

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

**959 CRIMINAL APPLICATION NO.3018 OF 2023**  
IN REVN/234/2023 WITH REVN/234/2023

MUKESH MANGALDAS KUMAWAT  
VERSUS  
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Thorat Nanabhau R.  
APP for Respondent-State : Mr. S. B. Narwade.  
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CORAM : S. G. MEHARE, J.  
DATE : 11.08.2023

**PER COURT :-**

1. Heard the learned counsel for the applicant and learned APP for the respondent-State.
2. Learned counsel for the applicant would submit that the evidence produced by the prosecution was not sufficient to prove the offences punishable under Sections 354, 342 and 452 of the IPC. The intention to outrage her modesty as alleged by the prosecution was missing and there was no material to believe that the applicant had knowledge that due to his acts, the modesty of a woman was likely to be outraged. A short term sentence has been imposed upon the applicant to

suffer S.I. for one year each for the offences punishable under Sections 354, 452 and six months for the offence punishable under Section 342 of the IPC. The applicant is law abiding person. Hence, the sentence may be suspended.

3. Per contra, the learned APP would submit that the clinching and cogent evidence was placed before the Court. Hence, both Courts have believed the prosecution case. There is no scope to argue in the revision application. Both orders impugned before this Court are legally correct, proper and appropriate. Hence, the applicant may not be granted suspension.

4. Perused the impugned judgments and orders. There appears grounds for argument whether the intention to outrage the modesty was cogently proved. The applicant was on the bail throughout the trial. The applicant has roots in village Waluj, District Aurangabad. Considering the term of the imprisonment, the Court is of the view that this is a fit case to exercise the discretion under Section 389 of the Cr.P.C. Hence, the following order :

**ORDER**

- (i) Criminal Application is allowed.
- (ii) The execution, implementation, effect and operation of the sentence imposed upon the applicant by the learned Judicial Magistrate First Class, Court No.16, Aurangabad, in R.C.C. No.1507 of 2016 by its judgment and order dated 29.09.2018 and confirmed by the learned Additional Sessions Judge, Aurangabad in Criminal Appeal No.176 of 2018, dated 08.08.2023 has been suspended till the conclusion of the criminal revision application.
- (iii) The applicant be released on bail on executing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of like amount.
- (iv) The applicant shall be released only after deposit the fine, if not deposited.
- (v) Bail before the learned Additional Sessions Judge, Aurangabad.

- (vi) Issue notice to the respondent/s, returnable on 05.10.2023. Learned APP waives service of notice for the respondent-State.
- (vii) Call Record and Proceedings.

**(S. G. MEHARE, J.)**

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vmk/-