

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

CRIMINAL APPLICATION NO. 813 OF 2015
WITH
CRIMINAL APPEAL NO.686 OF 2015

Yalu Jyotiram Chalke ...Applicant/Appellant
V/s.

The State of Maharashtra ...Respondent

Mr.D.D.Rananaware, for the applicant-appellant.
Mrs.Anamika Malhotra, APP for the respondent-State.

CORAM : A.R. JOSHI, J.

DATE : 20TH AUGUST 2015

P.C.:

1. Heard rival arguments on this application for bail and suspension of sentence during pendency of appeal.

2. The applicant is convicted for the offence punishable under section 376 of Indian Penal Code and sentenced to suffer RI for 7 years and pay fine of Rs.25,000/- in default to suffer RI for 1 year.

3. The case of the prosecution is that on 04th August 2014 the applicant-accused met the prosecutrix, the first informant women, while she was working in a cattle shed and at that time accused asked her whether she wanted some cement. On this she accompanied the

applicant on his motorcycle and they both started proceeding towards his home. Instead of reaching home the applicant took her to still some other place ahead and at one petrol pump he filled petrol after taking Rs.150/- from her. He took the amount on the pretext that this amount was for the cement bag which he would give her. Thereafter also the prosecutrix traveled on the motorcycle of the applicant and they reached near one abandoned Dhabba, a sort of hut. In the said hut allegedly the applicant had forcible sexual intercourse with the prosecutrix. By that time one relative of the applicant reached that area and noticing some two persons inside the abandon Dhabba he came near and saw the incident and reprimanded the applicant. He inquired the prosecutrix as to what was happening. On this she disclosed that she was forcibly taken there. Thereafter the incident was told to local Police Patil and on his instructions it was decided to lodge a complaint against the applicant. However, the complaint was not lodged on the same day as apparently there was no conveyance to go to the police station at Satara. The complaint was lodged on the next day. Appellant was also arrested on the day of the lodging of the complaint. Though PW.No.2 Doctor is examined during the trial he deposed only on the injuries on the eyebrow and other parts of the face of the women and apparently this happened due to the falling from the

motorcycle and sustaining injuries by the women. Though the women was gynecologically examined and report was obtained from gynecologist, no substantive evidence was brought before the Court by way of examining the gynecologist.

4. It appears that the relative who happened to be the witness of sexual intercourse did not support the case of the prosecution but only mentioned that he saw the applicant and the prosecutrix in the abandon Dhabba and then they were taken to the village and he accompanied them.

5. Considering the above state of affairs and mainly the evidence of the prosecutrix then aged about 40 years and lodging of the complaint on the next day and no incriminating CA report or the medical examination report, in the opinion of this Court there are good prospectus for the applicant-appellant in the appeal. The present appeal cannot be taken in the near proximiting for final adjudication and it will take few years for disposal. As such the present application is allowed with following order.

:: ORDER ::

(i) The applicant be released on bail on executing a PR bond

in a sum of Rs.20,000/- with one or two sureties in the like amount.

(ii) The bail procedure to be taken before the trial Court.

(iii) This order will be effective only after the deposit of the fine amount.

(iv) The application for bail is allowed and the substantive sentence is suspended during the pendency of appeal.

(A.R. JOSHI, J.)