

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

CRIMINAL APPLICATION NO.1161 OF 2014
IN
CRIMINAL APPEAL NO.201 OF 2015

Ghanshyam Jaiswal ...Applicant/Appellant
V/s.

The State of Maharashtra ...Respondent

Mr.Omprakash Pandey, for the applicant-appellant.

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

CORAM : A.R. JOSHI, J.

DATE : 06TH AUGUST 2015

P.C.:

1. Heard rival submission on this application for bail during pendency of appeal. Appeal is already admitted.

2. The appellant is convicted for the offence punishable under section 376 of Indian Penal Code and sentenced to suffer RI for 10 years and to pay fine of Rs.10,000/-. He is also convicted for the offence punishable under section 328 of Indian Penal Code and under section 506 of Indian Penal Code and minor punishment were imposed.

3. The facts of the present case is very peculiar in nature inasmuch as according to the prosecutrix girl then aged about 14-15 years she was taken to her neighbouring house by her neighbour i.e. present applicant-appellant and after administering some stupefying substance to her in a drinking water, forcible sexual intercourse was committed on her. According to the girl this happened some time during Diwali-2010. According to her the applicant-appellant threatened her of killing and compelled her not to disclose the incident to anybody. According to her thereafter also for 2 to 3 occasions there was such forcible sexual intercourse with her. Still she did not inform the incident to anybody. Here the age of the girl is of significance though she was below 18 she was apparently of the age of understanding and as per the medical report her age is around 14 to 15 years. Ofcourse there was no ossification test done while examining the girl to ascertain her exact age.

4. Some time in March 2011 the complainant-mother of the victim girl noticed that the abdomen of the victim girl was

bulging as such sensing some thing serious she enquired with the victim girl but still the girl did not disclose anything and kept quite. By this time of March 2011 according to the prosecution the present applicant left the neighborhood and went to his native place. When the girl was not disclosing anything she was taken to her teacher and then the girl took the name of the applicant-appellant as the person who committed sexual intercourse on her and revealed the story. Thereafter also the family of the prosecutrix did not lodge any complaint but considering that the girl was carrying, she was removed to some nearby Ashram shelter home. Some time on 11th April 2011 also the Ashram people informed the parents that the girl was carrying ill health. Then the girl was in advanced age of pregnancy and there was a quick born child on 03rd May 2011. The life of the small child was only for 4 hours or so. After the child died it was burried. Still by this time there is no complaint to the police. Subsequently on 06th July 2011 complaint was lodged by the mother of the prosecutrix. In fact the delay is of much significance. Thereafter the investigation was started the statements were recorded. The prosecutrix girl

and the appellant were sent for medical examination. Apparently there could not have been anything found in the medical examination as to forcible sexual intercourse and i.e. rightly so because of lapse of time as alleged incident of sexual intercourse is of much prior to March 2011 and the examination was some time in July 2011. Also according to the case of the prosecution after the arrest of the present applicant-appellant in July 2011. He showed the spot of incident and also produced some cloths which were used by him during the incident which occurred about 10 months prior.

5. Considering these circumstances in the opinion of this Court the present applicant-appellant can be released on bail during the pendency of the appeal. This is more so when there are no immediate prospects for taking up the appeal for final adjudication. As such considering the status of the evidence brought before the trial Court, in the opinion of this Court the applicant-appellant can be released on bail. Hence Order.

:: ORDER ::

- (i) Application is allowed.
- (ii) Applicant be released on PR bond in the sum of Rs.20,000/- (Twenty Thousand) with one or two sureties in like amount.
- (iii) The bail procedure to be taken before the trial Court.
- (iv) Application is accordingly disposed of.

(A.R. JOSHI, J.)