

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

CRIMINAL APPLICATION NO.937 OF 2015

IN

CRIMINAL APPEAL NO.781 OF 2015

Sanjay D. Shukla

...Applicant/Appellant

V/s.

The State of Maharashtra

...Respondent

Ms.Anjali Patil, for the applicant-appellant.

Mr.A.R.Patil, APP for the respondent-State.

CORAM : A.R. JOSHI, J.

DATE : 11TH AUGUST 2015

P.C.:

1. Heard rival arguments on this application for bail during the pendency of appeal.

2. The facts of the present case are peculiar in nature. The applicant-appellant is convicted for the offence punishable under section 4 of Protection of Children From Sexual Offences Act and sentenced to suffer RI for 7 years. He is also convicted for the offence punishable under section 506(II) of Indian Penal Code and sentenced to suffer RI for 7 years and pay fine of Rs.1,000/-

3. The first information report in the present case is

lodged by the prosecutrix a small girl aged about 13 years when she was taken to the Police Station by her parents on 06th November 2013. Allegations against the present applicant-appellant were that he had committed forcible sexual intercourse on girl on various occasions for about 3 to 4 months prior to the reporting of the incident on 06th November 2013. Also according to the case of prosecution the prosecutrix along with her parents was staying in a one room admeasuring 10 by 10 feet and in the same room the applicant-appellant was also residing. The area in which this hut and structure situated is apparently a slum area. According to the prosecutrix girl about 4 months prior to the information to the police, there was first occasion on which applicant-appellant had committed forcible sexual intercourse with the girl. It so happened at about 2.00 a.m. in the house when all the members in the house were sleeping including the parents and sister of the prosecutrix so also the present applicant-appellant. During that incident according to the prosecutrix the applicant-appellant threatened her of destroying her family if she disclose the said incident to anybody. Apparently on this threat

the prosecutrix remain quite. Thereafter also for 2-3 months intermittently there were incidents of forcible sexual intercourse on the girl but still she did not inform to her mother or to anybody. Only on 06th November 2013 there was some incident in which the present applicant-appellant was beating the victim girl and quarreling with her, that time on asking by her mother the prosecutrix girl disclosed the earlier incident of sexual assault on her. Thereafter the girl was taken to the Police Station after calling the father of the girl and narrating him the events. Reportedly the father of the girl and the present applicant-appellant were working as watchmen in the same establishment or similar establishments and were known to each other as the applicant-appellant was staying in the same house.

4. It is factual position that during trial before Court the prosecutrix and also her mother i.e. P.W.No.1 and P.W.No.2 turned hostile and did not support the case of the prosecution. Even they denied to identify the applicant as the person by name Sanjay Shukla and committing any sexual assault on the victim.

Admittedly, father of the victim girl was not examined before the trial Court. At the final end of the trial the matter was fixed for pronouncing the judgment. It so revealed by the prosecution that the statement of the victim girl recorded under 164 was not before the Court and then at that juncture the said statement was produced and P.W.No.1 prosecutrix girl was recalled for her further examination and cross-examination. The trial Court came to the conclusion still considering the hostility of the only prosecution witness P.W.No.1 and 2 as to the incident of sexual assault, that the case against the applicant is establish for the offence under section 4 of Protection of Children from Sexual Offences Act. The medical evidence do not show any forcible sexual intercourse. This is significant mainly considering the age of the girl as 13 years and no injuries on the private parts of the girl when she was examined 2 days after the lodging of the FIR.

5. Considering the above circumstances in the opinion of this Court the present applicant can be released on bail as there are no immediate prospects for taking up the matter for final

adjudication in appeal. As such present applicant be released on bail in a sum of Rs.20,000/- with one or two sureties in like amount. After availing the bail the applicant shall report to the concerned Police Station on 1st Sunday of each alternate month so that his availability during the hearing of the appeal can be ascertained. Applicant to give him detailed residential address and contact number to the concerned Police Station.

6. The bail procedure to be taken before the trial Court.
7. The application is accordingly disposed of.

(A.R. JOSHI, J.)