

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2348 OF 2021
IN
CRIMINAL APPEAL NO.797 OF 2021

Stevan @ Obari Godfrey D'Cruz
versus

Applicant

The State of Maharashtra

Respondent

Mr.Prashant P. Jadhav, Advocate for Applicant-Appellant.
Mr.S.V.Gavand, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 2nd February 2022

PC :

1. This is an application for suspension of sentence and grant of bail during pendency of Criminal Appeal No.797 of 2021. The applicant is convicted for offences under Section 376(2)(n), Section 420 of Indian Penal Code and Section 67(B) of Information Technology Act. He has been sentenced to suffer imprisonment for ten years and three years with fine of Rs.1,00,000/-, Rs.50,000/- and Rs.25,000/- respectively on each count.

2. The case of prosecution is that the victim was major at the time of incident and the applicant and the victim were acquainted with each other. There was promise of marriage by the accused. On several occasions there was physical relationship between them They resided together. From 2014 onwards they were in relationship. The accused was a married person. There was suppression of fact by him that he is married person. The accused threatened the victim and

extorted money. The FIR was registered under Sections 376(2)(n), 384, 323, 420, 504, 506 of Indian Penal Code and Section 67(B) of I.T.Act.

3. The applicant is, however, convicted for the aforesaid offences. The applicant has challenged the conviction by preferring appeal which has been admitted.

4. Learned advocate for the applicant submitted that the applicant is in custody from 16th December 2016. He has undergone the detention for a period of about five years. The applicant was granted bail by the Sessions Court during trial. However, he could not avail of the bail facility since bail was granted subject to condition that he shall execute the PR and SB of Rs.1,00,000/- with one local solvent surety in the like amount. The relationship between the accused and the victim was of consensual nature. Undisputedly they were in relationship between November-2014 and September-2016. The alleged obscene videos recorded in cell phone of the accused were not transmitted to any person. Accused ought not to have been convicted for the offence under I.T.Act. There was discrepancy in seizure of the cell phone of the applicant. The cell phone was recovered allegedly at the instance of mother of accused. The allegation of complainant that accused had suppressed that he was a married person is false. In her cross-examination she has disclosed as to how she was closely acquainted with the accused and his relatives. It is difficult to accept that she was not aware about the marital status of the applicant.

5. Learned APP submitted that consent was obtained under false

promise of marriage. Cell phone of the accused contained obscene video recording about physical relationship between the applicant and the complainant. There is sufficient evidence to prove the charges against the applicant. He has been convicted by the Trial Court for the aforesaid charges based on evidence.

6. The evidence of complainant-victim mentions that she got acquainted with the applicant in November-2014. Immediately thereafter there was physical relationship between them at the premises of accused. There was physical relationship from November-2014 to September-2016. Although it is alleged that the video recording was done forcibly, there was no complaint against the accused. The evidence discloses that under the threats of the video being made viral, she was subjected to physical relationship. The evidence further discloses that after the victim had shifted to Kopar Khairane, again there was physical relationship between them. There is no evidence that videos were transmitted to any other person. The defense is challenging recovery of cell phone. Prima facie, it is apparent that the relationship was consensual. Although the applicant was granted bail pending trial, he could not avail of the bail facility. The accused was convicted for offence under Section 67(B) of I.T.Act. It is debatable whether Section 67(B) of I.T.Act is attracted.

7. Learned counsel for applicant further submitted that the Trial Court has imposed huge fine while convicting the applicant for the offence u/s.376(2)(n) of IPC. The applicant has been directed to pay fine of Rs.1,00,000/-. For offence u/s.67(B) of I.T.Act he has been directed to pay fine of Rs.50,000/- and for offence u/s.420 of IPC he

has been directed to pay fine of Rs.25,000/-. It is submitted that the applicant is not in a position to arrange huge fine amount. During the trial he was granted bail but could not avail of the bail facility and continued to be in custody. It is, however, submitted that the applicant would make arrangement and deposit fine amount of Rs.50,000/- qua offence u/s.376(2)(n), Rs.15,000/- qua offence u/s.67(B) of I.T.Act and Rs.10,000/- in relation to offence u/s.420 of IPC. Learned counsel relied upon the decision of Supreme Court in the case of **Satyendra Kumar Mehra @ Satyendra Kumar Mehra Vs. The State of Jharkhand**¹. In the said decision it has been observed that the Appellate Court while exercising power under Section 389 Cr.PC can suspend the sentence of imprisonment as well as of fine without any condition or with conditions. There are no fetters on the power of the Appellate Court while exercising jurisdiction under Section 389 Cr.PC.. The Appellate Court could suspend the sentence and fine both or could direct for deposit of fine or part of fine. It is pertinent to note that the applicant is in custody for a period of five years.

8. Considering the aforesaid aspects, the sentence of imprisonment can be suspended.

ORDER

- (i) Interim Application No.2348 of 2021 is allowed and disposed of;
- (ii) During pendency of Criminal Appeal No.797 of 2021, the sentence of imprisonment imposed vide judgment and order dated 26th August 2021 passed by learned Additional Sessions Judge, Thane in Sessions Case No.308 of 2017 is suspended, and the

¹ (2018)15-SCC-139

applicant is directed to be released on bail on executing PR bond in the sum of Rs.20,000/- with one or more sureties in the like amount;

(iii) The applicant is permitted to furnish cash bail in the sum of Rs.20,000/- for a period of ten weeks in lieu of sureties;

(iv) The applicant is permitted to deposit fine of Rs.50,000/-, Rs.15,000/- and Rs.10,000/- respectively within a period of four weeks from the date of his release in respect to the conviction under Section 376(2)(n) of IPC, Section 67(B) of I.T.Act and Section 420 of IPC;

(v) The applicant shall attend Trial Court once in six months on First Saturday of the month till disposal of the Criminal Appeal;

(vi) In the event there are two consecutive defaults in attending the Trial Court, the Trial Court shall submit report to this Court;

(vii) In the event of default committed by the applicant in attending the Trial Court, the prosecution will be at liberty to prefer application for cancellation of bail.

(PRAKASH D. NAIK, J.)

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