

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.691 OF 2015
IN
CRIMINAL APPEAL NO.666 OF 2015

Anand Nagappa Domani	..Applicant
<i>Versus</i>	
The State of Maharashtra	..Respondent

WITH
CRIMINAL APPLICATION NO.690 OF 2015
IN
CRIMINAL APPEAL NO.666 OF 2015

....
Mr. L.R. Shahapur, for the Applicant.
Mrs. Anamika Malhotra, APP, for the Respondent-State.
....

CORAM : A. R. JOSHI, J.

DATE : 17th JULY, 2015

P.C.

1. Heard learned Counsel for the applicant. Also heard learned APP for the State. This is an application for bail during pendency of the appeal, which is already admitted on 26.6.2015.
2. The applicant is convicted for the offence punishable under Section 376 IPC and sentenced to suffer RI for seven years and to pay fine of Rs.500/- and in default to suffer RI for two

months. He is also convicted for the offence punishable under Section 342 of IPC and sentenced to suffer RI for six months and fine of Rs.500/- in default RI for 15 days.

3. The case of prosecution and as held proved by the trial Court is that there was forcible sexual intercourse on the girl then aged about 15 years and 2 months as the birth date of the girl is proved by the witnesses being 30.8.1997 and the incident of forcible sexual incident occurred on 4.11.2012. This was the finding given by the trial Court in para-17 and para-19 of the impugned order. At this juncture, it must be mentioned that inspite of this finding the Court convicted the applicant simplicitor for the offence punishable under Section 376 of IPC for which minimum punishment is for seven years and accordingly the applicant was awarded with minimum punishment. Now the question is once the trial Court comes to the conclusion that the prosecutrix was below 16 years of age then definitely the act of the accused / applicant attract the punishment under Section 376(2)(i) of IPC and for which the minimum punishment is 10 years. In fact this anomaly shall be cured at the time of final hearing of the appeal and passing

appropriate orders, but, at this stage of bail it is to be seen that the girl was below 16 years and the applicant was apparently staying in the same vicinity of the girl and on the pretext of getting married with her, he had forcible sexual intercourse with the girl.

4. Though, during the trial the applicant was on bail, in the opinion of this Court, after his conviction and that also *prima facie* attracting the offence punishable under Section 376(2)(i) of IPC but not so convicted by the trial Court, it is not a case in which during pendency of the appeal the applicant can be released on bail and hence his application for bail and also for suspension of sentence are dismissed and accordingly disposed of.

(A. R. JOSHI, J.)