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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 1170 of 2015.

IN

CRIMINAL APPEAL (Stamp) No. 891 of 2015.

Somraj Sahebrao Gavali

..Applicant.

Versus

The State of Maharashtra

..Respondent.

Mr Aniket U. Nikam, Advocate for the Applicant.

Mrs Anamika Malhotra, APP for the State.

CORAM : A.R.JOSHI,J

DATE : 23rd September, 2015

P.C. :

1) Heard rival arguments on this application for bail and suspension of substantive sentence, preferred during pendency of the appeal.

2) The applicant/original accused is convicted for offence under section 376 (2) (i) of IPC and sentenced to suffer

rigorous imprisonment (RI) for ten years and to pay fine of Rs.5,000/-, in default of payment of fine further RI for one year. Reportedly, the fine amount is already paid. The impugned judgment and order was passed by Special Judge and Additional Sessions Judge-3, Nashik (Smt. Urmila Joshi-Palke). The appeal preferred by the applicant/appellant is admitted.

3) Apparently, there are various anomalies and in fact the observations of the trial Court are per se contrary to the provisions of law and mainly on the minimum punishment prescribed for the offence punishable under section 376 (2) of IPC. However, that aspect shall be dealt in detail at the time of final adjudication of the appeal and necessary measures can be taken.

4) So far as the present application for bail is concerned, substantive evidence of PW no.1 prosecutrix girl, then apparently aged on the border line of 16-18 years, is of much significance. In her substantive evidence she has denied the case of the prosecution and earlier mentioned in her FIR as to the present applicant/accused having forcible sexual intercourse

with her. On the contrary, she has stated that she had long standing love affair with the accused and then lodged the complaint only at the instance of her mother when she was taken for medical examination by her mother on noticing that she was pregnant of about three to four months. Apart from the substantive evidence of said PW no.1 prosecutrix, there is only the documentary evidence by way of production of school record produced by PW no.2 which show that the date of birth of the girl in the Ashram Shala at Sargana, District Nashik was mentioned as 5th January,1998. This date of birth was mentioned in the school register on the say of the mother of the girl, without there being any other proof of date of birth, by way of birth certificate. Strangely enough the mother of the girl is not examined before the trial Court. However, an affidavit apparently sworn by her was taken on record by the trial Court vide Exhibit 42; wherein it was mentioned in the affidavit that the complaint against the applicant was lodged on some misunderstanding and that the prosecutrix girl was then residing with the family of the applicant/accused along with a small child which was born as a

result of the pregnancy conceived by the prosecutrix out of love affair between her and the present applicant.

5) Considering the above circumstances, in the opinion of this Court, the applicant can be released on bail though during the trial he was not granted bail.

6) In the result, the application is allowed. The applicant shall be released on his executing PR bond in the sum of Rs.15,000/- with one or two sureties in the like amount. The substantive sentence is suspended till conclusion of the trial. Bail before the trial Court.

7) The present order is effective only after the payment of entire fine amount by the applicant in the trial Court. The application is accordingly disposed of.

(A.R.JOSHI, J.)

CERTIFICATE :-

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