

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1228 OF 2014
IN
CRIMINAL APPEAL NO.929 OF 2014

Navnath Ramchandra Gaikwad ..Applicant
Versus
The State of Maharashtra ..Respondent

....
Mr. V.B. Shivarkar, Advocate for the Applicant.
Mrs. P.P. Bhosale, APP, for the Respondent – State.
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CORAM : A. R. JOSHI, J.

DATE : 10th JUNE, 2015

P.C.

1. Heard learned Counsel for the applicant on this application for bail during pendency of the appeal. The appeal is already admitted.

2. The allegations against the applicant are very serious in nature inasmuch as on the relevant day he kidnapped the minor girl aged about 11 years. He was knowing the girl as he was residing in the neighbourhood of the girl and as such he took the girl to some secluded place on the pretext of showing her some caves in the said locality. On reaching said place, he

tried to molest the girl by pressing her body. The girl became afraid and asked him as to why he had brought her to such a distant place. On which, he tried to assault her and in fact assaulted her on her eye by means of stone. Noticing eminent danger to her life and also to her body, the tender aged girl pretended to be dead and became motion less. The applicant/accused became aware of the situation and thought that the girl has lost her consciousness and she might have been dead also, he throw her in the nearby area by dragging her out of the cave and ran away. Prior to that there was an attempt to strangulate the girl by means of duppata/odhani of the dress she was wearing. But for the fortune of the girl she could save her life by pretending that she has become unconscious. After the applicant/accused left the place, 2-3 persons passing by the side saw the girl and enquired her and after receiving telephone number of her father they called her father. Her father reached the spot along with his friends and removed the girl to the hospital. She was in the hospital for about 4-5 days. She was treated for head injury as she had a black eye and CLW on the head. There was internal hemorrhage due to which her eyes were affected.

3. Considering this situation, the trial Court came to the conclusion of establishment of the offences punishable under Sections 363, 307 and 354 of IPC and maximum punishment awarded against the applicant was of seven years for two counts i.e. Sections 363 and 307 of IPC and for the offence punishable under Section 354 IPC imprisonment of two years was inflicted.

4. Though reportedly during the trial the applicant was on bail, in the opinion of this Court this is not a case in which the applicant can be released on bail considering seriousness of the allegations and which are proved during the trial. During the arguments it is argued that the offence punishable under section 376 of IPC has not been established and as such there was no conviction for the said offence. Further it is argued that the offence under Section 307 of IPC also could not be attracted. However, these arguments cannot be accepted. So far as the offence punishable under Section 307 of IPC is concerned, there is positive evidence as to strangulation of the girl, aged about 11 years, and only because of the attentiveness of the girl of pretending to be fainting she could have saved her life or it would have been offence even leading to punishment under

Section 302 of IPC so also it would be offence punishable under Section 376 of IPC also. Whatever that may be, as it is the conviction is for the offence punishable under Section 307, 363 and 354 of IPC. Under these circumstances, it is not a fit case in which the applicant can be released on bail during pendency of the appeal. Hence, application for bail is rejected and disposed of accordingly.

(A. R. JOSHI, J.)

Deshmane (PS)