



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1486 OF 2024
IN APEAL/330/2024

Vishal Dhondu Malekar,
Age : 29 years, Occu. : Labour,
R/o. Shelwad, Tq. Bodwad,
Dist. Jalgaon.

... Applicant.

Versus

1. The State of Maharashtra,
Through its Investigating Officer,
Bodwad, Dist. Jalgaon.

2. X.Y.Z.

... Respondents.

...
Advocate for Applicant : Mr. Harshal Prakash Randhir
APP for Respondent - State : Mrs. Chaitali Chaudhari - Kutti
Advocate for Respondent No.2 : Ms. Falguni Kulkarni (Appointed)

...
CORAM : ABHAY S. WAGHWASE, J.

DATED : 03 MAY, 2024

PER COURT :-

1. This is an application for suspension of sentence and grant of bail by virtue of conviction recorded by Additional Sessions Judge, Bhusawal, District Jalgaon in Sessions Case No.182 of 2021.

2. Notices were issued to respondents on 03.04.2024. According to learned Advocate for applicant, he has effected service to respondent no.2. He has placed affidavit of service on record.

3. Today, the matter is only for the purpose of suspension of sentence and grant of bail. As in spite of service, complainant or her representative has failed to appear. Learned Advocate Ms. Falguni Kulkarni is hereby appointed to represent cause of respondent no.2.

4. Applicant/Appellant to supply copies of memo and annexures, if any, to the learned Advocate appointed for respondent no.2 immediately.

5. Keep the matter for hearing today at 2:30 p.m.

At 2 : 30 p.m. :

6. Applicant, who is convict is praying for suspension of sentence and grant of bail during pendency of appeal.

7. Learned Advocate for applicant submitted that there is false implication. That, complaint is delayed one. That, there are allegations of forcibly taking victim in the house and embracing her and issuing threats for not disclosing anyone about seeing accused in close company of his girlfriend. It is pointed out that, there is no distinct evidence in this regard. Moreover, FIR is after 06 days. That, applicant was on bail during trial. Now, he has challenged the judgment and order of conviction by filing appeal,

however, appeal being recent one, it would take long time to be heard and decided and hence, it is prayed that, relief of suspension of sentence as well as grant of bail be granted.

8. Above application is strongly opposed by learned APP by pointing out that victim is 15 years of age. That, she had seen the accused in close company of his girlfriend. Fearing she would disclose to other, she was forcibly taken in the house by accused and she was hugged and threatened her with dire consequences. Learned APP pointed out that, because of fear, victim consumed insecticide and was hospitalized, and therefore, there is delay in lodging FIR. For all above reasons, learned APP prays to refuse the relief as prayed.

9. Learned Advocate appointed for Respondent no.2 complainant also strongly opposed the application by pointing out age of victim to be of 15 years. She further submitted that, after seeing accused in compromising position with his girlfriend, accused started stalking victim. On 01.10.2021, he forcibly took her in the house, hugged her and even threatened her. Therefore, on carefully analyzing evidence, guilt has been recorded. Learned Advocate also as like learned APP prays to refuse the relief as prayed.

10. After considering the submissions of both sides and on going through the papers, it is emerging that, Bodwad Police Station registered crime bearing no.239 of 2021 for commission of offence under sections 327, 354, 354-A, 354-D, 452, 342, 323, 504, 506 read with section 34 of Indian Penal Code (IPC) and under sections 7, 8, 11, 12, 16 and 17 of Protection of Children from Sexual Offences Act, 2012.

Complaint was registered, wherein there are allegations that, one month prior to 06.10.2021, when victim was passing through a lane and when she was near the house of accused, she happened to see accused sleeping on a cot with his girlfriend. They both also saw, victim seeing them near each other on a cot. According to victim, thereafter accused started stalking her. That, on 01.10.2021, while she was alone in her house, accused visited her house, caught her and forcibly took her in his own house, embraced her and even threatened her that she should not disclose anyone about seeing him with his girlfriend. He also slapped her. She also alleged that, his girlfriend also threatened that, if she tell anyone about their love affair, they will not let her live and further accused applicant said that he could have physical relations with her and would defame her.

11. On the basis of such accusation, accused seems to have been charge-sheeted for commission of offence under sections 327, 354, 354-A, 354-D and 342 of Indian Penal Code (IPC) and under section 7, 8, 11 and 12 of POCSO Act and was made to face trial. On conclusion of trial, learned Judge seems to have held applicant guilty, but only for offence punishable under section 354 of IPC and he is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.2,500/-. Apparently, such judgment is passed on 04.03.2024, against which appeal has been preferred before this court bearing Criminal Appeal No.330 of 2024. Statement is made across the bar that applicant was on bail during trial. Such statement is not disputed by learned APP or learned Advocate appearing for the victim.

12. Considering the nature of allegations, quantum of sentence and the fact that appeal being of 2024, would take long time to be heard and decided, relief as prayed deserves to be granted. Hence, I proceed to pass the following order :-

ORDER

- (i) Criminal Application stands allowed.

- (ii) The substantive sentence imposed on the applicant Vishal Dhondu Malekar in Sessions Case No.182 of 2021 by Additional Sessions Judge, Bhusawal, District Jalgaon on 04.03.2024 stands suspended till the final hearing and disposal of Criminal Appeal No.330 of 2024.
- (iii) The applicant be released on P.R. Bond of Rs.15,000/- (Rs. Fifteen thousand only) with two solvent sureties in the like amount.
- (iv) The applicant shall not commit any criminal activity.
- (v) The applicant shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the trial Judge to fix dates for their subsequent appearances.
- (vi) In case of two consecutive defaults on the part of the applicant to remain present before the trial Court, the trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.
- (vii) Bail before the trial Court.

- (viii) Fees of learned Advocate, who is appointed to represent the cause of respondent no.2, is quantified at Rs.3,000/- to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(ABHAY S. WAGHWASE, J.)