

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

**INTERIM APPLICATION NO. 1859 OF 2021
IN
CRIMINAL APPEAL NO.738 OF 2021
WITH
CRIMINAL APPEAL NO. 738 OF 2021**

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Manoj @ Mahesh Jani Applicant
v/s.
The State of Maharashtra Respondent

Ms. Ankita Bamboli for the Applicant.
Mr. S.V. Gavand, APP for the State.
Ms. Devyani Kulkarni for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 07th OCTOBER, 2021.

P. C. :-

. This is an Application under section 389 of Cr.P.C. for suspension of substantive sentence imposed by judgment dated 16/08/2019 in Sessions Case No.230/2015.

2. By the impugned judgment, the learned Additional Sessions Judge, Borivali Division, Dindoshi, Goregaon, Mumbai has held the Applicant guilty of offences under Section 376 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.30,000/- in default to undergo rigorous imprisonment

for two years.

3. Heard Ms. Ankita Bamboli, learned counsel for the Applicant. She states that there is a considerable delay in lodging the first information report. She states that the prosecutrix was working with the Applicant since the year 2006-07. She states that the evidence of prosecutrix indicates that she was sexually abused since the year 2007. She had neither lodged any complaint nor reported the matter to her family members or friends. She had also not stopped her sister from visiting the Applicant. She claims that the conduct of the prosecutrix would suggest that the relationship was consensual. She further states that the prosecutrix had not got herself medically examined and that the Applicant is in custody since 12/07/2015 and having undergone substantive period of imprisonment, he be released on bail.

4. Mr. S.V. Gavand, learned APP for the State and Ms. Devyani Kulkarni, learned counsel for Respondent No.2 submits that the evidence of the prosecutrix clearly indicates that the Applicant used to have sexual intercourse with the prosecutrix under the threat of circulating her photographs and defaming her. The evidence of PW4 also shows that the Applicant had taken photographs with several ladies in compromising position. It is stated that the Applicant had not

only committed rape on the prosecutrix but had also sexually abused the sister of the prosecutrix and other ladies. It is stated that considering the gravity of the offence, this would not be a fit case to suspend the sentence and/or to release the Applicant on bail.

5. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

6. The evidence of the prosecutrix reveals that she was working with the Applicant who was running a marriage bureau and claimed to be an Astrologer. Her evidence indicates that the Applicant used to perform puja and that he would give vibhuti (ash) to her to eat. He would touch her body and chant 'mantras' under the garb of performing puja and removing evil spirit (pret aatma) from her body. He had asked her to eat ash and drink water. She claims that she felt unconscious after eating ash and drinking the water. On regaining consciousness, she felt that her body was heavy. She has stated that subsequently, the Applicant showed her naked photographs. The Applicant threatened her that he would show the said photographs to her family members in case she refused to maintain sexual relationship with him. She has stated that she was forced to have physical relation

with the Applicant because of the threats given by the Applicant. The evidence of PW4 who is also one of the victims also reveals that she was working with the Applicant. She has stated that the Applicant used to give her milk and that she would feel giddy after drinking the milk. She has stated that her sister who had also visited the Applicant had felt the same.

7. The material on record indicate that in the course of investigation, the Investigating Officer had recovered some CDs with obscene contents and nude photographs of the Applicant and some ladies in compromising position. PW4 was shown these photographs. She had identified herself in two photographs wherein she is seen in compromising position with the Applicant.

8. PW2 is the sister of the prosecutrix. Her evidence also prima facie reveals that the Applicant claim to be an Astrologer and he used to perform certain puja. Several persons used to visit him, discuss their personal and other family problems. She too had visited the office of the Applicant. This witness was also sexually abused by the Applicant in the same manner.

9. The evidence on record prima facie indicates that the Applicant

who claimed to be an Astrologer and a person with spiritual power, had sexually abused the prosecutrix and other ladies who would visit him to find a solution to their problems. The evidence of the prosecutrix, PW2 and PW4 prima facie indicates that the Applicant established physical relationship with them after giving them ash and water/milk which was laced with some intoxicant. He took obscene photographs of these ladies in compromising position and later forced them to keep physical relationship with him under the threat of showing the photographs to their family members. The material on record prima facie indicates that these vulnerable ladies succumbed to the Applicant's blackmailing and continued to subject themselves to sexual exploitation. In such circumstances, delay in lodging the FIR is prima facie not of much significance.

10. The offence committed by the Applicant is serious in nature. Considering the gravity of the offence, the evidence in support thereof and the societal interest, in my considered view, this is not a fit case to suspend the sentence and/or to release the Applicant on bail. Hence, the Interim Application is rejected.

11. Considering the fact that the Applicant is in custody since 2015,

hearing of the Appeal is expedited. Appeal be listed on final hearing board after receipt of record and proceedings and filing of paper book.

(SMT. ANUJA PRABHUDESSAI, J.)