

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.454 OF 2015
IN
CRIMINAL APPEAL NO.458 OF 2015

Ajaysingh Kuvarsingh Dahiya ..Applicant
Versus
The State of Maharashtra ..Respondent

....
Mr. Dheeraj Dhutmal, Advocate for the Applicant.
Mrs. Anamika Malhotra, APP, for the Respondent – State.
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CORAM : A. R. JOSHI, J.

DATE : 15th JUNE, 2015

P.C.

1. Heard learned Counsel for the applicant on this application for bail during pendency of the appeal which has already been admitted.

2. The applicant is held guilty of the offence punishable under Section 376 of IPC and sentenced to suffer RI for seven years and to pay fine of Rs.25,000/- for the said offence. He was also convicted for the offence punishable under Section 506(Part II) of IPC and sentenced to suffer RI for one year and to pay fine of Rs.5000/-.

3. The allegations against the applicant are that he brought the victim girl, then aged about 11 to 13 years, sometime in the year 2010 from Haryana to Mumbai. The girl all along for two years stayed at the house of the applicant where PW-6 Soniya, the second wife of the applicant, was also residing. The first wife of the applicant was resident of Haryana where initially the prosecutrix girl was taken and thereafter the girl was brought to Mumbai.. All along, the girl was under the control and apparent custody of the present applicant and more so when she was staying in his house at Mumbai. This position has been fortified by the substantive evidence of PW-5 the prosecutrix herself, PW-1 the complainant who is mother of the prosecutrix and PW-6 one Soniya the second wife of the applicant.

4. Apparently, sometime in the year 2009 or so, there was marital discord between the parents of the prosecutrix girl at Delhi, Haryana and the father of the girl took his children i.e. the girl and other male child to the house of

the present applicant at Haryana. They stayed there for sometime. Thereafter, as mentioned earlier, the girl was taken to Mumbai and she started to stay at the house of the applicant along with his second wife. All along for these years when the girl was staying at Haryana and Mumbai there were sexual advances by the present applicant over the said prosecutrix and as and when opportunity arose he had forcible sexual intercourse with the girl. Apparently this act of the accused was not came to the light as the girl was then tender age and was studying in 4th or 5th standard. She was given threats of dire consequences of killing her parents. Moreover the girl was apparently under the domain and control of the applicant at Haryana and at Mumbai. During the trial the main substantive evidence of PW-5 i.e. the prosecutrix herself was discussed by the trial Court coupled with the substantive evidence of PW-1 complainant and PW-6 Soniya the second wife of the applicant. Though the complaint was lodged belatedly regarding offence of sexual intercourse i.e. after about two years time, the circumstances were such that this delay

cannot be treated as a mitigating circumstance to the case of prosecution mainly considering age of the victim girl and she being under control and domain of the applicant.

5. It is seen that the trial Court had charged and convicted the applicant for the offence punishable under Section 376 of IPC simplicitor and awarded punishment of seven years RI. Considering the factual position and the evidence brought before the Court, it appears that the charge should have been under Section 376(2)(f) of IPC and which will attract minimum punishment of ten years. Whatever that might be, now at this stage of bail during pendency of appeal, in the considered view of this Court, it is not a case in which the applicant can be released on bail. Hence, the application for bail is dismissed and accordingly disposed of.

(A. R. JOSHI, J.)