

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 792 OF 2023
IN
CRIMINAL APPEAL NO. 228 OF 2023**

Sanjay R. Kadam	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

...

Mrs.Mallika Ingale with Mr.N.M. Nadar for the applicant.
Mr.S.R. Agarkar, APP for the State.

**CORAM: BHARATI DANGRE, J.
DATED : 10th MARCH 2023**

P.C:-

1 The applicant has been convicted for the offence punishable u/s.376(2)(n) of IPC and he is sentenced to suffer RI for 10 years and to pay fine of Rs.50,000/-, in default, to undergo SI for two months.

 The applicant is also convicted of the offence punishable u/s.506 IPC and sentenced to suffer RI for two years and pay fine of Rs.10,000/-, in default to undergo SI for 15 days. Both sentences are directed to run concurrently.

2 Appeal filed by the appellant is admitted on 3/3/2023, and the Record and Proceedings with paper books are called for. Pending the Appeal, the applicant has taken out Interim Application seeking suspension of sentence.

While hearing the said application, on 3/3/2023, this Court recorded that out of the relationship of the applicant to the prosecutrix, a child is born and DNA establish that the applicant is a biological father of the child delivered by the prosecutrix/PW 1. Considering the welfare of the child, the applicant expressed his willingness to make some financial provision of his maintenance and therefore, he was directed to file an affidavit to that effect.

3 Today, the learned counsel for the applicant has placed on record the affidavit of the applicant, which is affirmed before the Prison Officer, Aurangabad Central Prison on 8/3/2023. The said affidavit is taken on record. In the said affidavit, the applicant has made the following statement :-

“2 I undertake to deposit amount of Rs. 50,000/- (Rupees Fifty thousand only) in the trial court. I say that, for the benefit of child, the same can be withdrawn by the complainant in the present case”

4 Apart from this, Mrs.Mallika Ingale has informed that the fine imposed under the judgment against which the present Appeal has been preferred, to the tune of Rs.50,000/- plus Rs.10,000/- is already deposited in the trial court.

Though the applicant has expressed willingness to deposit the amount of Rs.50,000/- for maintenance of the child who is now above five years, I deem it appropriate to direct the applicant to deposit a sum of One lakh within a period of six weeks, out of which Rs.50,000/- shall be deposited as per undertaking along with an additional amount of Rs.50,000/- within a period of four weeks before the trial court and the entire amount is permitted to be withdrawn by the prosecutrix.

5 Since it is informed that the applicant was on bail throughout the trial, and there is no allegation by the prosecution that he has misused his liberty, and *prima facie*, it can be seen that the relationship between the applicant and prosecutrix was a consensual one, she being a major and capable of understanding the consequences of the act, I deem it appropriate to suspend the sentence imposed upon the applicant in Sessions Case No.10/2017, where he is convicted of the offence u/s.376(2)(n) and 506 IPC.

6 Interim Application No. 792/2023 is thus allowed in terms of prayer clause (a).

The applicant be directed to be released on bail subject to the same terms and conditions on which he was released on bail by the trial Court provided he furnish fresh bail bonds.

This is, however, subject to the compliance being ensured by the applicant as regards the deposit of amount of Rs.One lakh for the welfare of the child, born out of the alleged relationship, whether consensual or not.

(SMT. BHARATI DANGRE, J.)