount;
- ii) The Applicant shall report to the trial Court, once in two months on the day/date specified by the trial Court, until further orders;

iii) The Applicant shall not contact the victim, her family members, complainant, witnesses or any person concerned with the case;

iv) 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;

v) 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 bail.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. The High Court Legal Services Committee to pay the fees as per Rules to Ms. Shraddha Sawant, learned appointed advocate, who has espoused the cause of the respondent No.2.

10. Copy of this order be forwarded to the High Court Legal Services Committee, for information and necessary action.
11. All concerned to act on the authenticated copy of this order.

***REVATI MOHITE DERE, J.***