



IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3805 OF 2024
IN APEAL/817/2024

Vijaykumar Dattatraya Hibare
Age -35 years, Occu- Labor,
R/o Venugopal Nagar, Kumtha Naka,
Near Hanuman Mandir,
House No.36, Solapur,
Tq. and Dist. Solapur.

... Applicant
(Orig Accused)

Versus

1. The State of Maharashtra
Through Police Inspector,
Shivaji Nagar P.S., Beed.
2. X.Y.Z.

... Respondent
(Respondent No.2 Original
Complainant @ Victim)

...

Advocate for Applicant : Mr. Vijay Vasant Rao Deshmukh
APP for Respondent - State : Mrs. Chaitali Chaudhari - Kutti
Advocate for Respondents : Ms. Tanvi V. Jadhav (Appointed)

...

CORAM : ABHAY S. WAGHWASE, J.

DATED : 23rd SEPTEMBER 2024

PER COURT :-

1. Convict in Sessions Case No. 112 of 2022 is praying for suspension of sentence and grant of bail during pendency of Criminal Appeal No.817 of 2024 filed by present applicant.
2. Learned counsel for applicant pointed out that applicant is

convicted for offence punishable under section 376-B of Indian Penal Code and is sentenced to suffer three years imprisonment and to pay fine. He pointed out that, applicant and complainant are husband and wife. That, there are allegations of commission of above offence. During separation, he submitted that, in fact alleged occurrence is while applicant visited complainant at her place. That, whatever incident took place was consensual, how subsequently after five months FIR has been lodged alleging marital rape. That, applicant has a good case on merits in appeal. However, appeal being of 2024 and it would take long time to be heard and decided. He pointed out that already after conviction, learned trial Judge has granted bail till appeal period is over and the same was continued by this court and he undertakes to abide conditions imposed therein and even there is no adverse remark. For above reasons, it is prayed that, sentence be suspended and bail be granted to the applicant during pendency of appeal.

3. Learned APP strongly opposed pointing out that, there are allegations of forceful sexual relations during separation of marriage. Considering serious allegations and that when trial court on appreciation of evidence has recorded guilt, he opposes both above reliefs.

4. After considering the submissions of both sides, it seems that, informant and present applicant were married on 29.07.2013.

From report lodged by her dated 15.07.2020, it is emerging that, after 4 years cohabitation, there was bickering, resulting into strained relations and so she left his company in 2016 and went to reside with her parents and from there she instituted proceedings under Domestic Violence Act. She has alleged that, during pendency of court proceedings, her husband again developed contact with her since January 2019 and according to her, he again gained her trust and spent entire day in her company on 15.02.2020 and she reported that against her wish, he developed physical relations with her and after a month, she realized that, she had conceived, but husband started disowning the same. Therefore, complainant lodged report against him on 15.07.2020.

5. Admittedly, taking the above dates into consideration, the FIR is lodged after 5 months of alleged physical intimacy. Therefore, statement is made across the bar that applicant was on bail during trial. Considering the relations between the parties, nature of allegations and appeal being of 2024, prayers so raised deserves to be granted. Hence, the following order :-

ORDER

- (i) Criminal Application stands allowed.
- (ii) The substantive sentence imposed on the applicant Vijaykumar Dattatraya Hibare in Sessions Case No. 112 of 2022 by the learned Sessions Judge, Beed on

13.08.2024 stands suspended till the final hearing and disposal of Criminal Appeal No.817 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 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.
- (viii) Fees of learned Advocate, who is appointed to represent the cause of respondent no.2 to be paid by High Court Legal Services Sub-Committee, Aurangabad as per rules

(ABHAY S. WAGHWASE, J.)