

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

CRIMINAL APPLICATION NO. 284 OF 2015
IN
CRIMINAL APPEAL NO.47 OF 2015
[Through Jail]

Devidas Kisan Nikalje	...Applicant/Appellant
V/s.	
The State of Maharashtra	...Respondent

Mr.Samarth Moray, appointed advocate
for the applicant-appellant.
Mrs.P.P. Bhosale, APP for the respondent-State.

CORAM : A.R. JOSHI, J.

DATE : 20TH AUGUST 2015

P.C.:

1. Heard learned appointed counsel for the applicant-appellant under the Legal Aid Scheme on this application for bail and suspension of sentence during the pendency of appeal. Appeal is already admitted.

2. The present applicant is convicted for the offences punishable under section 363,366 and 376 of Indian Penal Code. For the major offence under section 376 of Indian Penal Code he

is sentenced to suffer RI for 7 years and pay fine of Rs.2,000/-. For the offences punishable under sections 363 and 366 of Indian Penal Code he is sentenced to suffer RI for 1 year each and pay fine of Rs.2,000/- each.

3. The case of the prosecution is that the present applicant-appellant is a close relative of the complainant, mother of the prosecutrix girl. Apparently the age of the girl was 15-16 years as per the medical examination. The applicant was residing in the neighborhood of the complainant and her family. On the relevant day the complainant had gone for her work and her two daughters including the prosecutrix were at home. In the evening when complainant came back she could not find prosecutrix at home. Her search was taken but in vain. Then suspecting that the applicant, a near relative, must have kidnapped her daughter, complainant lodged a complaint with police which was registered initially for the offences under sections 363 and 366 of Indian Penal Code. After about 4 to 5 days the prosecutrix victim girl came back to the place of work of her mother and narrated the

incident mainly emphasizing the fact that she had married with the applicant and their marriage was performed in one temple at Beed. By that time she was wearing Mangalsutra. Said Mangalsutra was taken charge of the police and her statement was recorded.

4. Substantive evidence of PW No.2 the prosecutrix girl is brought to the notice of this Court during the argument by the learned counsel for the applicant and it is submitted that there was nothing like compelling the girl to leave her mothers place and also there was nothing that the present applicant compelled her and kidnapped her from her lawful guardianship. Substantive evidence of the prosecutrix show that she had developed a love affair with the applicant though knowing that applicant had already married and having his wife living. In fact in the substantive evidence the prosecutrix has stated that the wife of the applicant herself instigated the her to elope with the applicant and to get married with him. The wife of the applicant is not examined in the case. There is substantive evidence of one

relative of the applicant at whose house, the applicant and the girl had stayed for a day or two and that time the girl was introduced to said relative as the wife of the applicant.

5. Considering the above own substantive evidence of the prosecutrix girl and considering the age as per the medical examination, it is apparent that the girl had left her house of her own will and went along with the applicant and apparently they got married and he introduced her as his wife to his relatives. It also can be ascertained that the prosecutrix girl was of understandable age and she herself left her mother's place. As such considering these circumstances there are good prospectus for the applicant-appellant in his appeal. However, it will take longer time for taking up the appeal for final adjudication and as such in the considered view of this Court the present applicant-appellant can be released on bail during the pendency of appeal. Hence Order.

:: ORDER ::

(i) Applicant-appellant shall be released on bail in a sum

of Rs.15,000/- with one or two sureties in the like amount.

(ii) Bail procedure be taken before the trial Court.

(iii) The present order be communicated to the applicant who is in jail, through the Jailor of the concerned jail.

(iv) Learned appointed counsel has ably argued the matter after going through the substantive evidence of the prosecution witnesses. Office to ascertain and pay the legal fees to be payable to the learned appointed counsel.

(A.R. JOSHI, J.)