

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

**CRIMINAL APPLICATION NO.1039 OF 2015
IN
CRIMINAL APPEAL NO.903 OF 2015
WITH
CRIMINAL APPLICATION NO.1040 OF 2015
IN
CRIMINAL APPEAL NO.903 OF 2015**

Nitin Ashok Shewale ..Applicant/Appellant
V/s.
The State of Maharashtra .. Respondent

Mr.Sanjiva Sawant a/w Mr.B.K.Barve and Ms.Archana Lad i/by
B.K. Barve & Co., for the applicant/appellant.
Mrs.P.P.Bhosale, APP for the Respondent-State.

**CORAM : A. R. JOSHI, J.
DATE : 05th OCTOBER, 2015.**

P.C.

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

2. The applicant is original accused no.3. He along with accused no.1 and 2 is convicted for the offences punishable under sections 376(g) of Indian Penal Code, 366A and 341 of Indian Penal Code. For the major offence under

section 376 he is sentence to suffer RI for 10 years. Some fine amounts are also awarded. The incident occurred on the broad day light at about 9.30 a.m. to 9.45 a.m. On 04th October, 2011 when the prosecutrix girl then aged about 15 years was going to school the incident happened at rather deserted jungle area and that time the another girl friend was accompanying the prosecutrix. Said other girl ran away sensing the trouble which was created by the present applicant and his other two associates. Apparently the case of the prosecution as transpired from the substantive evidence of the prosecution witnesses and mainly that of the prosecutrix and corroborated by her girl friend, that accused no.1 was eve-teasing the procecutrix on various occasions and on many occasions he used to be accompanied by his other friends including the present applicant. These boys were teasing the girls going to the school and it was the village pathway of about 4 kilometer streach, during which such teasing used to occur. On the day of the incident the victim girl along with her friend was proceeding towards the school. That time they were initially followed by the accused persons on the motor cycle, driven by the present

applicant. Thereafter in a deserted area of a jungle they again arrived and obstructed the way of the girls. At this juncture sensing the danger the friend of the prosecutrix girl ran away towards village but the prosecutrix girl was dragged by accused no.1 to the nearby area. He was assisted by present applicant and another accused. They caught hold of the victim. Initially there was forcible sexual intercourse by accused no.1 and thereafter present applicant accused no.2 also had sexual intercourse with the girl.

3. Considering the substantive evidence including the evidence of serological expert, the trial Court came to the conclusion of establishment of main offence of gang rape and convicted all the accused. Considering these circumstances though it is argued that the applicant is in jail since the year 2011 and had already undergone 4 years imprisonment, this is not a case in which during pendency of appeal the applicant can be released on bail and hence the present application is dismissed and disposed of.

(A. R. JOSHI, J)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/order.