

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

**INTERIM APPLICATION NO.2989 OF 2021
IN
CRIMINAL APPEAL NO.874 OF 2021**

Mr. Upendra Pragaji Gohil ...Applicant

Versus

The State Of Maharashtra ...Respondent

Shri. Rahul Arote, Advocate for the Applicant/Appellant.

Shri. S.H. Yadav, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 10th JANUARY, 2022.

PER COURT:

1. This is an application for suspension of sentence of imprisonment imposed vide judgment and order dated 4th October 2021 passed by the learned Additional Sessions Judge, Greater Mumbai in Sessions Case No.428 of 2016. The applicant has been convicted for the offences punishable under section 376 r/w section 511 of Indian Penal Code and sentence to suffer RI for six years and fine of Rs.10,000/-, and the offence punishable under section 506 of IPC and section 323 of IPC and sentenced to suffer RI for one year each respectively. The applicant was taken in custody.

2. The case of the prosecution in short is that the victim and the applicant – accused are residents of same building. On 16th

January 2016, at about 9.30 pm, while the victim was on the terrace of the building, the applicant came on the terrace and told her that he likes her and want to marry her. He closed the doors of the terrace and sexually assaulted her by using force. She was threatened not to disclose the incident to any person. Subsequently, the victim and her parents approached the Police and the complaint was registered.

3. The previous application seeking suspension of sentence was withdrawn vide order dated 3rd November 2021. The said application was apparently withdrawn before appeal was admitted by this Court. It is not disputed that the application was not argued on merits.

4. The learned counsel for the applicant submitted that the applicant was on bail during the trial and he has not misused the facility of bail. The judgment of the trial Court suffers from serious infirmity. The applicant has been convicted for offence under section 376 r/w 511 of IPC. The applicant has been falsely implicated in this case. The evidence on record discloses that the relationship between the applicant and the victim and her family was not cordial. The complaints were lodged against each other. The victim was in relationship with the person from the next

building and he used to frequently visit the house of the applicant which was objected by the applicant and the several other residents. In view of that, the applicant has been falsely implicated in this case. The medical evidence does not support prosecution case. The appeal may not reach for hearing within a short span of time.

5. Learned APP submitted that the offence is of serious nature. The evidence adduced before the trial Court established the offences. Although the medical evidence does not support the fact that there was sexual intercourse, the injuries suffered by the victim indicate that there was an attempt to commit sexual intercourse for which the applicant has been convicted by the trial Court. Hence, the sentence of imprisonment may not be suspended.

6. Undisputedly, the appellant/applicant was on bail during the trial. There is no report that he has misused the facility of bail. I have perused the evidence of victim, medical officer and the other evidence adduced by the prosecution. From the deposition of the victim, it can be seen that the relationship between both the families was strained. Complaints were lodged against each other. The victim has admitted that she was in relationship with the boy from the adjacent building. He used to

visit her house frequently. There was physical relationship between them. The defence of the applicant is that on account of victim's relationship with the boy they were indulging in objectionable activities and the applicant and others had objected that and this was the reason for lodging false FIR. The applicant – appellant was charged for offence under section 376 of IPC. Doctor has opined that there was no sexual intercourse.

7. The applicant's appeal has been admitted by this Court. The appellant has challenged the conviction against him. The appeal may not come up for hearing within short span of time. The maximum sentence imposed by the trial Court is six years. The applicant has urged that judgment of conviction suffers from discrepancies.

8. In view of the above, the sentence of imprisonment can be suspended and bail can be granted to the applicant. Hence, the following order:-

ORDER

- (i) Interim Application No.2989 of 2021 is allowed;
- (ii) During the pendency of Criminal Appeal No.874 of 2021, the sentence of imprisonment awarded by the learned Additional Sessions Judge, Greater Mumbai

vide judgment and order dated 4th October 2021 in Sessions Case No.428 of 2016 is suspended and the applicant is directed to be released on bail on executing PR. Bond in the sum of Rs.25,000/- with one or more solvent sureties in the like amount;

- (iii) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety;
- (iv) The applicant shall report the trial Court once in six months on first Monday of the said month between 11.00 am to 1.00 pm till the decision in the appeal;
- (v) In the event, there are two consecutive defaults in appearing before the trial Court by applicant, the said fact shall be brought to the notice of this Court;
- (vi) Interim Application is disposed of.

(PRAKASH D. NAIK, J.)