

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2500 OF 2015 IN
CRIMINAL APPEAL NO. 411 OF 2015

Santosh s/o Balu Kale,
Age : 30 years, Occu.: Labour,
R/o.: Bhenda Bk., Tal. Newasa,
District Ahmednagar.

.. Applicant
(Orig. Accused)

Vs.

The State of Maharashtra
Through P.I. Newasa Police Station
Tal. Newasa, District Ahmednagar

.. Respondent

Mr. R.P. Karpe, Advocate for applicant
Mr. V.P. Kadam, A.P.P. for respondent-State

CORAM : M.T. JOSHI, J.
DATE : 10/07/2015

ORAL ORDER :

Heard both sides. Perused the papers.

2. Present applicant has been convicted by the learned District Judge-1 & Additional Sessions Judge, Newasa vide judgment and order dated 24/3/2015 passed in Sessions Case No. 93 of 2014 for the offences punishable under section 376(1) of the Indian Penal Code, under section 8, 12 of Protection of Children from Sexual Offences Act, 2012 and sentenced to suffer rigorous imprisonment for seven years and to pay fine nil for

offence punishable under section 376(1) of the Indian Penal Code. The applicant is not separately sentenced for the offences punishable under section 8, 12 of Protection of Children from Sexual Offences Act, 2012 as he is convicted for major offence punishable under section 376(1) of the I.P. Code.

3. Learned counsel for the applicant/applicant submits that while the prosecution has not examined the prosecutrix, who was 14 years old girl, the complainant who is the aunt of the prosecutrix as well as the husband of the complainant have both turned hostile to the prosecution case. Thus, there is no substantive evidence at all. In the circumstances, he submits that the applicant be released on bail.

4. Learned A.P.P. however opposed the application. He submits that the medical evidence would show that the prosecutrix has given the history of the sexual assault and it would show that her hymen was torn. To this, Mr. Karpe, learned counsel for the applicant submits that the very same injury certificate would show that there were no obvious injuries on the person of the prosecutrix and hymen may be torn by number of causes.

. Mr. Karpe further submits that during the trial for some period, the applicant was on bail however, since he could not attend the Court, he was again arrested and he is now behind the bars. Considering all these facts, he submits that the applicant be released on bail.

5. Having considered the material on record, without making any comment on the merit of the case at this stage, in my view, the substantive sentence can be suspended and the applicant can be released on bail. Hence, the following order:-

6. The Application is allowed.

7. The substantive sentences are hereby suspended.

8. The applicant be released on bail upon his executing P.R. bond in the amount of Rs.50,000/- (Rs. Fifty Thousand) and also upon furnishing two sureties in the amount of Rs.25,000/- (Rs. Twenty Five Thousand) each. Application stands disposed of.

[M.T. JOSHI]
JUDGE

arp/