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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2609 OF 2023
IN
CRIMINAL APPEAL NO.810 of 2023

Santosh Shivaji Bagal : Applicant
Vs.
State of Maharashtra & Anr. : Respondents

Adv. Amit Munde for the Applicant.
Adv. Vijay Shelar for Respondent No.2.
Mrs. M. R. Tidke, APP for the State.

CORAM : KISHORE C. SANT, J.

DATE : 22nd JANUARY, 2024

PC. :

1. Heard the parties.
2. This Application is for suspension of sentence and release of Appellant on bail. The Accused is held guilty for offences punishable under Sections 376(2)(n), 366 & 506 of the Indian Penal Code. The maximum sentence awarded is 10 years for offence punishable under Section 376(2)(n). Fine amount of Rs.25,000/- total is already deposited by the Applicant on 19th June, 2023. It is the case of the Applicant that in fact the prosecutrix and the accused were having love relations though there is an

allegation that at the time of incident though he was married he disclose to the prosecutrix that he is married and had relations with her. He submits that, however, there is no evidence to show that, he was married at the time of the incident. He further submitted that if the conduct of the parties is seen, it is clearly seen that there was love relations between the parties. Both were of the same age. The prosecutrix went to various places with the accused. She even stayed with him at different places and no complaint was made. A complaint is made only when brother of the prosecutrix told her that the accused is married. It is seen that only because the prosecutrix came to know that the accused is married, she filed a complaint. He thus submits that in absence of evidence about marriage, no conviction could have been recorded.

3. Learned APP points out from the judgment that the Court has recorded in the judgment when the prosecutrix had been to the house of the accused there she came to know that he is married and he is having four years son. She submits that the accused has clearly cheated the prosecutrix and prays for rejection of Application.

4. Learned Advocate for the Respondent No.2 also vehemently opposes the Application stating that a clear case is made out to convict the accused. Sufficient evidence is on record. Learned Trial Court has rightly

appreciated the evidence and prays for rejection of the application. Considering the submission, this Court finds that the prosecutrix was also mature at the time of incident. At the most her case is that, under the pretext of marriage she consented for the relations.

5. Learned Advocate for the accused submits that the accused got married only after this incident and not before that. During the course it is also submitted that now even prosecutrix is also married. This Court finds that as the Appellant was in custody from 15th July, 2018 till 26th November, 2018, till he was released on bail by the Trial Court. Thereafter the Applicant is in jail from 13th June, 2023. Thus he has undergone about one year in jail. He has already deposited the fine amount. There is no allegation that he has misused a liberty granted to him during the trial. The case is made out to allow, the application. Hence the following order.

ORDER

- a) Application stands allowed.
- b) Substantive sentence awarded by the learned Sessions Court, in Sessions Case No. 29 of 2020 is suspended.
- c) The Applicant shall be released on bail on furnishing PR. bond of Rs. 25,000/- and one or more solvent sureties in the like amount.

- d) The Applicant shall not contact in any manner to the prosecutrix and her relatives that would amount to harassment to the prosecutrix.
- e) The Applicant shall keep informed concerned Police Station about his residential address, mobile number etc., and other contact details till the final disposal of the Appeal.
- f) The Application stands disposed of.

(KISHORE C. SANT, J.)