

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

**CRIMINAL APPLICATION NO.420 OF 2015
IN
CRIMINAL APPEAL NO.205 OF 2015**

Shri.Wilson John D'Souza

..Applicant/Appellant
(Org. Accused)

V/s.

The State of Maharashtra

.. Respondent
(Org. Complainant)

Mr.Kaushik Mhatre, for applicant/appellant.
Mrs.Anamika Malhotra, APP for State.

**CORAM : A. R. JOSHI, J.
DATE : 1ST JULY, 2015.**

P.C.

1. Heard rival submissions on this application during the pendency of appeal. Appeal is already admitted.

2. The applicant-appellant is convicted for the offence punishable under section 376 and 506(II) of Indian Penal Code and under section 3(1)(XII) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. For the offence punishable under section 376 of the Indian Penal Code he is sentenced to suffer rigorous imprisonment for 7 years.

3. Reportedly, entire fine amount is paid. During the trial appellant was on bail. During the arguments substantive evidence of the prosecutrix women of the age of 27 years is brought to the notice of this court. According to her own case the initiation of the relation between her and the present applicant started on 20th September 2011, when according to her some stupefying substance was mixed in her tea and by taking advantage of her unconsciousness, sexual intercourse was committed on her by the applicant at her house, in the afternoon. Thereafter, within fort night applicant again came to her house and demanded for sexual favour. When she refused, he showed her some video clips which were taken on his mobile. He told her that he will display the video recording on Internet and threaten her to make it public and defame her. On this prosecutrix succumbed to his wishes and the sexual relation between them continued till February 2013. In between they visited various lodges and stay there for few hours, but according to prosecutrix all these happened because of the threat given by the applicant by making public of video clips. She constantly remained under pressure and ultimately it

was noticed by her husband on 18th February 2013. Then she disclosed all events of last one and half year to her husband and relatives and then offence was registered on her complaint against the applicant.

4. It is strongly submitted on behalf of the applicant that it is a case of consensual sexual intercourse and that when it came to the light the prosecutrix pretended that she was under coercion and threat, given by the applicant. It is further argued that admittedly the small female child of the prosecutrix which was born during the said period of one and half year is also born out of this relations as established by DNA test. According to the applicant all this was consensual and there was no coercion at all.

5. Considering the submissions and the evidence of the prosecutrix and considering that during the trial the applicant was on bail and considering that in the immediate proximity it could not be possible to take up the matter to dispose of finally, present applicant can be released on bail,

hence order.

ORDER

(I) The applicant shall be released on same bail as granted by Trial Court with fresh bond to be executed before the Trial Court.

6. Application accordingly disposed of.

(A. R. JOSHI, J)