

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

**INTERIM APPLICATION NO.3440 OF 2022
IN
CRIMINAL APPEAL NO.1001 OF 2022**

Sultan @ Toufik Inaytulla Patel Applicant
Versus
The State of Maharashtra Respondent

Mr. Dilip Bodake, Advocate a/w. Suyash Khose, for the
Applicant.

Mr. P.H. Gaikwad, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL, J.
DATE : 13th OCTOBER, 2022**

P.C. :

1. This is an application for bail pending final disposal of the appeal preferred by the applicant.

2. Heard Shri Dilip Bodake, learned counsel for the applicant and Shri P.H. Gaikwad, learned APP for the State.

3. Leave to amend to correct the name of prison is granted. Amendment to be carried out forthwith.

4. The applicant was convicted by the Extra Joint Additional Sessions Judge, Karad vide judgment and order

dated 21.9.2022 passed in Sessions Case No.18/2017. The applicant was convicted for commission of offence punishable under Section 376(1) of the Indian Penal Code and was sentenced to suffer RI for ten years and to pay fine of Rs.3,000/- and in default to suffer SI for one month. He was also convicted for commission of offence punishable under Section 506 of IPC and was sentenced to suffer RI for six months and to pay fine of Rs.2,000/- and in default to suffer SI for one month. Both the sentences were directed to run concurrently. The applicant was on bail during trial and he was taken in custody after his conviction.

5. The prosecution case is that the prosecutrix, who is examined as PW-1, was acquainted with the appellant through her elder sister. He used to meet her on the College Road. He used to frequently call her. He used to talk her with love. He had promised that he would marry her. He had told her that he had six to seven trucks. On 21.12.2016, he had gone to Pune. At about 2.30 a.m. in the night on 22.12.2016, the applicant called her on her mobile phone. He called her

to meet him on the highway. She told him that it was late in the night and she was scared. He still asked her to meet him. She went to meet him near a temple. They talked for some time and then they went towards his truck. They sat in the cabin of the truck. There also they kept chatting with each other. During that time, he told her that he loved her and that he would marry her. After that she described the incident of sexual intercourse. According to her it was against her wish. She then rescued herself and went home. Her mother woke up. She enquired with her. Then she narrated the incident to her. After that, the FIR was lodged. The investigation was carried out. The applicant was arrested and he faced the trial, which resulted in his conviction, as mentioned earlier.

6. Learned counsel for the applicant submitted that he was on bail during trial and he has not misused the same. The narration of the prosecutrix itself shows that it was a clear case of consent and only because her mother got to know about it, this case was lodged against him. The

applicant was falsely implicated in this case. It is case of pure consent. He submitted that learned Judge erroneously relied on the statement of the prosecutrix under Section 164 of Cr.P.C. because those portions were not put to her in her deposition.

7. Learned APP, on the other hand, opposed this application. He submitted that the offence is serious and though the prosecutrix had gone to meet the applicant on her own, the further incident was against her wish and, therefore, bail should not be granted to him.

8. I have considered these submissions. From the narration of PW-1, the prosecutrix, it is very clear that she had gone to meet the applicant at odd hours i.e. at 2.30 a.m. in the night in a secluded place. The evidence shows that they were in love. There are clear indications that she was fully aware of her acts. Therefore, there is substance in the submission of learned counsel for the applicant that it was a case of consent.

9. Considering all these aspects and also taking into

account the fact that the applicant was on bail during trial and there are no allegations of commission of any other offence, I am inclined to grant bail to the applicant. Ultimately his guilt or innocence can be decided only at the final hearing stage of appeal. However, the applicant has made out a case for releasing on bail during pendency of appeal. Hence, the following order :

:: O R D E R ::

- i. During pendency and final disposal of Criminal Appeal No.1001/2022, the applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii. The applicant shall not in any manner cause harassment to PW-1 in this case.
- iii. Interim Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)