



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

**CRIMINAL APPLICATION NO.402 OF 2023
IN
CRIMINAL APPEAL NO.79 OF 2023**

Ravi Ramlal Rao	..Applicant
vs.	
The State of Maharashtra	..Respondent

Mr.S.G.Bobde, Advocate for applicant
Ms.V.S.Choudhary, APP for respondent
Ms.Namita Thole, Advocate for respondent no.2 (appointed)

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : MARCH 11, 2024**

ORDER (PER NEERAJ P. DHOTE, J.) :-

This is an application for suspension of substantive sentence of imprisonment awarded by learned Addl. Sessions Judge, Aurangabad, vide order dated 30.11.2022 in Sessions Case No.94 of 2020. Vide the said order, the applicant/appellant has been sentenced to suffer rigorous imprisonment for 12 years and to pay fine of Rs.10,000/- (Rupees Ten Thousand), in default, to suffer imprisonment for one year, for the offence punishable under Section 376 of Indian Penal Code.

2. Learned counsel for the applicant/appellant submits that the applicant and the victim were knowing each other and they had intimate relationship. He submits that the victim died due to heart ailment. He submits that for the offence under Section 304 of Indian Penal Code, the applicant has been acquitted by the trial court. The applicant was merely 22 years of age at the time of the incident. He is behind the bars for last more than four years. Learned counsel, therefore, prays for allowing of the application.

3. Learned APP for respondent-State has strongly opposed the application. She submits that though the applicant/appellant has been acquitted of the offence under Section 304 of Indian Penal Code, the medical evidence on record shows injuries on the genitals of the victim. She submits that the applicant was aware of the heart ailments of the victim and despite that, he took her with him and committed rape. She submits that after her death, the applicant left the place. She submits that this application for suspension of sentence may be rejected as no case is made out.

4. Learned counsel appointed to represent the victim submits that there is ample evidence on record against the applicant/appellant and the trial court has rightly convicted the

applicant/appellant for the offence of rape. She submits that in the statement under Section 313 of the Code of Criminal Procedure, the applicant/appellant has denied the consensual relationship with the deceased. She, therefore, prays for rejection of the application.

5. We have heard both sides. Perused the evidence on record.

6. There is evidence of one witness who has been examined as PW 4, wherein, she deposed that she saw the deceased and the applicant going together on motorcycle. It is the case of prosecution that the applicant/appellant used to visit the house of the victim for getting tiffin. This shows that there was acquaintance between them. There is no dispute that the victim was above 18 years of age, i.e. major, at the time of the incident. It is also not disputed that the victim (deceased) was suffering from heart ailment. Admittedly, the applicant/appellant has been acquitted of the offence under Section 304 of Indian Penal Code. Though the medical evidence points out that there were external injuries on the genitals of the victim, the fact remains that the victim and the applicant were known to each other and the victim accompanied the applicant and therefore, the consensual sexual act cannot be ruled out.

7. Considering all the above aspects, we see that the applicant has a good case on merits. Hence, we proceed to pass the following order:-

(i) The application is allowed.

(ii) During pendency of the appeal, the substantive sentence of imprisonment imposed against the applicant/appellant by learned Addl. Sessions Judge, Aurangabad, vide order dated 30.11.2022 in Sessions Case No.94 of 2020, to stand suspended. The applicant/appellant be released on bail on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with two sureties each in the like amount.

8. Provisional fees of learned counsel appointed to represent respondent no.2 - victim, is quantified at Rs.5,000/- (Rupees Five Thousand), to be paid by High Court Legal Services Sub-Committee, Aurangabad.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP