

**IN THE HIGH Court OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

**CRIMINAL APPLICATION NO.1669 OF 2015.
IN
CRIMINAL APPEAL NO.319/2015.**

SAMBHAJI NAMDEO BADE.

Versus.

THE STATE OF MAHARASHTRA.

**BHAGIRATHI @ BHAGABAI W/O BHANUDAS BADE : First Informant
and Applicant in Cri.Appln.No.2320/15.**

Appearance =>

Mr. Sudarshan J. Salunke, Advocate for the Applicant.

Mr. Kishor Khade, Advocate for the Applicant in Cri.Appln.
No.2320/15 (First Informant.)

Mrs. V.A. Shinde, Additional Public Prosecutor for the State of
Maharashtra.

CORAM : VM. Deshpande, J.

DATE : 30th April, 2015.

Per Court :-

This is an Application for suspension of substantive jail
sentence and for grant of bail.

[2] The learned Additional Sessions Judge, Majalgaon,
District – Beed vide his Judgment and Order dated 23rd March, 2015
passed in Sessions Case No.10/2014 convicted the Applicant for the
offence punishable under Section 376 of the Indian Penal Code and

sentenced him to suffer rigorous imprisonment for seven years and to pay fine of Rs.3000/- and in default of payment of fine amount, to suffer further simple imprisonment for three months.

Applicant is further convicted for the offence punishable under Section 341 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for one month and to pay fine of Rs.200/- and in default of payment of fine amount, to suffer further simple imprisonment for five days.

[3] Heard Mr. Sudarshan J. Salunke, learned counsel for the Applicant, Mr. Kishor Khade, learned counsel for the Applicant in Cri. Appln. No.2320/15 (First Informant.) and Mrs. V.A. Shinde, learned Additional Public Prosecutor for the State, in extenso.

[4] Mr. Kishor Khade, learned counsel for the Applicant - First Informant strenuously urged before this Court that, application for bail should not be considered favourably. According to him, submission of learned counsel for the Applicant that since the Applicant was on bail, throughout the trial; that cannot be a consideration for considering the Application for suspension of substantive jail sentence and for grant of bail, during pendency of Criminal Appeal.

[5] In order to buttress his submissions, he placed his reliance on the following authoritative pronouncements :-

(i) Sidhartha Vashisht alias Manu Sharma V/s. State NCT Of Delhi, 2008(3) Maha.L.J., (Cri.), 541.

(ii) Suzanne Lousie Martin V/s. Staet of Rajasthan & Ors., 2009 DGLS (CRI.) Soft., 2226.

(iii) Keshvanand Harinarayan Swami V/s. State of Gujarat. 1997 CRI.L.J., 3173.

(iv) Deepak Babulal Dhurve & Ors. V/s. The State of Maharashtra. 2014, ALL M.R. (CRI.), 2445.

Lastly, Mr. Kishor Khade, learned counsel for the Applicant submits that prayer to grant bail by suspending substantive jail sentence should be rejected.

[6] There cannot be quarrel for the proposition that merely because the Applicant was on bail; he has any right to be released on bail, on his presentation of Appeal, before the Appellate Court. That will be one of the factors, while considering the application for bail, by the Appellate Court.

There is no straight-jacket formula by which it can be said that merely because the accused is convicted by the learned trial Court, his bail application cannot be considered favourably by the Appellate Court.

Every case is to be considered in the light of available evidence on the record. Precedents, always are guiding factors however, those have to be considered in the light of available evidence and material in respect of the particular case.

[7] In the present case, the date of incident is 2nd May, 2013. Report is lodged on 4th May, 2013.

Debate is made that the prosecutrix or her husband were not responsible for the delay caused. The learned counsel for the Applicant invited attention of this Court to the evidence of the prosecutrix and her husband. This Court will have to render its verdict, as to whether the prosecution has satisfactorily explained the delay or not at the time of final hearing of the Appeal.

However, fact remains that there is delay. Further, on the date when report was lodged by the prosecutrix; on the very same day, the prosecutrix was medically examined by the Doctor. There are certain injuries as could be noticed in the injury certificate Exhibit – 21. Exhibit -21 is conspicuous in its absence in respect of age of those injuries. Further the Doctor - (Mrs.(Dr.) Deepali Gavhane), who has examined the prosecutrix i.e. PW No.3 is also silent in her evidence recorded before the Court in respect of age of those injuries. This assumes importance, since according to the prosecution, the incident has occurred on 2nd May, 2013 and prosecutrix lodged the report on 4th May, 2013.

[8] Further vaginal swab of prosecutrix was taken on 4th May, 2013. Said was sent to Chemical analyzer. Report of Chemical Analysis in that behalf is available on record at Exhibit – 37. Chemical Analysis report shows no detection of semen on vaginal swab and public hairs of the prosecutrix.

[9] Mrs. Shinde, learned Additional Public Prosecutor as also Mr. Kishor Khade, learned counsel for the First Informant invited attention of this Court to the report of Chemical Analyzer in respect of clothes of the prosecutrix, which shows existence of semen on petticoat as well as knicker and group of the same is Blood Group “O”. Thus, at least prima facie, there are two different C.A. Reports. Further the clothes of the prosecutrix were seized on 4th May, 2013. Incident is dated 2nd May, 2013. Prima facie, one has to reach to the conclusion that clothes wear by the prosecutrix on 2nd May, 2013 will not be kept in same condition by the prosecutrix till 4th May, 2013.

[10] In this backdrop, suggestion is given to the prosecutrix, which is of course denied by the prosecutrix that she was having illicit relations with the present Applicant. Present Applicant is cousin of her husband.

[11] In that view of the matter, the Applicant, who is on bail and at no point of time, he has misused the liberty granted to him, has to be considered as positive factor while considering the present application for bail. Hence, I pass the following order :-

ORDER

(i) Criminal Application is allowed.

(ii) Substantive Jail sentence passed by the learned Additional Sessions Judge, Majalgaon, District – Beed vide his Judgment and Order dated 23rd March, 2015 passed in

Sessions Case No.10/2014, whereby convicting the Applicant for the offence punishable under Section/s 341 and 376 of the Indian Penal Code shall remain suspended, during pendency of present Criminal Appeal.

(iii) Applicant shall be released on bail on he executing PR. Bond of Rs. 25,000/- [Rs. Twenty five Thousand.] with two solvent sureties in the like amount.

(iv) Bail before trial Court.

(v) Applicant shall remain present before this Court, at the time of final hearing of Criminal Application.

(vi) With this Criminal Application is allowed and same is disposed of accordingly.

(V.M. DESHPANDE, J.)