
(2020) 09 MP CK 0005
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 2568 Of 2020

Vijay

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 02-09-2020

Acts Referred:

Indian Penal Code, 1860 — Section 451, 354, 354(ka)

Citation : (2020) 09 MP CK 0005

Hon'ble Judges : Rajendra Kumar Srivastava, J

Bench : Single Bench

Advocate : Sandeep Kumar Mishra, Amit Bhurak,

Final Decision : Allowed

Judgement

Heard on the question of admission.

Appeal is admitted for final hearing.

Now, heard on I.A. No.5191/2020 an application for suspension of execution of sentence awarded to the appellant and grant of bail.

Vide judgment dated 17.02.220 in S.T. No. 68/2019 passed by learned Special Judge, POCSO Act, 2012, Distt.-Khandwa, M.P., the appellant has been convicted for the offence punishable under Section 451, 354 & 354(ka) of IPC and sentenced him to undergo R.I. for 1 year with a fine of Rs.500/-, R.I. for 1 year with a fine of Rs. 500/- and R.I. for 1 year with a fine of Rs. 500/- respectively with default stipulation.

As per prosecution case, on 24.07.2019, at about 3 P.M. when the prosecutrix was alone at her home, at that time, appellant entered in her house, grabbed her mouth and touched her with bad intention. Then, she cried. On her crying, her brother Karan reached the spot. Appellant ran away from there by giving dire consequences, if she reveals the incident to anyone. Thereafter, the FIR was lodged and the aforesaid offence has been registered against the present

appellant.

Learned counsel for the appellant has submitted that the appellant has been falsely implicated in this case. It is further submitted that prosecutrix (PW-4) is above 18 years. Both parties love each other. At the time of incident, prosecutrix's brother Karan reached the spot, so appellant has been falsely implicated. Prosecutrix itself admitted in her evidence that she deposed her statement before the trial court as per say of Govt. Advocate, so she is a tutored witness. Hence, there are material contradiction, omissions and improvements in the version of the prosecution witnesses. Apart from that, no independent witness has supported the case of prosecution. He has further submitted that during trial, appellant was on bail and his execution of jail sentence was already suspended by the trial court and was granted bail by the learned trial court till 03.04.2020 and thereafter his bail period was extended by this court till 02.06.2020. Thereafter, due to worldwide lockdown he could not file proper application before this court. The appeal is of year 2020 and trial will take time to conclude the same. There is fair chance to succeed in the appeal. There is no likelihood of his absconding and tampering with the evidence. Under the circumstances, if the execution of sentence of the appellant is not suspended, his right to file appeal will be futile. Hence, prayer is made for suspension of jail sentence and grant of bail to the present appellant-accused.

On the other hand, learned Panel Lawyer for the respondent-State opposes the submission of appellant's counsel and prays for rejection of application.

Heard and perused the record.

Having considered the argument advanced by learned counsel for the parties and the facts that the learned trial court has already suspended the execution of jail sentence of the appellant, prosecutrix itself admitted in her evidence that she photographed with the appellant and there was laughter and joke between them, appellant was on bail during trial, this appeal is of year 2020, final hearing of this appeal will take time but without commenting anything on the merits of the case, the said I.A. is allowed

It is ordered that subject to payment of fine amount, if not already deposited, the execution of jail sentence of the appellant-Vijay shall remain suspended during the pendency of this appeal and he be released on bail on his furnishing a personal bond for a sum of Rs. 50,000/- (Rupees Fifty Thousand Only) with one solvent surety in the same like amount to the satisfaction of the trial court for his appearance before the learned trial court on 27.11.2020 and thereafter on all other such subsequent dates, as may be fixed by the trial court in this regard.

In case, the appellant is found absent on any date fixed by the trial court then the said court shall be free to issue and execute warrant of arrest without referring the matter to this Court, provided the Registry of this Court is kept informed.

Further, in view of the order passed by the Hon'ble Supreme Court in suo moto W.P.No.1/2020, it would be appropriate to issue the following direction to the jail authority:-

1. The Jail Authority shall ensure the medical examination of the appellant by the jail doctor before his release.

2 . The appellant shall not be released if he is suffering from 'Corona Virus disease'. For this purpose appropriate tests will be carried out.

3 . If it is found that the appellant is suffering from 'Corona Virus disease', necessary steps will be taken by the concerned authority by placing him in appropriate quarantine facility.

List this matter for final hearing in due course, as per listing policy. C.C. as per rules.