IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1841 OF 2015
IN
CRIMINAL APPEAL NO. 341 OF 2015

Santosh Babugir Gosavi,
Age : 40 years, Occu. Labour,
R/o Sukewadi, Tq. Sangamner,
District Ahmednagar APPLICANT

VERSUS

The State of Maharashtra,
through P.S.O., City Police
Station, Sangamner,
District Ahmednagar RESPONDENT

Mr. V.Y. Bhide, Advocate for the applicant
Mr. S.R. Palnitkar, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.
DATE : 21/07/2015

ORAL ORDER :

1. Heard both sides.

2. Mr. V.Y. Bhide, learned counsel for the applicant, files on record the notes of evidence as regards relevant witnesses. The same are accepted on record and marked “X” for the purposes of identification.

3. The present applicant is convicted by the

learned Additional Sessions Judge, Sangamner, vide judgement and order dated 20th March, 2015 passed in Sessions Case No. 37/2013, for the offences punishable under section 376 read with section 511 of the I.P. Code and under sections 3 and 4 read with section 18 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 10,000/-, in default to suffer simple imprisonment for six months, is praying for suspension of substantive sentences and for his release on bail.

4. The applicant is convicted for an offence of attempting to commit rape over his own twelve years old girl.

5. Mr. Bhide, learned counsel for the applicant, submits that not only the sentence is short-term sentence, but also the deposition of the mother of the prosecutrix i.e. the wife of the present applicant would show that there was bitter enmity between him and the said lady and one after another, the complaints were filed against him with the police. He further points towards the statement of the prosecutrix that her

brother had peeped from the window at the time of incident. The statement is an improvement over the statement recorded by the police. Besides, very same brother PW5 Ganesh has disowned any such incident being witnessed by him. Besides this, he submitted that the learned Sessions Judge has not correctly examined the minor witnesses to find out as to whether they were able to prudently answer the questions put to them. Further, the present applicant is behind the bars since 23rd June, 2013 and in the circumstances, he submitted that the applicant be released on bail by suspending the substantive sentences.

6. The learned A.P.P. opposed the application. He submitted that all the submissions of the learned counsel for the applicant are regarding the merit of the case. He submits that considering the fact that this is a case of attempt to commit rape over the applicant's own twelve years daughter, he can not be released on bail.

7. Considering the overall material on record, without making any comment on merit of the case as canvassed by the learned counsel for the applicant,

since the applicant is behind the bars for a period of more than two years, in the background of the case and considering the short-term sentence awarded to the applicant, in my view, the applicant can very well be released on bail. Hence, the following order :-

8. The substantive sentences awarded to the present applicant — Santosh Babugir Gosavi are hereby suspended till the disposal of Criminal Appeal No. 341/2015 filed by him in this Court.

. The fine amount is already deposited by the applicant, as submitted by the learned counsel for the applicant. The applicant be released on bail on his executing P.R. bond in the sum of Rs. 30,000/- (rupees thirty thousand) and also upon furnishing surety in the like amount.

9. The present application accordingly stands allowed and disposed of.

[M.T. JOSHI]
JUDGE

npj/criapln1841-2015