



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO. 3846 OF 2023
IN APEAL/983/2023**

Vikas Ananda Khandare,
Age : 23 years, Occu. : Labour,
R/o. Ajegaon, Tq.Sengaon, Dist. Hingoli.

... Applicant.

Versus

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Goregaon

2. X.Y.Z.

... Respondents.

...
Mr. Vishal A. Bagdiya, Advocate for Applicant
Mr. N. D. Batule, APP for Respondent – State
Ms. Anagha N. Pedgaonkar, Advocate for Respondent No.2
(Appointed through legal Aid)
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 17th JANUARY, 2024

PRONOUNCED ON : 24th JANUARY, 2024

ORDER :

1. Applicant/convict by way of instant application, is seeking suspension of sentence and grant of bail on account of his conviction recorded by Additional Sessions Judge, Hingoli in Sessions Case No. 56 of 2017, holding him guilty for offence punishable under sections 376(1), 452, 352 and 506 of Indian Penal Code (IPC).

2. Learned Advocate for applicant would submit that, conviction is in absence of cogent, reliable and trustworthy evidence. He pointed out that, victim is a married woman having three children. That, applicant and victim complainant are neighbours and have long acquaintance. He pointed out that medical evidence is negative. That, moreover, applicant was on bail during trial. There was no forcible act. However, as much more time would be required for decision of appeal, he prays for suspension of sentence and grant of bail during pendency of the appeal.

3. While opposing the above application, learned APP submitted that, by use of axe threats have been issued. That, victim herself shouted, and therefore, husband came to rescue. Serious offence has been committed, and therefore, it is prayed that, relief may not be granted.

4. Learned counsel for victim also opposed the application by submitting that, accused had come armed with axe and had forced his entry, and thereafter, locked the door of the room while victim was sleeping with children. That, forcible sexual act was committed by use of deadly weapon. That, when she shouted, husband came to her rescue, he has also seen accused, and therefore, considering such evidence, conviction is recorded. That,

he is likely to misuse the liberty and so relief is opposed.

5. After considering the papers, it seems that, in all four accused including present applicant were charge-sheeted by Goregaon police station for offence under sections 376(1), 452, 352 and 506 read with 34 of IPC. Victim PW2 deposed that, around 12:00 midnight to 1:00 a.m. while she was sleeping with her children in one room and when her husband was sleeping in the veranda, present applicant entered the house and by placing axe on her neck, he committed rape on her. She claims that, she raised shouts and her husband woke up, and thereafter, accused ran away and later on accused nos.2 to 4 came, assaulted and threatened to kill her husband.

6. Husband PW3 is also examined and he has reiterated about hearing call given by his wife on the intervening night of 23.06.2017. He claims to have found accused in the room of his wife and seen him running. FIR seems to be lodged on 24.06.2017.

7. Therefore, taking into account such material into consideration, though before this court it is submitted that, victim is married and that medial evidence is negative, going by the testimony of victim as well as her husband, and even if applicant

was on bail during trial, in view of the seriousness and gravity of the offence, I do not consider it a fit case for grant of relief.

8. The criminal application stands rejected.

(ABHAY S. WAGHWASE, J.)