

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2267 OF 2023

IN

CRIMINAL APPEAL NO.799 OF 2023

Akram @ Munna Aslam Qureshi

: Applicant/
Accused

Vs.

The State of Maharashtra & Anr.

: Respondents/
Orig. Complainant

Adv. V. S. Tiwari, Adv. Priya Muthupandi & Adv. Priti Tiwari for the
Appellant/Accused.

Adv. Amna Khan h/f Adv. Farhana Shah for the Respondent No.2.

Mr. A. R. Patil, APP for the Respondent/State.

CORAM : KISHORE C. SANT, J.

DATE : 7TH FEBRUARY, 2024

PC. :

1. Heard the parties.
2. This Application is filed seeking suspension of sentence awarded by the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai dated 17th February, 2023 in Sessions Case No. 556 of 2017. The Applicant is convicted for the offence punishable under Section 376 of Indian Penal Code and is directed to suffer R.I. for 10 years and to pay fine of Rs.3,000/- in default to suffer further R.I. for 3 months.
3. The learned Advocate has pressed this Application mainly on

the ground that the Applicant was arrested on 22nd April, 2017 and since then he is behind the bar. The sentence awarded is only 10 years out of the period of 10 years, he has already suffered about 7 years i.e. more than half of the sentence.

4. Learned Advocate for the Respondent and learned APP vehemently oppose the Application stating that since the accused is related to the victim & still he has committed such a crime. The Trial Court has rightly appreciated the evidence and has recorded a conviction and prayed for rejection of the Application.

5. Considering the fact that the Applicant has already suffered about 7 years sentence out of 10 years. This Court is inclined to consider the Application. The Hon'ble Apex Court in the judgment in the matter of ***Saudan Singh Vs. State of Uttar Pradesh***, reported in 2021 SCC OnLine 3259 and the order passed by Division Bench of this Court in the matter of ***Vaibhav Prabhakar Shelar Vs. The State Of Maharashtra in Interim Application No.1530 of 2023 in Criminal Appeal No.964 of 2022*** has already given the guidelines that when there is no likelihood of the Appeal being in near future application be considered liberally. Looking to the pendency of the Appeals in this Court it is not likely that this Appeal be taken for final hearing immediately. Hence the following order.

ORDER

- a) The Application stands allowed.
- b) The sentence awarded by the learned Additional Sessions Judge at Fort, Greater Mumbai dated 17th February, 2023 awarding punishment to the Applicant under Section 376 of the Indian Penal Code, shall stand suspended, pending the Appeal.
- c) The Applicant be enlarged on bail on furnishing P R. Bond of Rs.25,000/- and one more solvent sureties in the like amount.
- d) He shall not try to contact prosecutrix and her family members and other witnesses.
- e) The Applicant shall attend the police station every three months as per the convenient time of the Police Station-Incharge.
- f) 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.
- g) The Application stands disposed of.

6. At this stage, learned Advocate request that condition of furnishing security be modified & the Applicant be allowed to furnish security after he is released on bail. It is difficult for the Applicant to arrange the security as there is no one to look after his family except his old mother. Considering this 8 weeks time is granted to furnish the security after he is released on bail. If he fails to furnish security within eight weeks this order shall stand cancelled.

(KISHORE C. SANT, J.)