

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

**INTERIM APPLICATION NO. 4302 OF 2022
IN
CRIMINAL APPEAL NO. 1196 OF 2022**

Moh. Nawaz Aslam Jahagirdar ..Applicant.
Versus
The State of Maharashtra ..Respondent

Mr. Ganesh Gole i/b. Ateet Shirodkar for Applicant.
Smt. M. R. Tidke, APP for State/Respondent No.1.

CORAM : SARANG V. KOTWAL, J.
DATE : 16th DECEMBER 2022

PC :

1. This is an application for bail pending final disposal of Criminal Appeal No.1196 of 2022. The Applicant was convicted and sentenced by learned Additional Sessions Judge, Nashik, vide his Judgment and order dated 23/11/2022 passed in Special (Atrocity) Case No.48 of 2020. At the conclusion of the trial, the applicant was convicted for commission of offence punishable U/s.376(2)(n) of the I.P.C. and was sentenced to suffer R.I. for Ten years and to pay a fine of Rs.3000/- and in default of payment of fine to suffer R.I. for Six months. He was acquitted from the

Charges of commission of offences punishable under sections 313, 323, 506(2) r/w. 34 of the I.P.C. and under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The Applicant has challenged this Judgment and order by way of Appeal No.1196 of 2022 which is already admitted and is pending final disposal. The prosecution case is that the prosecutrix came in contact with the applicant in the year 2014. They got friendly resulting in their physical relations. That went on till July 2018. When she was pregnant, she asked the Applicant to marry her, but he refused and thereafter this complaint was lodged.

3. Learned counsel for the Applicant submitted that the Applicant was on bail during trial. He further submitted that the case of the prosecutrix itself shows that it was a consensual relationship and there was no element of force. Therefore, no offence under section 376(2)(n) of the I.P.C. is made out. He further submitted that the applicant belonged to different religion and the victim was aware of the difficulty in their marriage. The

relationship continued for a long period. He further submitted that the applicant does not have any other criminal antecedents.

4. Learned APP opposed this application. She submitted that, physical relations were established on the false promise of marriage, therefore, it would amount to misconception of facts and consent is vitiated. Therefore, the offence is made out.

5. I have considered these submissions. I have particularly perused the deposition of the prosecutrix who was examined as PW-1. Their relationship started in the year 2014 and till July 2018 physical relations continued. Though, she submitted that the relationship was against her wish, but her evidence indicates that it was a consensual relationship. She was also aware that the applicant belonged to different religion. In fact, she has stated that, at the instance her own sister, for some time, she had stopped meeting the applicant. Thus, it is clear that, though she was aware of the obstacles, their physical relations continued. At this stage, I find force in the submission of learned counsel for the Applicant. The applicant has made out a case for grant of bail pending his

appeal.

6. Hence, the following order:

O R D E R

- i) During pendency and final disposal of Criminal Appeal No.1196 of 2022, the Applicant is directed to be released on his furnishing P. R. bond in the sum of Rs.30000/- with one or two sureties in the like amount.
- ii) The Applicant shall not try to contact the victim and shall not harass her directly or indirectly.
- iii) The Application is disposed of.

(SARANG V. KOTWAL, J.)