

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2791 OF 2023
IN APEAL/682/2023

AABA @ SHANKAR DEVIDAS BHIL
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Harshal P. Randhir
APP for Respondent : Ms. V. N. Patil Jadhav
...

CORAM : S. G. MEHARE, J.

DATE : 17-08-2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State.
2. The applicant seeks suspension of sentence imposed upon him by the learned District Judge-5 and Additional Sessions Judge, Jalgaon, by his judgment and order passed in Special Case No.106 of 2018, dated 10.07.2023, to suffer rigorous imprisonment for seven years for the offence punishable under Section 376 of the Indian Penal Code and fine of Rs.1000/- for the offence punishable under Section 506 of the Indian Penal Code. He has deposited the fine amount.
3. The learned counsel for the applicant would submit that the applicant was twenty two at the time of the incident and

unmarried. The prosecutrix was married and has children. Her husband deserted her. She was living alone with her mother. He has vehemently argued that the samples collected for D.N.A. test were not properly preserved and the seal in which the samples were preserved were broken by the Investigating Officer. Therefore, it was to be seriously doubted. The applicant never did sex with the prosecutrix. She was older than him. The applicant was on bail during the trial. He never tampered with the prosecution witnesses and jumped the bail. He is still unmarried, but has family responsibilities. The sentence is a short-term. The appeal may take its time to conclude. Hence, the sentence may be suspended.

4. The learned A.P.P. has strongly opposed the application. She would submit that the samples were properly tested. Specific evidence has been led by the Medical Officer testing the D.N.A. and he came to the correct conclusion that the applicant was biological father of a born child. There were no reasons to disbelieve the prosecutrix. The offence was serious and heinous. The applicant has no good grounds. Hence, the application may be rejected.

5. Considering the objections raised by the learned counsel for the applicant, the age of the applicant and the term of imprisonment, it would be inappropriate to decline him suspension

of sentence. It was a short term imprisonment. There are no exceptional circumstances to deny the suspension. Hence, normal rule to suspend the sentence during pendency of the appeal against the conviction may be applied. Hence, the order:-

- i) The application is allowed.
- ii) The execution, implementation, effect and operation of the judgment and order passed by the learned District Judge-5 and Additional Sessions Judge, Jalgaon, in Special Case No.106 of 2018, dated 10.07.2023, sentencing the applicant to suffer rigorous imprisonment for seven years for the offence punishable under Section 376 of the Indian Penal Code, has been suspended till conclusion of the appeal.
- iii) The applicant be released on bail on executing PB and SB of Rs.50,000/- with a solvent surety of like amount on the condition that he shall not cause harm to the victim, her relatives and his children till conclusion of the appeal.
- iv) Bail before the learned District Judge-5 and Additional Sessions Judge, Jalgaon.
- v) The applicant shall keep contact with the learned counsel engaged to avoid protraction of the appeal.

**(S. G. MEHARE)
JUDGE**