

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

**CRIMINAL APPLICATION NO. 4479 OF 2014
IN
CRIMINAL APPEAL NO. 501 OF 2014**

Damodhar Pratapram Jangid ...Applicant

versus

The State of Maharashtra ...Respondent

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Mr. N.S. Ghanekar, Advocate holding for
Mr. Ashwin V. Hon, Advocate for Applicant
Mr. D.V. Tele, A.P.P. for respondent - State.

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CORAM : A.I.S. CHEEMA, J.

DATED : 19th JANUARY, 2015

Order :-

1. Heard learned counsel for the applicant and learned Additional Public Prosecutor for respondent.

2. This application has been filed by the applicant-accused to grant bail. The applicant has been convicted for the offence punishable under sections 376 and 506 of the Indian penal Code (hereinafter referred to as "IPC" for short) by learned Sessions Judge, Latur on 30-07-2014. He has been also convicted for the offence punishable under Sections 4 of the Protection of Children from Sexual Offences Act, 2012(hereinafter referred to as "Act of 2012")

for short). The applicant was in custody when the matter was pending before the trial Court. Now, he has been convicted.

3. Learned counsel for applicant submits that trial is already over and there is no fear that applicant would tamper the evidence. Referring to the evidence brought on record by the prosecution, it is submitted by learned counsel for the applicant that the incident is reported to have taken place on 10-04-2013. The prosecutrix is stated to have been below the age of 16 years. Learned counsel for applicant points out that evidence brought by the prosecution was that, prosecutrix, daughter of the landlord had come to stay overnight with minor son - Shankar of the applicant aged about 9 years and they slept in one room. There was failure of electricity at about 10.45 p.m. Accused came in the room concerned and the accused fanned his son Shankar by means of towel. The electricity came back at about 11.00 p.m. It is alleged that thereafter, accused committed forcible intercourse on the prosecutrix.

4. Learned counsel for the applicant submits that the evidence on record is not reliable that minor son was sleeping on the cot of 4 X6 feet along with prosecutrix and accused also joined in and committed alleged forceful act. Learned counsel for applicant submits that it is unbelievable that even after the incident prosecutrix continued to be in the same room till morning. It is also argued that as per prosecution, prosecutrix informed the incident to her father only in the evening on 11-04-2013 and still first information report came to be lodged only in the evening of 12-04-2013. According to him, there was delay. Mother of the prosecutrix was knowing an advocate and her brother was working as clerk of an Advocate. Thus, according to him, false case has been filed. Learned counsel submits that there was dispute on account of repayment of money between the father of prosecutrix and the accused.

5. Learned counsel for applicant referring to evidence of Dr. Varsha, submits that prosecutrix was examined on 13-04-2013 and did not have marks of injury and there was no evidence that force had been used on her. Her hymen was ruptured and those tears were old.

6. Learned Additional Public Prosecutor submits that the prosecutrix was clearly below the age of 16 years and the evidence of her father shows that prosecutrix was nervous after the incident and when the accused was confronted he accepted that he committed such act. According to learned Additional Public Prosecutor, there was no reason for the prosecutrix to falsely implicate the accused. She had not told about the incident to her mother as she was suffering from blood pressure. Learned Additional Public Prosecutor submits that there is no reason to grant bail to the applicant-accused.

7. Heard both sides. Perused the record. It is clear case of committing sexual intercourse with minor. Her consent, or otherwise is immaterial. It was argued by the learned counsel for the applicant that there was no proof of resistance and minor did not have any external injuries. This is not sufficient to doubt the prosecutrix. The prosecutrix being minor and under sudden pressure, in such situation, may react differently. Such incident can have different types of pressure on the victims and there is not straight jacket formula, that if victim was not agreeable then she must

physically resist. Old tear of hymen itself also is no reason to jump to the conclusion that the victim was habituated to sexual intercourse. Hymen may get ruptured by reason other than sexual intercourse also.

8. Looking to the material available, no case for grant of bail is made out to convicted accused who was also under trial when matter was conducted. There is no substance in the criminal application and the same stands rejected.

9. The observations made are limited for the purpose of deciding present bail application only.

(A.I.S. CHEEMA, J.)

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