



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

**CRIMINAL APPLICATION NO.2678 OF 2024
IN
CRIMINAL APPEAL NO.591 OF 2024**

. Pramod S/o. Bhanudas Bhangе,
Age: 35 years, Occu.: Pvt. Service,
R/o. Noor Patel Colony, Udgir,
Tq. Udgir, Dist. Latur
**.. Applicant
(Orig. Accused)**

Versus

. The State of Maharashtra,
Through Udgir Rural Police Station,
Tq. Udgir, Dist. Latur
.. Respondent

...
Advocate for Applicant: Mr. Tukaram M. Venjane
APP for Respondent / State: Mr. N. D. Batule
...

CORAM : ABHAY S. WAGHWASE, J.
Reserved on : 02.08.2024
Pronounced on : 09.08.2024

ORDER:

1. Present application is for suspension of sentence and grant of bail during pendency of Criminal Appeal No.591 of 2024, arising out of judgment and order passed by learned Additional Sessions Judge, Udgir, dated 15.06.2024 in Sessions Case No.37/2015 for offence punishable under Section 376(2)(n) of the Indian Penal Code.

2. In support of above relief, learned counsel pointed out that charge was framed against applicant for offence under Section 376 (2) (n) of the Indian Penal Code and he was tried and was ultimately held guilty of above charge. Learned counsel pointed out that victim was above 18 years of age and a college going student, whereas applicant appellant also was a student of same college and they were colleagues. He pointed out that, admittedly, there was love affair. Victim has visited house of accused and has alleged sexual intercourse on promise of marriage. He pointed out that second instance is about intercourse at a lodge. That, in fact, whatever instances took place, were consensual one and were not due to force or any undue influence. He pointed out that victim's evidence also suggests that there was no act against her wish or by force. According to learned counsel, in spite of such evidence, charge of rape has been slapped initially and, subsequently, guilt is also recorded. There is inordinate delay in lodging complaint. There is good case on merits in appeal, but it being recently filed, would take long time to be heard. That, applicant was on bail during trial and, hence, prayers for suspension of sentence pending appeal as well as bail are pressed into service.

3. While opposing the above application, learned APP pointed out that serious offence is proved to be committed. There was promise of

marriage, which was never intended to be kept and fulfilled. Victim has deposed about sexual intercourse on false promise of marriage. That, on complete appreciation, learned trial court has recorded guilt. For all above reasons, he prays to dismiss the application.

4. Heard both sides. Perused the papers.

5. Story of prosecution shows and it is also admitted in trial court that prosecutrix was studying in 3rd Year B.A. and, even, accused was studying in the same college and, as such, they both are collegemate. On visiting victims testimony at Exhibit 24, it is emerging that they got to know each other during annual gathering and, since then, they were meeting each other. Her version is that he expressed his liking and love towards her and also expressed his desire to marry her. According to her, he also assured to approach her parents to seek her hand. Then, she has alleged that, in July 2012, he called her to his house when he was alone. She went and claims that she questioned him when they are getting married and he said that they would marry soon. She states that even when she was not willing he had intercourse with her. Second allegation is about she being taken to a lodge in August 2013 i.e. after 1 year of previous incidence and she claims there also she asked about the marriage and he assured to perform it soon and at lodge he maintained physical relations with her. She categorically deposed that whenever she

asked about marriage he told her that his financial condition is not sound and said that let him first get job. Then, she has alleged that up to 01.01.2015 in same lodge he had sexual intercourse with her. In para 3 of evidence she also stated that he approached her parents and uncle to her house and even informed that he is planning to marry her. She also alleges that prior to 2015 he took her to temple and also performed marriage. Then he started avoiding and meeting her and even did not respond to her phone calls and gave false reasons. Finally on 28.05.2015 she learnt about marriage of accused fixed with another girl. Therefore, she lodged report on 03.06.2015.

6. Learned trial court has convicted applicant by holding that by promising to marry, which since inception was a deception, sexual intercourse has been developed. That, he had no intentions to marry at all and therefore charge is held to be proved. Admittedly, appeal has been preferred and the same is recently filed i.e. in the year 2024.

7. In the considered opinion of this court, firstly, victim is major and has already attained the age of discretion. She has admitted about love affair. Only as regards to episode in the house, which she claims to be against her wish, she has accompanied him to lodge on his birthday and even thereafter. At such time she merely states that she resisted. She merely repeated questioning him of marriage. She has also stated that he

had asked her to wait till he secures a job and that his financial condition was not yet sound. She has also stated about he taking her to the temple and perform marriage. She has also deposed that he did approached her parents to seek her hand as assured to her. However, marriage does not seems to have been performed and hence FIR is lodged.

Therefore, in the light of above discussion and the fact that applicant was on bail during trial, relief as prayed deserves to be granted. Hence , following order.

ORDER

- (I) Criminal Application stands allowed.
- (II) The substantive sentence imposed on the applicant in Sessions Case No.37 of 2015 by the learned Additional Sessions Judge, Udgir, on 15.06.2024 stands suspended till the final hearing and disposal of Criminal Appeal No.591 of 2024.
- (III) The applicant – Pramod Bhanudas Bhange 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 tender bail papers and thereafter, the trial Judge to fix dates for his 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.

[ABHAY S. WAGHWASE, J.]

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