

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.1667 OF 2023
IN
CRIMINAL APPEAL NO.509 OF 2023**

Ramashankar Ramsajivan Shukla ..Applicant/Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Ganesh Bhujbal, for the Applicant/Appellant.
Mr. M. R. Tidke, APP for the Respondent/State.
Mr. M. S. Ansari, for the Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 17th JANUARY, 2024

PC.

1. Heard the parties.
2. This Application is filed seeking suspension of sentence awarded by the judgment and order passed by the learned Additional Sessions Judge, Thane in Sessions Case No.424 of 2012, whereby the accused/Applicant is held guilty for the offence punishable under Section 376 of IPC and directed to suffer imprisonment for 7 years and to pay fine of Rs.5000/-. The fine amount is already paid. The accused was on bail during trial. From the date of judgment, accused is in jail. Present case is solely based on the testimony of victim/informant. It is the case of the prosecution that on the date of incident, the accused came to the

house of the victim in the night and had physical relations with the victim. The victim was under the impression that the accused is her husband had the sexual intercourse with him. It is after sometime, she realized that he was not her husband and said person was the accused/Applicant. Looking at the entire deposition of the victim, it appears that it does not inspire confidence. Though there is medical evidence, it is not definite that the forcible intercourse was committed. The CA report also only states that the blood group of the semen found on the person of prosecutrix was of group "A". However, there is no evidence to show that the blood group of the accused is "A". Thus, even CA report is of no use to the prosecution case. *Prima-face*, a case is made out to allow the application.

3. The application as such stands allowed.
4. Substantive sentence awarded by learned Additional Sessions Judge, Thane in Sessions Case No.424 of 2012 stands suspended.
5. Applicant/Appellant be released on bail on furnishing PR bond with solvent surety in the sum of Rs.30,000/-.
6. Applicant/Appellant shall keep informed the concerned Police Station/Investigating Officer about his residential details and other contact details like mobile number etc. till final disposal of the Appeal.

7. The Application stands disposed of as such.
8. Learned advocate for the Respondent No.2 is entitled to receive fess from Legal Aid Services Authority as per rules.

[KISHORE C. SANT, J.]