

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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL INTERIM APPLICATION NO. 1143 OF 2021**

**IN**

**CRIMINAL APPEAL NO. 485 OF 2018**

**DEEPAK VIDHYADHAR AARANAKE )...APPLICANT**

**V/s.**

**THE STATE OF MAHARASHTRA )...RESPONDENT**

Mrs. Farhana Shah, Appointed Advocate for the Applicant.

Mrs. P. P. Shinde, APP for the Respondent - State.

**CORAM : REVATI MOHITE DERE &  
V. G. BISHT, JJ.**

**DATE : 1<sup>st</sup> JULY 2022**

**P.C. :**

1 Heard the 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 the aforesaid appeal.

3 The applicant, vide judgment and order dated 18<sup>th</sup> November 2017, passed by learned Sessions Judge, Kolhapur in Sessions Case No.48 of 2015, has been convicted and sentenced as under :

- for the offence punishable under Section 376 of the Indian Penal Code, 1860, to suffer imprisonment for life and to pay fine of Rupees 1000/-, in default to suffer rigorous imprisonment for two months each.
- for the offence punishable under Section 406 of the Indian Penal Code, 1860, to suffer rigorous imprisonment for three years and to pay fine of Rupees 1000/-, in default to suffer rigorous imprisonment for two months.
- for offence punishable under Section 420 of the Indian Penal Code, 1860, to suffer rigorous imprisonment for seven years and to pay fine of Rupees 1000/- and in default to suffer rigorous imprisonment for two month.

4 The learned counsel for the applicant submits that the relations between the applicant and the prosecutrix were consensual since she was 35 years of age and that the same could be evident from the evidence that has come on record. She further submits that the alleged incident of rape is alleged to have taken place on 30<sup>th</sup> November 2012. However, there is delay of about one year in lodging the First Information Report (FIR) that is the FIR was lodged on 24<sup>th</sup> October 2013. She further submits that the applicant is in custody from 2013 for almost nine years.

5 Learned APP opposed the application.

6 Perused the papers and in particular the evidence of PW1 that is the prosecutrix, aged 35 years. It appears that the prosecutrix was a divorcee and had met the applicant through a website. From the evidence it appears that they became friends and the applicant would visit the house of the prosecutrix. According to PW1, on the pretext that the applicant was to marry her, the applicant established physical relations with her. She has

further stated in her evidence that the applicant took an amount of Rs.2 lakhs from her and did not return the same. A perusal of the cross-examination of the said witness shows that she has admitted that the applicant would call her frequently and that the applicant had come to her maternal house and disclosed he liked her and that the marriage would be fixed after the arrival of his sister. She has, further, in her cross-examination, admitted that on the day of incident i.e. on 30<sup>th</sup> November 2012, the fact that the applicant had come and stayed with her, was not informed by her to her maternal relatives. There are other admissions in the cross-examination of the said witness.

7 The appeal was admitted on 4<sup>th</sup> May 2018. The applicant is in custody since 2013. Considering the evidence on record, particularly the evidence of the prosecutrix and the fact that the applicant is in custody for almost nine years, the application is allowed and the sentence of the applicant 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.15,000/-, with one or two sureties in the like amount.
- ii) The applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his appeal is finally disposed of.
- iii) 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.
- iv) 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 All concerned to act on the authenticated copy of this order.

**(V. G. BISHT, J.)**

**(REVATI MOHITE DERE, J.)**