

2023 SCC OnLine Bom 1613

In the High Court of Bombay at Goa
(BEFORE PRAKASH D. NAIK, J.)

Geetesh Pagi ... Applicant;

Versus

State Thr. I.O/P.I. Canacona Police Station and
Another ... Respondents.

Criminal Misc. Application No. 63 of 2023 in Criminal Appeal No. 22
of 2023

Decided on August 3, 2023

Advocates who appeared in this case:

Mr. A.D. Bhobe and Ms. S. Shaikh, Advocate for the petitioners.

Mr. S.G. Bhobe, Public Prosecutor for the respondents.

The Order of the Court was delivered by

PRAKASH D. NAIK, J.:— This is an application for suspension of sentence and grant of bail during the pendency of the Criminal Appeal No. 22 of 2023 preferred by the appellant/applicant challenging the judgment and order of conviction dated 31.7.2023 passed by the Addl. Sessions Judge, Fast Track Court-1, South Goa Margao.

2. The applicant/accused has been convicted for the offence punishable under Section 376 of the IPC and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs. 5,000/- and in default to undergo simple imprisonment for 6 months.

3. The case of the prosecution is that the victim and the accused were acquainted with each other. There were physical relationship between them on several occasions. The accused had promised the victim that he would marry her and under the guise of marriage had maintained physical relationship.

4. The learned counsel for the applicant submitted that the evidence of the victim clearly indicates that she was in a relationship with the accused. The relationship was of consensual nature. The victim was aged 40 years and the accused was around 22 years. The applicant was granted anticipatory bail during investigation. He has not committed breach of the order granting anticipatory bail.

5. Mr. S. G. Bhobe, learned Public Prosecutor submitted that trial Court has convicted the applicant on the basis of the evidence adduced by the prosecution. This is a case of false promise made by the accused.

6. I have perused the evidence of the complainant and the judgment

of the trial Court. From the version of the complainant it appears that she was in a relationship with the accused. There were several instances of physical relationship between them. She has also deposed that the accused had stayed with her and maintained a physical relationship. The victim however contended that the promise of marriage was not fulfilled by the accused. From the version of the complainant/victim it appears that relationship was of consensual nature. There is distinction between breach of promise and false promise to induce the victim to maintain physical relationship.

7. Considering these circumstances, case for suspension of sentence and grant of bail is made out.

ORDER

- (i) Criminal Misc. application no. 63/2023 is allowed.
- (ii) The substantive sentence of imprisonment imposed vide judgment and order dated 31.7.2023 passed by the Additional Sessions Judge, Fast Track Court-1, South Goa Margao, in Sessions Case no. 21/2017 is suspended and the applicant is directed to be released on bail on execution of PR bond of Rs. 20,000/- (Rupees twenty thousand only) with one or two sureties in the like amount to the satisfaction of the Registrar(Judicial) of this Court.
- (iii) Criminal Misc. application no. 63/2023 stands disposed of accordingly.

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