

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1216 OF 2015
IN
CRIMINAL APPEAL NO.1011 OF 2015

Samadhan Mahadeo Pawar	 Applicant / Org. Accused No.3
<i>Versus</i>	
The State of Maharashtra	 Respondent

ALONG WITH
CRIMINAL APPEAL NO.853 OF 2015

Prakash Bharat Aware & Anr.	 Appellant
<i>Versus</i>	
The State of Maharashtra	 Respondent

Mr. Jaydeep D. Mane for the Applicant /
Original Accused No.3.

Mr. H.J. Dedia, A.P.P., for the
Respondent-State.

CORAM : SMT. V.K. TAHILRAMANI, ACTING C.J. &
DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 19TH NOVEMBER, 2015.

P.C. :

1. This Criminal Application is preferred by Original Accused No.3 seeking suspension of substantive sentence of imprisonment and for his release on bail during pendency of the Appeal.

2. As per prosecution case, while Prosecutrix in this case was returning to her house and was passing from embankment of river Bhogavati, Accused No.1 Prakash Aware caught hold of her hand, made her fall down and committed forcible sexual intercourse with her. Thereafter, Accused No.2 Vaibhav @ Bhau Jadhav also subjected the Prosecutrix to forcible sexual intercourse. The present Applicant/Accused No.3 facilitated the commission of gang rape on the Prosecutrix by not allowing her to run away from the spot, when she was trying to do so. The Applicant and Accused No.2 Vaibhav obstructed the Prosecutrix, made her fall down and then Accused No.2 Vaibhav committed sexual intercourse with her. All the three Accused are convicted by the Trial Court for the offence punishable under Section 376(D) of the IPC and sentenced to suffer R.I. for life with fine amount. They are further convicted for the offence punishable under Section 3(2)(v) r/w. Section 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to suffer imprisonment for life on the said count also.

3. The submission of the learned counsel for the Applicant is that the Applicant is not implicated by the Prosecutrix for committing rape

on her. The only role attributed to him is that, the Applicant has obstructed the Prosecutrix from running away, fell her down and then gave her threats of being killed, if matter is reported to anybody. Hence, it is urged that, having regard to this allegation, the Applicant deserve to be released on bail.

4. However, in our considered opinion, as rightly submitted by the learned A.P.P., the role of the Applicant cannot be minimized in any way, considering that he has facilitated the act of gang rape being committed by the Accused Nos.1 and 2 on the Prosecutrix. The specific act of restraining the Prosecutrix from running away and also of giving threats to her, is attributed to him. Having regard to the gravity of the offence, that is of gang rape, and also the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and further considering the fact that during the pendency of the trial also, the Applicant was not on bail, his request for bail does not deserve to be allowed. Hence, the order.

5. The Criminal Application No.1216 of 2015 stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [ACTING CHIEF JUSTICE]