

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.1132 OF 2023
IN
CRIMINAL APPEAL NO.348 OF 2023

Ismail Abdul Raheman Karajgi .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Faisal Shaikh with Ms.Aasma Khan for the Applicant.

Mr.Y.M.Nakhawa, A.P.P. for the State.

PSI Pralhad Jamadar, attached to Santacruz Police Station,
present.

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CORAM: BHARATI DANGRE, J.

DATED : 28th MARCH, 2023

P.C:-

1. By the present application, the Applicant seeks suspension of sentence imposed upon him by the learned Additional Sessions Judge, Pune in Sessions Case No.360 of 2010, where on being convicted under Section 386 of IPC, he has been directed to undergo R.I. for four years and to pay fine of Rs.5,000/-, in default to suffer S.I. for six months and is also directed to undergo R.I. for three years and to pay fine of Rs.2,000/-, in default to suffer S.I. for three months, on being convicted under Section 506(2) of IPC. The substantive sentences are directed to run concurrently.

2. Heard the learned counsel for the Applicant and the learned A.P.P. for the State.

The Applicant was subjected to trial for committing the offences under Sections 323, 376, 386, 504 and 506(2) of IPC.

The prosecution alleged that the prosecutrix, aged 29 years, was acquainted with the present Applicant, who was working in the same company and a bond of friendship was developed between them. On a trip outside their office city, they further came close and this resulted in marriage proposal coming forth from the Applicant, which was turned down by the prosecutrix. There was a disgruntled feeling for some period of time, but subsequently it is alleged that they again become friends. The quibble between the two employees, which was reported to the company, resulted in transfer of the Applicant at a place distinct from where the prosecutrix was working. It is then alleged that in the month of February, 2009, on a pretext that he wanted to meet a girlfriend with the prosecutrix, he forcibly committed sexual intercourse with her and threatened her of dire consequences, if this is disclosed to anybody. She was also threatened that the entire act has been recorded with the help of spy camera and he has retained the images and videos. For not disclosing the same, he demanded an amount of Rs.30,000/- and threatened that he would throw acid on the face of her younger sister and would kill her family members.

3. The prosecutrix got married in the year 2009 and it is alleged that on the day of marriage, she had paid an amount of

Rs.25,000/- to the Applicant, but the prosecution case is to the effect that he continued to threaten even the husband of the prosecutrix.

4. In order to unfold the prosecution case, the evidence was laid before the Court and as far as the charge under Section 376 of IPC is concerned, the Sessions Court answered the same in the negative, but found the Applicant guilty for extorting money from the prosecutrix by putting her in fear of death or of grievous hurt.

Perusal of the judgment, which has appreciated the evidence brought on record, would reveal that the learned Judge has clearly recorded that what was brought on record by the prosecution were two e-mails alongwith the photographs, which had used the threatening language for payment of money. Pertinent to note that print out of the e-mails were generated from the computer, but they were presented before the Court, without 65-B certificate and reliance was placed on the authoritative pronouncement of the Apex Court in the case *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Goranrtyal & Ors.*¹ and the Court clearly rendered a finding that though E-mails are marked as Exhs.138 and 139, but they cannot be read in evidence and the Court has relied on the oral testimony of PW 1 and PW 12.

5. Whether these documents would be read in evidence and in absence of these documents, whether the oral testimony of

¹ AIR 2020 SC 4908

the witnesses can be the sole basis for conviction under Section 386 alongwith Section 506(2) of IPC, is a matter which deserve consideration, in the present Appeal. Since the Appeal is already admitted and the sentence imposed is R.I. of four years on being convicted under Section 386 of IPC and R.I. of three years on being convicted under Section 506(2) of IPC, it is a fit case where the sentence deserve a suspension and the Applicant be released on bail, during the pendency of the trial. It is informed that the Applicant was on bail, while he was being tried by the Sessions Court.

Hence, the following order.

: ORDER :

- (1) The application is allowed.
- (2) The sentence imposed on the Applicant under the impugned judgment dated 09/03/2023 passed by the Additional Sessions Judge, Pune, is hereby suspended.
- (3) The Applicant is directed to be released on bail on furnishing PR Bond of Rs.25,000/- with one or more sureties in the like amount.

(SMT. BHARATI DANGRE, J.)