

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

**CRIMINAL APPLICATION No.1116 OF 2015
IN
CRIMINAL APPEAL NO.891 OF 2015**

Manoj Laxman Pathara ..Applicant/Appellant
V/s.
The State of Maharashtra .. Respondent

Mr.Niranjan Mundergi i/by Mr.Randhir Singh,
for applicant/appellant.
Mr.A.R.Patil, APP for Respondent-State.

CORAM : A. R. JOSHI, J.

DATE : 16th SEPTEMBER, 2015.

P.C.

1. Heard rival arguments on this application for bail/suspension of sentence during pendency of appeal.
2. The case of the prosecution is that in the morning time at about 9.30 a.m. on 10th July, 2013 the victim girl aged about 10 years, a school going child, was assaulted by the present applicant-appellant and he committed forcible sexual intercourse with her after removing her clothes. During the said incident, the girl lost her consciousness and regained the consciousness only after sometime. She was found that she

was alone lying in the deserted jungle area and all her clothes were removed. Some how she came home and noticing her condition as to not having clothes on her person, her parents took her inside the house and inquired, as to what had happened. She disclosed the incident that one unknown person dragged her in the jungle while she was going the school and after assaulting her, he committed forcible sexual intercourse and that time she lost her consciousness. Noticing this incident the parents of the victim took her to the local Government doctor and after her examination they came back home but did not disclose the incident to the police till the police patil of the village advised them to lodge a complaint. Accordingly on 15th July, 2013 the First Information Report was lodged against some unknown person. Again there is nothing mentioned in the FIR and in the statements of the parents of the victim-first informant, that the said incident of assault and the rape was committed by the applicant. According to the substantive evidence of the prosecutrix and her parents and also evidence of P.W.No.9 Investigating Officer, the applicant-appellant was known to the victim and her family and even he was residing in

the near vicinity along with his parents, wife and children. After lodging of the FIR on 16th July, 2013 or there about the applicant was arrested. Thereafter, apparently on his voluntary statement, the clothes produced by him from his house were taken charge of. His test identification parade was conducted on 16th November, 2013.

3. Apart from the above, according to the case of prosecution and the substantive evidence of the prosecutrix P.W.No.1 and her father P.W.No.2, immediately after knowing the incident from the prosecutrix, her father went to the spot and brought back the school bag and the clothes of the child. Said articles were subsequently handed over the police after lodging of the FIR i.e. after six days of the incident. However, the spot panchnamma which was prepared on 16th July, 2013 indicated that some photographs were taken by calling the photographer. The photographer is P.W.No.7. However, his substantive evidence show that he was called by the investigating officer by taking the photographs on the spot of the incident on 19th July, 2013 and was asked to take photographs. Said photographs show the clothes of the victim

and also the school bag. In fact, this factual circumstance was put to the investigating officer P.W.No.9 and strangely he answered during the cross-examination that she had placed the said school bag and clothes of the victim on the spot and then the photographs were taken. This conduct on the part of the investigating officer shall be appropriately dealt with at the time of final hearing of the appeal but at this stage it is apparent that prima-facie it is doubtful regarding involvement of the present applicant.

4. During the trial, the applicant was on bail and though he has been sentenced to suffer imprisonment for 10 years for the offence under section 376 of Indian Penal Code, in the considered view of this Court, the evidence adduced before the trial Court suggests that there are good prospectus for the applicant in the appeal. The appeal will take longer time for adjudication and as such in the opinion of this Court the present applicant can be released on bail as already granted by the trial Court. Hence, the application is allowed. The substantive sentence is suspended.

5. The applicant be released on same bail as granted

by the trial Court with fresh bonds to be executed before the trial Court.

6. The bail order is effective only on payment of fine amount.

7. Application is accordingly disposed of.

(A. R. JOSHI, J)

CERTIFICATE

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