

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.590 OF 2015
IN
CRIMINAL APPEAL NO.571 OF 2015

WITH
CRIMINAL APPEAL NO.571 OF 2015

Chutukumar Kabarar Trivedi	..Applicant
<i>Versus</i>	
The State of Maharashtra	..Respondent

....
Ms. Anjali Patil, for the Applicant.
Mr. A.R. Patil, APP, for the Respondent-State.
....

CORAM : A. R. JOSHI, J.

DATE : 25th JUNE, 2015

P.C.

1. Heard learned Counsel for the applicant on this application for bail during pendency of the appeal which is already admitted. Also heard learned APP for the State.

2. The allegations against the applicant are that on 24.4.2013 he committed indecent act which falls under the definition of the amended section 375 of IPC and apparently there was no any carnal sexual intercourse on a child of about five years old. Major variance in the substantive evidence of PW-

2, mother of the victim girl, is brought to the notice of this Court. Definitely there is omission brought on record on the part of the defence during the trial on the aspect. According to the first informant in her First Information Report the entire incident as to what happened in the afternoon of 24.4.2013 was narrated to her by her small daughter at early hours of next day and then the small daughter had 2-3 omitting. Then the search for the accused was taken but he was not found. As against this in the substantive evidence PW-2 stated that on the same day evening at 7 PM her daughter came crying and narrated the incident as to the act done by the applicant, which falls within the definition of amended Section 375(a) of IPC. Immediately after knowing the said incident from her daughter on that evening, PW-2 took her for some medicine and also then reported the matter of the police. This is major discrepancy in the substantive evidence. Still considering that the entire case of the prosecution is mainly based on the substantive evidence of the small child, PW-1 then aged about five years, in the opinion of this Court at least at this stage it is not feasible to release the applicant on bail. However, considering the specific circumstances and evidence recorded before the Court without

there being any evidence of any independent witnesses from the neighbourhood of the hut where the alleged incident occurred, the matter can be expeditiously taken for final hearing as since the day of arrest the applicant is in custody and he has been sentenced to 10 years imprisonment for the offence punishable under Section 376(2)(i) of IPC. As such, present bail application is rejected and disposed of. Appeal be kept for final hearing on 23rd July, 2015. Private paper book is allowed.

(A. R. JOSHI, J.)

Deshmane (PS)