

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5376 OF 2014
IN
CRIMINAL APPEAL NO.603 OF 2014

Pappu s/o. Parasram Narwade,
Age 22 years, occ. Agri. and
Education, r/o. Warzadi,
Tq.Gangapur, Dist.Aurangabad ..Applicant

Versus

The State of Maharashtra ..Respondent

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Mr.Nilesh Ghanekar, advocate for applicant

Mr.S.R.Palnitkar, AGP for respondent - State

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CORAM : M.T. JOSHI, J.
DATE : AUGUST 04, 2015

PER COURT :

Heard both sides.

2] Present applicant, who is convicted and sentenced by learned Additional Sessions Judge, Aurangabad in Sessions Case No.52 of 2013 for the offences punishable under Section 341, 376 and 506 of Indian Penal Code, has filed present

application for suspension of the substantive sentences and to release him on bail. The major sentence awarded by learned Additional Sessions Judge is seven years for the offence punishable under Section 376 of Indian Penal Code.

3] The applicant is behind the bars since 7th October, 2012. The record would show that according to the prosecution case, a fourteen years old minor girl was subjected to forcible sexual intercourse by the applicant on 7th October, 2012 in a field.

4] Mr.Ghanekar, learned counsel for the applicant, submits that though the prosecutrix has stated on oath, that she had given several bites to the applicant to avoid the sexual intercourse and though she resisted it by giving kicks, scratching and biting the applicant, the injury certificate as regards the applicant, filed on

record by the prosecution, would show that there were no injuries on the person of the applicant. He further submits that, similarly, though the medical examination certificate as regards the prosecutrix, placed on record by the prosecution at Exhibit 26, would show that there were no injuries on her person and even the hymen was intact, though the prosecution case is that there was forcible sexual intercourse with the prosecutrix. Learned counsel further points towards the cross-examination of the prosecutrix, which would show that her age, at the time of the incident, was nineteen years. As against this, the *bona fide* certificate issued by the Headmaster of the school, would show that the prosecutrix was fourteen years old at the time of the incident and the Headmaster has admitted in cross-examination that the entry regarding the age of the prosecutrix in the *bona fide* certificate, was made on the basis of transfer certificate issued by

previous school of the prosecutrix. Learned counsel submits that there is no medical opinion regarding the age of the prosecutrix. In the circumstances, he submits that the substantive sentences may be suspended and the applicant may be released on bail during pendency of the appeal.

5] Learned APP opposes the application. He submits that there is no reason for the prosecutrix to make a false statement though the defence was that there was close relationship between the applicant/appellant and the prosecutrix.

6] Considering the overall facts on record and finding that hearing of the appeal may take its own time, without making any comment on the submissions advanced by both sides, in my view, in the background of the case, the applicant can

be released on bail by suspending the substantive sentences, during pendency of the appeal.

7] Hence, the following order :-

A] The substantive sentences of the applicant/appellant are hereby suspended, during pendency of the appeal.

B] Upon deposit of the fine amount, the applicant be released on bail upon his executing P.R. bond in the sum of Rs.30,000/- (Rs.Thirty Thousand) and also upon furnishing surety in the like amount.

C] The applicant is directed not to enter the territorial limits of village Warzadi, Tq.Gangapur, Dist.Aurangabad for a period of two years or till the appeal is decided, whichever occurs earlier, without prior permission of the concerned sessions court.

D] In the P.R. Bond, the applicant shall give his permanent address and address of his place of residence during the said period of two years.

[M.T. JOSHI, J.]

kbp