

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

3 CRIMINAL APPLICATION NO.2236 OF 2022
IN APPEAL/507/2022

VISHAL VISHWAMBHAR AMBILWADE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Appellant : Mr Nilesh S. Ghanekar
APP for Respondent/State : Mr P.G. Borade

CORAM : SHRIKANT D. KULKARNI , J.

DATE : 25th JULY, 2022

PER COURT :

1. It is an application for suspension of sentence and bail moved by the applicant/accused.
2. Heard Mr N.S. Ghanekar, learned counsel for the applicant/accused and Mr P.G. Borade, learned APP for the State.
3. Perused the impugned Judgment and order of conviction passed in Sessions Case No.69/2014 by the learned Additional Sessions Judge, Aurangabad dated 07.07.2022.
4. Mr Ghanekar, learned counsel for the applicant invited my attention to the copy of deposition of the first informant. He pointed out that there was affair between the victim and the applicant/accused since before four years of the incident in question. They were known to each other. They intended to marry. However, there was opposition from the side of victim's mother and brother. It is further evident that the applicant/accused with victim came to Aurangabad on 17th January, 2013 and took one room in Sheetal Lodge. In the said room, applicant/accused

put Mangalsutra around the neck of the victim and thereafter, physical relations between the parties commenced. As a result, the victim became pregnant. She insisted for marriage, but it was told that unless she aborted, the applicant/accused may not enter into wedlock. On 14th April, 2013, the victim had abdominal pains and ultimately resulted in abortion. On the basis of FIR lodged by the victim, Crime No. 157/2013 came to be registered at CIDCO Police Station, Aurangabad for the offences punishable under sections 313, 376 and 109 of IPC coupled with the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. On fulfilled trial, the learned Additional Sessions Judge was pleased to acquit the applicant/accused from the charge of sections 313 and 109 of the IPC and provisions of Atrocities Act. The applicant/accused came to be convicted under section 376 of IPC and sentenced to suffer rigorous imprisonment for 7 years and pay fine of Rs.30,000/- with default stipulation.

5. Mr Borade, learned APP for the State strongly opposed to allow the bail application and suspension of sentence.

6. That impugned Judgment and order of conviction rendered by the Additional Sessions Judge, Aurangabad is challenged before this Court on various grounds. It is under scrutiny. It is revealed during the course of argument that the applicant/accused was on bail during the trial and in the earlier part of the order, it is observed by him that victim and the applicant/accused had affair since before four years of the incident in question.

7. By looking to the facts and circumstances of the case in hand and deposition of the victim, I am of the considered view to suspend the sentence awarded by the Additional Sessions Judge. The applicant/accused needs to be enlarged on bail, even though notice is yet not served to the victim. At this stage, there is no need to wait for the service to respondent No.2/victim since her role would be in respect of payment of compensation. It is informed that the applicant/accused had deposited fine amount of Rs. 30,000/- with the Sessions Court and as such, there is no hurdle to pass order regarding suspension of sentence and bail.

ORDER

- (i) The application is hereby allowed.
- (ii) The impugned order of sentence passed against the appellant in Sessions Case No. 69/2014 by the Additional Sessions Judge, Aurangabad dated 07.07.2022 is hereby suspended till final decision of the appeal.
- (iii) The applicant/accused shall be released on bail on furnishing his PR bond of Rs. 20,000/- (Rupees Twenty Thousand) with one or two solvent sureties of the like amount.
- (iv) Bail before the concerned Sessions Court.
- (v) The application is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]