



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

**CRIMINAL APPLICATION NO. 3965 OF 2024
IN APPEAL/848/2024**

. Shaikh Mahemud Shaikh Farid
Age: 45 years, Occu.: Agri.,
R/o. Jamgavhan, Tq.Kalamnuri,
Dist.Hingoli.Applicant

Versus

1. The State of Maharashtra
Through Police Inspector,
Akhada Balapur Police Station,
Tq.Kalamnuri, Dist.Hingoli.

2. XYZRespondents

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Advocate for Applicant : Mr. Vishal Amritlal Bagdiya

APP for Respondent no.1 : Mr.D.R.Korade

Advocate for Respondent no.2 : Ms.Mayuri Kasturkar - Kulkarni
(appointed through Legal Aid)

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 13 NOVEMBER, 2024

PRONOUNCED ON : 18 NOVEMBER, 2024

ORDER :-

1. Learned Counsel for the applicant seeks leave to amend prayer
clause.

2. Leave is granted. Amendment to be carried out forthwith.

3. As a result of conviction recorded by the learned Additional
Sessions Judge-2, Hingoli in Special Case (Atro.) No.1 of 2018,

applicant has moved instant application for suspension of sentence and grant of bail.

4. Learned Counsel for the applicant pointed out that applicant was tried vide Special Case (Atro.) No.1 of 2018 and held guilty for offence under Section 354 of the Indian Penal Code (IPC) and under Sections 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as the “SC and ST Act) and is sentenced to suffer rigorous imprisonment for five years and to pay fine for both offences.

5. It is pointed out that there is false implication. That victim is a married woman. That applicant and victim both resides in same locality and opposite to each other. There are allegations that there was outraging of modesty of victim on 15-03-2017. That there was no prompt FIR, rather it was on the next date. Learned Counsel pointed out that there is already political rivalry. That present applicant and victim had both contested election against each other and there is admission to that extent. Learned Counsel pointed out that there are allegations of commission of offence under the provisions of SC and ST Act, however, prosecution could not establish and substantiate that victim was belonging to any reserve category.

He further pointed out that even Investigating Officer has not been examined, still conviction has been recorded for offence under Section 354 of the IPC and under Sections 3(1)(w)(ii) of the SC and ST Act. Therefore, judgment of conviction has been challenged by filing appeal. However, appeal is of 2024 and as it would take long time to be heard so above reliefs are pressed into service.

6. Learned APP and learned Counsel for victim opposed the application on the ground that serious offence of outraging modesty of the victim, who belongs to reserved category, is committed and it is so proved on full-fledge trial. That delay is explained. That accused was aware about caste of victim, but deliberately offence has been committed. For all above reasons, they both prays to reject the application.

7. After hearing the submissions and on going through the papers, it seems that applicant was tried and held guilty by the learned Additional Sessions Judge-2, Hingoli for offence under Section 354 of the IPC and under Sections 3(1)(w)(ii) of the SC and ST Act. That guilt has been recorded by judgment and order dated 09-09-2024 on the strength of evidence of three witnesses i.e. PW1 victim, PW2 husband of victim and PW3 spot pancha.

8. After visiting evidence of PW1 victim, it is emerging that she has narrated in paragraph 2 that accused came from behind and held her breasts with both his hands. Admittedly, occurrence has taken place on 15-03-2017 and FIR is lodged on the next day.

Second charge is of commission of offence under the provisions of the SC & ST Act. Learned trial Judge, in paragraph 19 of the judgment, has observed that inspite of opportunity, Investigating Officer has not been examined and even caste certificate of prosecutrix is not proved by prosecution.

Therefore, there is substance in the appeal, which is pending. Admittedly, appeal is of 2024. Statement is made across the bar that applicant was on bail during trial.

9. Considering the above material, relief as prayed deserves to be granted. Accordingly, following order is passed :

ORDER

- (i) Criminal Application is allowed.
- (ii) The sentence imposed on the applicant - Shaikh Mahemud Shaikh Farid by the learned Additional Sessions Judge-2, Hingoli in Special Case (Atro.) No.1 of 2018 dated 09-09-2024 stands suspended till final hearing and disposal of Criminal Appeal No.848 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.
- (vii) 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.
- (viii) Bail before the trial Court.

(ABHAY S. WAGHWASE)
JUDGE