

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

**CRIMINAL INTERIM APPLICATION NO.1211 OF 2022
IN
CRIMINAL APPEAL NO.201 OF 2021**

Shailendra Arun Kulkarni .. Applicant/Appellant
Versus
State of Maharashtra and Anr. .. Respondents

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Mr.Abdul R. Shaikh, Advocate for the Applicant/Appellant.

Mr.S.V. Gavand, APP for the Respondent No.1-State.

Mr.H.E. Palwe a/w. Mr.Sudip Mallick, Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATED : APRIL 27, 2022.

P.C. :

This is an application for suspension/stay of conviction imposed vide judgment and order dated 13th January, 2021, passed by District Judge-4 and Additional Sessions Judge, Nashik in Sessions Case No.219 of 2016.

2 The applicant has been convicted for the offence under Section 376(n) of Indian Penal Code ("IPC", for short) and sentenced to suffer imprisonment for 10 years and fine of Rs.10,000/-, and fine of Rs.10,000/-.

3 The applicant is employed as a clerk in BYK College, Nashik. In view of the conviction, the services of the applicant is liable to be terminated. Show cause notice has been issued to him by the institution to show cause why he should not be dismissed from services on account of conviction for the offence under Section 376(n) of IPC. The show-cause notice dated 6th August, 2021, has been annexed to this application.

4 The case of the prosecution is that the complainant (prosecutrix) was acquainted with the accused. She was major in age. Their friendship developed into a love affair. The accused promised that he would marry her. There was physical relationship between them on several occasions. The complainant had informed her family members about her relationship with the accused. Her family had approached the accused with marriage proposal and insisted for marriage. The accused avoided marriage, and, hence, the FIR was lodged on 29th September, 2015, alleging that the victim was subjected to physical relationship on the pretext of marriage.

5 Learned advocate for the applicant submitted that the applicant is employed with the educational institute. Due to conviction, his services are liable to be terminated. The incident had

arisen on account of misunderstanding. The relationship between prosecutrix and the applicant was consensual. After conviction, the applicant has performed marriage with the complainant on 26th August, 2021. The marriage has been registered. The registration certificate dated 26th August, 2021, has been annexed to this application. Now the prosecutrix is the wife of the applicant. She is impleaded as respondent no.2 in this application, and, she has supported the prayers in this application. Respondent no.2 has filed an affidavit affirming the fact that marriage has been performed between the applicant and respondent no.2. The affidavit affirmed by respondent no.2 is placed on record.

6 Learned advocate for the applicant has relied upon the decision in the case of *Rama Narang Vs. Ramesh Narang and Ors.*¹ and *Navjot Singh Sidhu Vs. State of Punjab and Anr.*²

7 Learned APP submitted that the documents on record to indicate that the applicant has performed marriage with the prosecutrix. However, the applicant has been convicted under Section 376 of IPC.

1 (1995) 2 SCC 513

2 (2007) 2 SCC 574

8 I have perused the evidence of the
complainant/prosecutrix. It is not in dispute that the
complainant/prosecutrix was major at the time of the incident.
Admittedly, there is love affair between the complainant and the
applicant-accused. There was consensual physical relationship
between them. The FIR was lodged since the marriage was not
performed by the accused. The marriage registration certificate
placed on record would indicate that the marriage is solemnised
between the applicant and the complainant. The complainant/
respondent no.2 was present in the Court on the last date of hearing.
On account of the conviction, the services of the applicant are likely to
be terminated. Although the applicant has been convicted for the
offence punishable under Section 376 of IPC, in the light of peculiar
factual aspects of this case, the discretionary power of suspension of
conviction can be exercised in this case carving out as exceptional
case. Considering the aforesaid circumstances, relief prayed in this
application can be granted.

9 Hence, I pass the following order:

:: ORDER ::

- (i) Interim Application No.1211 of 2022, is allowed;

- (ii) During the pendency of Criminal Appeal No.201 of 2021, the conviction imposed *vide* judgment and order dated 13th January, 2021, passed by District Judge-4 and Additional Sessions Judge, Nashik, in Sessions Case No.219 of 2016, is suspended;
- (iii) Interim Application No.1211 of 2022, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)