

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.350 OF 2015
IN
CRIMINAL APPEAL NO.156 OF 2015

Aarif Mahamadkhan Maldar ..Applicant
Versus
The State of Maharashtra ..Respondent

....
Mr. A.N. Pathan, Advocate for the Applicant.
Mr. A.R. Patil, APP, for the State.
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CORAM : A. R. JOSHI, J.

DATE : 10th JUNE, 2015

P.C.

1. Heard learned Counsel for the applicant on this application for bail during pendency of appeal which is admitted. The applicant is convicted for the offence punishable under Section 9(i) read with Section 10 of the Protection of Children from Sexual Offences Act, 2012 and was sentenced to suffer five years imprisonment and fine of Rs.5000/-. He was also convicted for the offence punishable under Sections 323 of IPC and six months imprisonment was awarded. During the trial the applicant was not on bail. He was charged mainly for the offence punishable under Section 376 of IPC. However, during the trial considering the medical evidence, the trial

Court came to the conclusion as to no penetration in the private parts of the prosecutrix and hence acquitted the applicant for the offence punishable under Section 376 of IPC but the trial Court held that the charge of aggravated sexual assault was established punishable under Section 10 of the Protection of Children from Sexual Offences Act.

2. During the arguments it is submitted that even the offence for aggravated sexual assault cannot be attracted considering the facts and that there is nothing to keep the applicant in custody during pendency of the appeal when the punishment is maximum for five years.

3. Counter to these arguments, the learned APP stated that the offence is of very heinous nature and for some reasons the trial Court came to the conclusion as to non-establishment of the offence under Section 376 of IPC but the offence of aggravated sexual assault has been established. It is further contended that looking to the seriousness of the offence the applicant may not be released on bail.

4. The material as against the applicant is considered. Apparently, the allegations against the applicant are that he was eve-teasing the victim girl, then aged about 17 years and half or

so, in the village at Kokan and when she was alone passing on the road he bounced on her and made her to lie on the ground in an isolated area. He gave threat to her by showing knife. Thereafter the girl became unconscious and subsequently she regained consciousness when the situation was such that her clothes were taken away and she was in painful condition having pain at the abdomen. Her inner garments were also removed including the sanitary napkin. Considering these circumstances though it is apparent that the trial Court acquitted the applicant for the offence punishable under Section 376 of IPC, definitely the other offence punishable under Section 10 of Protection of Children from Sexual Offences Act is of serious nature and as such considering the conduct of the applicant, it is not in the fitness of the situation to release the applicant on bail during pendency of appeal. Appropriately the applicant can make application for expeditious hearing and that can be heard in accordance with law. Hence, application for bail is rejected and disposed of.

(A. R. JOSHI, J.)