

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

**914 CRIMINAL APPLICATION NO.3027 OF 2023
IN APEAL/739/2023**

**SABERODDIN @ SABER JIYAUDDIN SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Mr. Satej Jadhav, Advocate for the applicant.
Mrs. D.S. Jape, A.P.P. for respondent No.1 – State.
Mr. D.S. Ingole, Advocate for respondent No.2.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 13th October 2023.

ORDER:-

1. Heard learned Counsel for the applicant as well as learned Counsel for the victim. It appears that the victim has also filed affidavit mentioning that compromise has taken place between herself and the applicant/accused.

2. At the request of learned A.P.P. the matter is kept back till 2.30 p.m.

At 2.30 p.m.

3. Heard learned A.P.P., learned Counsel for respondent No.2 and also the reply argument of learned Counsel for the applicant.

4. The applicant, who is the original accused, is seeking suspension of their substantive sentences of imprisonment for

the offence punishable under Section 376 and other sections of the Indian Penal Code in Sessions Case No.88/2017. The maximum punishment appears to be of 10 years under Section 376 of IPC.

5. The learned Counsel for the applicant submits that it was actually a case of illicit relations, but as the husband of prosecutrix came on the spot at the time of incident, it was coloured as “rape” incident. He pointed out various statements made by the victim during her cross-examination. He further submitted that the appellant/accused was on bail throughout the trial.

6. On the contrary, the learned A.P.P. as well as learned Counsel for respondent No.2 strongly opposed the application on the ground that the conviction is recorded by the learned Trial Court after considering the entire evidence on record. Moreover, the testimony of prosecutrix is well corroborated by evidence of her husband. They also pointed out that the ambiguity found in the cross-examination of the prosecutrix has already been explained by way of re-examination.

7. However, it appears that the present applicant / accused was on bail throughout the trial. Moreover, the applicant herself has produced on record affidavit mentioning that she has no objection for release of the accused on bail during the

pendency of appeal. Though such affidavit cannot be considered here, but considering the fact that the applicant was on bail during the trial and has also deposited the fine amount, following order is passed

ORDER

- (i) The application is hereby allowed and substantive sentences of imprisonment for the offence punishable under Section 376 and other sections of the Indian Penal Code, imposed upon this applicant in Sessions Case No. 88/2017 is hereby suspended during the pendency of this appeal.
- (ii) The applicant be released on bail on execution of his P.R. bond of Rs. 25,000/- with one or more solvent sureties in the like amount
- (iii) Bail in lower Court.
- (iv) Application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)