



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

**17 CRIMINAL APPLICATION NO. 1722 OF 2024
IN APEAL/396/2024**

KRUSHNA BHAGWAN RATHOD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr.P.P. More h/f. Mr. Sandip Rathod, Advocate for the applicant.
Mr.N.B. Patil, APP for the respondent-State.
Mr.J.A. Menezes, Advocate for respondent No.2.

CORAM : KISHORE C. SANT, J.
DATE : 12.08.2024

PC :-

01. Heard learned Advocates for the parties at length.
02. The learned Advocate for the applicant submits that in the present case the applicant is sentenced to suffer rigorous imprisonment for five years for the offence punishable under section 376 of the Indian Penal Code and further imposed fine of Rs.25000/- and in default to suffer further simple imprisonment for two months. He submits that the fine amount is already deposited. During pendency of the trial the applicant was on anticipatory bail. There is no complaint of misuse of any liberty. On merits, he submits that the victim girl is well grown and matured person. Even as per allegations, first incident took place on

02.11.2016. Second incident took place in the month of February, 2017. The last such incident took place on 06.03.2018. The FIR was lodged for the first time on 28.03.2018. Thus, there is huge gap between the alleged incident and the FIR which shows that the relationship was consensual relationship and the victim had not made any grievance. While making allegations, it is stated that the relations were under the pretext of marriage. In any case, he submits that even after the last incident, the prosecutrix kept quiet for more than 22 days. He thus submits that this is a fit case for suspension of sentence.

03. The learned APP as well as the learned Advocate for respondent No.2 vehemently opposed the application. It is submitted that the offence is serious one. Under the pretext of marriage the applicant has exploited the prosecutrix when he had no intention to marry her. It is pointed out that even after the incident, the applicant was after the prosecutrix. He even saw that the prosecutrix does not get married. He passed information to a person with whom the marriage of the prosecutrix was settled. It is thus submitted that the present case is not a case where accused should be granted benefit of suspension of sentence merely because the sentence is a short sentence.

04. This Court has made enquiry about marital status of the prosecutrix. It is informed that the prosecutrix got married in 2018 itself and now she is residing with her husband. This Court thus finds that the allegation that the applicant is still following the prosecutrix does not appear to be correct. In any case proper care can be taken by imposing certain conditions. The Hon'ble Apex Court in the case of **Bhagwan Rama Shinde Vs. State of Gujarat , 1999 Cr.L.J. 2568** has already held that it is not desirable to keep a person in jail when the appeal is not likely to be heard in near future, in the cases where sentence is short sentence. Hence, following order :-

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence of the applicant shall stand suspended during pendency of the appeal.
- (iii) The applicant shall be released on bail on executing PR bond and solvent surety in the sum of Rs.15,000/- (Rupees Fifteen Thousand).
- (iv) The applicant shall not try to contact the victim or any of her relatives and the witnesses in the case.

(v) The applicant shall attend the concerned police station once in every month i.e first Sunday of every month between 10.00 a.m. to 12.00 noon.

(vi) The applicant shall keep informed about the contact details such as residential address and mobile number and in case there is change, same shall be informed to the concerned police station immediately.

(vii) In case of breach of any condition of this order, the bail granted shall be liable to be cancelled.

[KISHORE C. SANT, J.]