

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 4345 OF 2022
IN
CRIMINAL APPEAL (ST) No.21094 OF 2022
WITH
INTERIM APPLICATION NO. 4346 OF 2022
IN
CRIMINAL APPEAL (ST) No.21094 OF 2022
(Order corrected in terms of the order dated 5/04/2023)

Shankar Kisan Gurav

.. Applicant/Appellant

Versus

The State of Maharashtra

.. Respondent

...

Mr. Rajesh Khobragade a/w Akash Tayade for the applicant/
Appellant.

Ms. Anamika Malhotra, APP for the State.

Mr. Kokate, PSI, Vartaknagar, police station.

CORAM: BHARATI DANGRE, J.

DATED : 30th MARCH 2023

P.C:-

IA No. 4345/2022

1 By the present application the applicant seek condonation of delay of 16 days in filing the appeal, assailing the judgment and order dated 14/09/2022 passed by the Sessions Judge Thane, in Session Case No. 311 of 2016.

2 Heard the learned counsel for the applicant and perused the application.

The applicant has candidly stated that he was not having sufficient financial means to appoint an Advocate and prefer an appeal as his financial condition was extremely bad. Therefore, he

took some time to arrange for the money and this has occasioned the delay in filing the appeal.

3 The explanation offered being satisfactory and bonafide the application stands allowed in terms of prayer clause 'a'.

4 Interim Application No. 4345 of 2022 stands disposed off.

Criminal Appeal (St)No. 21094 of 2022

5 Appeal Admit.

6 Call for record and proceedings.

Interim Application No. 4346 of 2022

7 By the present application the applicant seek suspension of sentence imposed upon him under the impugned judgment on recording a finding of guilt under Section 376 and 420 of IPC.

 Heard the learned counsel for the applicant and the learned APP. On perusal of the evidence of the prosecutrix PW-1, it is evident that she has stated that she got acquainted with the accused and a love affair developed between them. Thereafter, he proposed her for marriage and he establish sexual relationship with her on several occasions and presicely has deposed in the Court that he used to commit sexual relations with her 3 to 4 times in the month, but he used to avoid performance of the marriage. Apart from this, he also threatened her not to marry anyone.

8 The succinct distinction between the promise to marriage before the physcial relationship is established and failure to fullfill the promise has been clearly culled down by the Apex Court in case of *Pramond Suryabhan Pawar Vs. State of Maharashtra and anr*, and where it has specifically held that the thin line of distinction is

required to be looked into while the consent accorded by the prosecutrix is a free consent and whether an offence under Section 376 is made out.

9 Apparently the prosecutrix has attend sufficient majority to understand the consequence of the act and whether the consent accorded by her was under some misconception is a matter for determination at the time of the appeal. As the learned counsel for the appellant had submitted that the sexual relationship established was consensual on account of love relationship maintained between them.

10 In any case since the point deserve consideration at the stage of the appeal, I deem it appropriate to suspend the sentence and release the applicant on bail by furnishing PR bond to the extent of Rs. 25,000/- with one or two sureties of the like amount.

11 Interim Application No. 4346 of 2022 is disposed off.

(SMT. BHARATI DANGRE, J.)