

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.784 OF 2019
IN
CRIMINAL APPEAL NO.1406 OF 2019

Pintu Bapu Mohite

Applicant

versus

The State of Maharashtra

Respondent

Ms.Vilasini B. i/by Mr.Jaydeep D. Mane, Adv. For applicant.
Mr.H.J.Dedhia, 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.1406 of 2019.

2. The applicant has been convicted vide judgment and order dated 3rd October 2019 passed by Extra Joint Additional Sessions Judge, Pandharpur in Sessions Case No.58 of 2012 for offences under Sections 376, 363, 365 and 506 of Indian Penal Code. He has been sentenced to suffer imprisonment of seven years, three years, one year and one year respectively and to pay fine of Rs.10,000/- each for offences under Sections 376, 363, 365 of IPC and Rs.5,000/- u/s.506 of IPC.

3. The case of prosecution is that the prosecutrix is a married lady having two children. On 11th September 2011 the complaint was lodged alleging that on 30th August 2011 the victim came to village Huljanti at her parents house for attending festival and thereafter she was returning to her matrimonial home. She boarded the bus and alighted at Nimboli for boarding another bus going towards Maroli.

The accused was known to her, who met her at Mariaai Chowk. On the pretext of giving lift to the victim, the accused made the victim to sit on his motorcycle and told her that he would take her to her in-laws house at Maroli. However, accused took her towards Sangola. He threatened her. She was taken to village Bedaggaon. The accused took her at the premises owned by the person familiar with him. He introduced her to the owner of premises as his wife. She was threatened. She was subjected to sexual relationship forcibly. Thereafter accused was apprehended by the brother of victim. The FIR was registered.

4. Learned counsel for applicant submitted that the applicant was on bail during trial. He is taken in custody from the date of conviction. He is in jail for a period of more than two years. The maximum sentence imposed by the Trial Court is of seven years. The applicant has not misused the facility of bail. From the evidence of witnesses it is apparent that physical relationship was consensual.

5. Learned APP submitted that the Trial Court has convicted the appellant on the basis of evidence adduced before the Court. The victim was threatened. The sexual relationship was under coercion.

6. It is noted that the applicant was on bail during trial. It is not reported that there was misuse of facility of bail. From the evidence of prosecutrix and other witnesses it does appear that physical relationship was by consent. The case of prosecution is that victim was given lift by the accused. She was taken to different village. The victim was along with her minor child aged about five years. She was taken to the house of familiar person of accused. She was introduced as wife. The accused was known to the victim. Prima facie it does appear that the victim had volunteered to accompany the accused. The physical relationship appears to be consensual.

7. Considering the aforesaid circumstances, sentence of imprisonment can be suspended.

ORDER

- (i) Interim Application No.784 of 2019 is allowed and disposed of;
- (ii) During pendency of Criminal Appeal No.1406 of 2019, the sentence of imprisonment imposed vide judgment and order dated 3rd October 2019 passed by Extra Joint Additional Sessions Judge, Pandharpur in Sessions Case No.58 of 2012 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 sureties in the like amount;
- (iii) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for ten weeks in lieu of sureties;
- (iv) If the fine amount is not deposited, the same shall be deposited within four weeks from today;
- (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.)

MST