

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**50 CRIMINAL APPLICATION NO.800 OF 2023
IN APEAL/165/2023**

Kishor Kadu Dhage

...Applicant

VERSUS

State of Maharashtra

...Respondent

...
Advocate for Applicant : Mr.Patil Jitendra Vijay
APP for Respondent-State : Mr.N.T.Bhagat
...

CORAM : R. G. AVACHAT, J.

DATE : 27.03.2023.

PER COURT :

1. Heard. The applicant is convicted for the offences punishable under Sections 376 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for a period of 7 years and to pay fine of Rs. 1,000/-, in default Simple Imprisonment for 1 month. He is further convicted for the offence punishable under Section 452 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for a period of 3 years and to pay fine of Rs. 1,000/-, in default Simple

Imprisonment for 1 month. He is further convicted for the offence punishable under Section 506 of the Indian Penal Code and is sentenced to pay fine of Rs. 1,000/-, in default Simple Imprisonment for 1 month. All the substantive sentences have been directed to run concurrently.

2. As such, the applicant is supposed to undergo a maximum term of imprisonment up to 7 years. Pending the trial, he was on bail. The victim was a married woman. There is delay of 10 hours in lodging the First Information Report. The prosecutrix-victim was a married woman, meaning thereby she was above 18 years of age at the time of incident. As per the case of the prosecution, the applicant entered her house, when the family members were in the field. Taking the advantage that she was alone in the home, the applicant committed rape on her. FIR has been lodged about 10 hours after the incident. The medical examination report does not support the prosecution case, so has been observed by the trial Court. Same is the case of the Chemical Analysor's report. Pending the trial, the applicant was on bail. It is a short term sentence of 7 years of imprisonment. The appeal is not likely to come up for hearing in near future. Hence it is a good case to suspend the substantive

sentence pending the appeal. In view of the same, the application is allowed in view of the following order :

ORDER

- (a) The application is allowed.
- (b) Pending the appeal, the execution of substantive sentences of imprisonment imposed upon the applicant by the learned District Judge-4 and Additional Sessions Judge, Jalgaon, in Sessions Case No. 41 of 2018, by the judgment and order dated 13.02.2023, to stand suspended and the applicant be released on bail on his executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(R. G. AVACHAT)
JUDGE

mahajansb/