

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO 1846 OF 2021
IN
CRIMINAL APPEAL NO. 90 OF 2021**

Mohan Baburao Kasle

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Mr. A.D. Ostwal, Advocate for applicant

Mrs. G.L. Deshpande, A.P.P. for respondent no.1 - State

....

CORAM : R.G. AVACHAT, J.

DATED : 31st JANUARY, 2022

PER COURT :

1. It has been informed by learned counsel for the applicant and learned A.P.P. as well, that Respondent No.2 - informant was major at the relevant time. She has been made party to this appeal only for the reason that she has been awarded compensation. According to learned counsel for the applicant, Respondent No.2 - victim need not be heard on this application for suspension of substantive sentence of imprisonment.

2. Heard.

3. This is an application for suspension of substantive sentence of imprisonment. The applicant has been convicted for the offence punishable

under Section 376 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.10,000/-, in default to suffer rigorous imprisonment for six months and also under Sections 323 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.1,000/-, in default to suffer rigorous imprisonment for one month.

4. Learned A.P.P. took me through the evidence of the victim and her husband to submit that there is direct evidence to indicate the applicant's involvement in the alleged crime. According to her, the offence is serious one. The prosecution is ready to workout the appeal finally. She, therefore, urged for rejection of the application.

5. The victim was thirty two years of age. The applicant was the friend of the victim's husband. It is the case of the victim that on 04th August, 2018 she had accompanied her husband to the field for watering the crop. It was about 09.00 p.m. Her husband had asked her to prepare food for the applicant as well. She, therefore, went to the field with food for three persons. It was about 10.00 p.m. Her husband went to switch on the motor pump near the bore well. She remained at the shed in the field. Taking advantage of the situation, the applicant committed rape on her.

6. The First Information Report was lodged on the next date. Statement of the husband was recorded about three days after the incident. True, he claims to have seen the applicant committing rape on his wife. The medical evidence and the C.A. report as well do not support the prosecution case. The applicant was on bail pending the trial. He has been behind the bars for little over one year. Considering all these facts and the fact that the appeal is not likely to come up for hearing in near future, I pass the following order :-

ORDER

- (i) Criminal application is allowed.
- (ii) The execution of substantive sentence of imprisonment of the applicant to stand suspended pending the appeal. The applicant be released on his executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(R.G. AVACHAT, J.)

SSD