

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2835 OF 2023
IN REVN/222/2023 WITH REVN/222/2023

SHAIKH MOINUDDIN SHAIKH ARIFUDDIN
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Ambar S. Barlota
APP for Respondent : Mr. S. B. Narwade
...

CORAM : S. G. MEHARE, J.

DATE : 02-08-2023

PER COURT :-

1. Heard the learned counsel for the applicant.
2. Issue notice to the respondent. The learned A.P.P. waives service of notice for the respondent/State.
3. The applicant is seeking suspension of sentence imposed on him to suffer rigorous imprisonment for one year each for the offences punishable under Sections 452 and 354 of the Indian Penal Code, by the learned 7th Judicial Magistrate First Class, Aurangabad in Regular Criminal Case No.2071 of 2015, in its judgment and order dated 23.10.2018 and confirmed by the learned Additional Sessions Judge, Aurangabad, in Criminal Appeal No.188/2018 vide judgment and order, dated 26/07/2023.
4. The learned counsel for the applicant would submit that the applicant has been taken into custody after the dismissal of his appeal. The fine amount has been deposited. There were no antecedents to the discredit of the applicant. The revision may take its time to conclude and sentence is short term. Hence, sentence may be suspended.
5. The learned A.P.P. argued that there are concurrent

judgments against the applicant. There are no errors on the face of the record. Therefore, the applicant has no case for suspension of sentence.

6. Perused the impugned judgments and orders.

7. It is a case of outraging the modesty of a woman. Whether the applicant outraged the modesty of the woman was intentional or with knowledge has to be examined. This legal issue falls for consideration. There are no exceptional circumstances to deny the suspension of sentence. Hence, the Court is of the view that this is a fit case to exercise power under Section 389 of the Code of Criminal Procedure. Thus, the order:-

- i) Application is allowed.
- ii) The execution, implementation, effect and operation of the sentence imposed upon the applicant to suffer rigorous imprisonment of one year each for the offences punishable under section 452 and 354 of Indian Penal Code, by the learned 7th Judicial Magistrate First Class, Aurangabad, by his judgment and order in Regular Criminal Case No.2071 of 2015, dated 23.10.2018 and confirmed by the learned Additional Sessions Judge, Aurangabad, in Criminal Appeal No.188 of 2018 vide judgment and order, dated 26/07/2023, is suspended till conclusion of the appeal.
- iii) Applicant Shaikh Moinuddin Shaikh Afruddin be released on bail on furnishing P.B. and S.B. of Rs.50,000/- with one solvent surety of like amount.
- iv) Bail before the learned Additional Sessions Judge, Aurangabad.
- v) Call R & P.
- vi) List the revision application on 25.09.2023.

(S. G. MEHARE. J.)