

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

**CRIMINAL APPLICATION NO.1248 OF 2015
IN
CRIMINAL APPEAL NO.981 OF 2015**

Riyaz UL Mohammed Mufijuddin
& Ahmed

..Applicant/Appellant

V/s.

The State of Maharashtra

.. Respondents

Mr.Khan Ishrat Ali Azhar Ali for the applicant/appellant.
Mrs.Anamika Malhotra APP for the Respondent-State.

CORAM : A. R. JOSHI, J.

DATE : 16th DECEMBER, 2015.

P.C.

1. Heard rival arguments on this application for bail during pendency of the appeal. Appeal is already admitted.

2. The applicant is convicted for the offence punishable under section 376 of Indian Penal Code and sentenced to suffer RI for 7 years and pay fine of Rs.8,000/-. He is also convicted for the offence under section 418 of I.P.C. and sentenced to suffer RI for two years and pay fine of Rs.2,000/-.

3. The allegation against the applicant are of very peculiar in nature. Admittedly the applicant and the prosecutrix were in love for about a year. Also they exchanged their telephone numbers. They stayed together at the office premises of the applicant on many occasions. The prosecutrix did so on the pretext that she was to meet her parents and she used to tell so to her employer where she was working as a maid servant. Out of these relations the prosecutrix got pregnant. She also delivered a male child. It appears that during the trial before the sessions court present applicant accused accepted the paternity of the child and also showed his willings to marry the prosecutrix. It was so alleged that the applicant had his wife staying at native place at Aasam and he got married to said women after his affair with the prosecutrix. Apparently the trial Court held the establishment of the charge under section 376 and convicted him and sentenced him for 7 years. Also the trial Court convicted him for the offence of cheating and convicted him under section 418 of I.P.C. Apparently there cannot be application of section 418 but at the most if the cheating is establish the punishment could be

under section 417 of I.P.C. However, that aspect shall be dealt with by this Court at the time of final adjudication of the appeal. Moreover, apparently whether the charge under section 376 attracts or not is also a question requiring detailed analysis of the facts for the simple reason that apparently the alleged act of the present applicant of giving promise to marry and have sexual relations with her whether comes under any of the 'seven descriptions' as mentioned in section 375 of Indian Penal Code. In any event considering the circumstances in the opinion of this Court the applicant can be released on bail during pendency of the appeal. Hence order.

ORDER

- (i) Application is allowed.
- (ii) The applicant shall be released on executing P.R.bond in the sum of Rs.20,000/- with one or two sureties in the like amount. The bail procedure to be undertaken before the Sessions Court.
- (iii) The present bail order is effective only after the deposit of the fine amount before the Sessions Court.
- (iv) During pendency of this appeal the applicant shall

attend the concerned Khar Police Station on 1st Sunday of every alternate month.

(v) Application is accordingly disposed of.

(vi) The substantive sentences is suspended till the disposal of the appeal.

(A. R. JOSHI, J)