

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4621 OF 2015 IN
CRIMINAL APPEAL NO. 686 OF 2015

Vikram S/o Shivaji Thorat,
Age : 27 years, Occu.: Agriculture,
R/o : Village Virgaon, Taluka : Vaijapur,
District : Aurangabad

[At present the applicant is
in Aurangabad Central Prison,
Harsool, Aurangabad, Taluka
and District : Aurangabad]

.. Applicant/
Appellant
[Orig. Accused]

Vs.

The State of Maharashtra,
Through the Police Station Officer,
Virgaon, Taluka : Vaijapur,
District : Aurangabad

.. Respondent
[Prosecution]

Mr. Rajendra S. Deshmukh, Advocate for the applicant
Mr. N.T. Bhagat, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.
DATE : 17/11/2015

ORAL ORDER :

Heard.

2. The present applicant, who has been convicted by the learned Additional Sessions Judge, Vaijapur vide judgment and order dated 13/08/2015 passed in Sessions Case No. 166 of 2012, for the offences punishable under

section 376 and 448 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 10 years and six months, respectively, with direction to pay fine of Rs.1500/- and Rs.500/-, respectively, in default to suffer further imprisonment for 3 months and 1 month, respectively, for the aforesaid offences, is praying for suspension of the substantive sentences during the pendency of the appeal and his release on bail.

3. Mr. Rajendra Deshmukh, learned counsel for the applicant submits that the fine amount is already deposited. He further submits that the prosecution case itself would reveal that while the house of the prosecutrix was singularly placed in the fields, the door of her house was kept unlatched by her in the midnight of 30/5/2011. The excuse given that as the husband of the prosecutrix was expected to come from the agricultural operations, she kept the door unlatched, in the circumstances, is unnatural.

. He further points that the victim has deposed that till completing the intercourse by the present applicant, he has not released her and, therefore, semen

had fallen on her clothes and private part. Further, the prosecution case would show that the victim did not take any bath and on 31/5/2011 i.e. on the next day, at about 12.30 pm, in the noon, she was medically examined and at that time, no semen was seen on her vagina, saree or her clothes.

. Further, according to him, though the prosecution case is that the applicant/appellant gagged her mouth and forcibly committed sexual intercourse, the Medical Officer did not find scratch on her body. In the circumstances, he submits that the applicant may be released on bail.

4. Learned A.P.P. opposed the application. He submits that the prosecutrix has deposed that the appellant-applicant has committed forcible sexual intercourse with her. The learned Sessions Judge has awarded rigorous imprisonment of 10 years for the offence punishable under section 376 of the Indian Penal Code and, therefore, the applicant does not deserve to be released on bail.

5. Upon considering all the material on record and finding that during the pendency of the trial, the applicant/appellant was released on bail and that he has not misused any liberty and finding that the hearing of the Appeal itself may take its own time, in my view, the applicant deserves to be released on bail. In the circumstances, the following order :-

6. Criminal Application is hereby allowed.

7. The substantive sentences awarded to the present applicant/appellant are hereby suspended. The applicant be released on bail, upon his execution of P.R. bond in the sum of Rs.20,000/- (Rs. Twenty Thousand) and also upon furnishing surety in the like amount.

8. Hamdast granted.

9. Application stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

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