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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1098 OF 2015**  
**IN**  
**CRIMINAL APPEAL NO.590 OF 2015**

|                                      |              |
|--------------------------------------|--------------|
| Liyakat @ Sadulla Mohd.Ali Karajikar | ..Applicant. |
| Vs.                                  |              |
| The State of Maharashtra             | ..Respondent |

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Mr. Amin Solkar for Applicant.  
Mr. A.S. Shitole, APP for the State.

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**CORAM: SMT. V.K. TAHILRAMANI, Acting C.J. &  
A.S. GADKARI, J.**

**21<sup>st</sup> October, 2015**

**P.C.:**

**1** The applicant has been convicted under Section 376 (2) of the Indian Penal Code and has been sentenced to suffer imprisonment for life and to pay fine of Rs.5000/-. The applicant has also been convicted under Section 366 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.2000/-. The Trial Court has directed that the sentences to run concurrently except the sentences imposed in default of payment of fine.

The applicant has preferred the present application

under Section 389 of Cr. P.C. for suspension of his sentence and for releasing him on bail during the pendency of trial.

**2** It is the prosecution case that the victim girl was mentally challenged and was having very low I.Q. On 11.9.2013, the applicant enticed victim girl and took her to Firdaus Guest House at about 2.45 p.m. and committed rape on her. PW-12 Mohd. K. Ansari saw that the victim was going alongwith the applicant at Firdaus Guest House and therefore he immediately gave a call to his friend namely Hafees Paniar (PW-3) who was the friend of Mr. Adam Patel the father of the victim girl. Hafees in turn gave a phone call to Mr. Adam Patel (PW-2). The father of the victim girl Mr. Adam Patel immediately went to Firdaus Guest House when the Manager of the said Guest House namely Yeshwant Jadhav (acquitted accused) told that nobody had come there. Mr. Adam Patel (PW-2) the father of the victim girl thereafter gave a phone call to the victim girl on the cellphone when the victim girl informed him that she will come on her own to home. Subsequently Mr. Adam Patel (PW-2) saw the victim coming from Bata Junction. He made enquiry with the victim, when she told him that she was taken by a person on the promise that the said person would marry with her and the said

person has also gave her his cellphone number. Mr. Adam Patel (PW-2) thereafter tried to call on the said cellphone number, but the person on the other end replied that it was a wrong number. During the trial, PW-1 the victim girl has identified the applicant as the same person who lured and committed rape on her.

**3** The learned Counsel for the applicant submitted that though the Trial Court has held that the victim has identified the person who committed the crime, PW-1 victim girl was initially beaten up by her father and as per the dictates of her father, she deposed in the Court and therefore the evidence of PW-1 is full of tutoring. The learned Counsel has further submitted that the Investigating Agency has collected bed cover/sheet from the room of the said guest house which was found to have some stains of semen, however, the DNA sample of the applicant has not matched with that found on the bed-sheet during the course of chemical analysis. He further submitted that the identification of the applicant has therefore not been established beyond reasonable doubt.

**4** It appears from the record that the Chemical Analyzer's report discloses that the DNA Profile of semen detected on ex5 bed cover of F.S.L. ML. Case No.DNA-21/14 and blood sample of

ex1 is not from the same paternal progeny. Thus, we prima facie find that there is some substance in the argument of the learned Counsel for the applicant.

**5** In view of the above, we are inclined to suspend the sentence of the applicant and release him on bail on certain conditions.

Hence, the following order:

The applicant shall be released on bail on PR Bond of Rs.50,000/- with one or two sureties in the like amount.

The applicant shall attend D.B. Marg Police Station on 1<sup>st</sup> Monday of every month during the pendency of the present appeal.

**6** The application is allowed in the above terms.

**(A.S. GADKARI, J.)**

**(ACTING CHIEF JUSTICE)**