

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1273 OF 2015
IN
CRIMINAL APPEAL NO.786 OF 2014**

Pandurang Gunwant Kamble ..Applicant/Appellant
V/s.
The State of Maharashtra & Anr. .. Respondents

Mr.Ujwal Agandsurve, for the applicant/appellant.
Mrs.Anamika Malhotra, APP for the Respondent-State.

**CORAM : A. R. JOSHI, J.
DATE : 20th OCTOBER, 2015.**

P.C.

1. Heard rival submissions on this application for bail during pendency of appeal and suspension of substantive sentence.

2. The applicant is convicted for the offence punishable under section 376 of Indian Penal Code and sentenced to suffer RI for 10 years and to pay fine of Rs.3,000/-. He is also convicted for the offence under section 506 of Indian Penal Code and sentenced to suffer RI for 2 years and to pay fine of Rs.1,000/-.

3. It is a factual position that there is no material evidence brought before the trial Court regarding the actual age of the prosecutrix-P.W.No.1. She gave her evidence before the trial Court in the year 2014 and stated her age as 17 years. The incident occurred some time by end of March 2009 and as such according to her testimony she was about 12 to 13 years old when the incident of forcible sexual intercourse was occurred on the night. The medical examination of the girl was done by one lady doctor however, she was not examined and instead another lady doctor was examined but she could not identify the signature of the lady doctor who examined the prosecutrix. During the trial the applicant-appellant was on bail. However, the factual position was that after the incident of March 2009 applicant was not available in the village and he was subsequently arrested by end of August 2010 and after four months of his custody he was released on bail and through out the trial then he remained on bail.

4. Considering the effect of the substantive evidence and mainly the lack of evidence on ascertaining the age of the

girl and the exact finding on the basis of the medical examination, in the opinion of this Court the present applicant can be released on bail as the appeal may take longer time for final adjudication. In the result present application is allowed.

5. Applicant be released on same bail as granted by the trial Court with fresh bond to be executed before the trial Court.

6. Present bail order is effective only on payment of entire fine amount before the trial Court.

7. After availing the bail the applicant shall attend concerned Police Station which is Pangari Police Station, Taluka-Barshi, Dist-Solapur on first Sunday of every alternate month. With these directions the present application is disposed of.

(A. R. JOSHI, J)