

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3459 OF 2015 IN
CRIMINAL APPEAL NO.490 OF 2015

Mohan s/o Vitthal Shinde ... APPLICANT

VERSUS

The State of Maharashtra & anr. ... RESPONDENTS

.....
Shri Kunal Kale, Advocate holding for
Shri A.S. Kale, Advocate for applicant
Shri B.A. Shinde, A.P.P. for State
.....

CORAM: M.T. JOSHI, J.

DATED: 16th October, 2015.

ORAL ORDER :

1. Heard both sides. Pending the appeal against conviction for the offences punishable under Sections 376(2)(i), (n) and 506(2) of the Indian Penal Code and consequential sentences to suffer rigorous imprisonment for ten years and three years respectively, the original accused has preferred the present appeal in which the present application for his release on bail by suspending the substantive sentence, is filed.

2. The prosecution case would reveal that, 13 years old prosecutrix was raped on three consecutive days when she attended the house of the applicant to help his pregnant wife. The learned Sessions Judge held that the case is proved.

3. The learned counsel for the applicant points towards the prosecution case itself that the mother of the prosecutrix is in prostitution business and that she was arrested for an offence punishable under the provisions of Prevention of Immoral Trafficking Act. He further points towards the medical evidence, which would show that, after 24 hours of the said last incident, the prosecutrix was examined by the Medical Officer and no injuries on her private part were found. As per the medical officer, rupture of hymen can also be attributed to other cause and not necessarily a sexual act. He further submits that, since the date of arrest the applicant is behind the bars.

4. Learned A.P.P. opposes the application. He submits that, the contentions of the accused that the mother of the prosecutrix is in prostitution business is irrelevant. The medical evidence would show that the hymen was ruptured. There is nothing to disbelieve the version of the prosecutrix.

5. Upon hearing both the sides and without making any comment, as argued by the counsel, in my view, since the appellant/ applicant was behind the bars during the trial and the hearing of the appeal may take its own time, the substantive sentences can be suspended taking into consideration the background of the case.

6. In the circumstances, the substantive sentences are suspended. Upon deposit of fine amount, if not deposited till this date, the applicant be released on bail on furnishing P.R. bond in the sum of Rs.20,000/- (Rupees twenty thousand) and also upon furnishing surety in the like amount. Application disposed of.

Hamdast granted.

(M. T. JOSHI, J.)

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