

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1538 OF 2014
IN
CRIMINAL APPEAL NO.808 OF 2014

Manojkumar Satnarayan Paswan @ Gabbar ..Applicant
Versus
The State of Maharashtra ..Respondent

....
Ms. Priyanka Joshi, Advocate appointed for the Applicant.
Mrs. P.P. Bhosale, APP, for the State.

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CORAM : A. R. JOSHI, J.

DATE : 12th AUGUST, 2015

P.C.

1. Heard rival submissions on this application for bail / suspension of sentence during pendency of the appeal. The appeal is already admitted.

2. The applicant is convicted for the offence punishable under Section 376, 363 and 366 of IPC. For the major offence punishable under Section 376 of IPC, he is sentenced to suffer RI for ten years and to pay fine of Rs.5000/-.

3. The entire case of the prosecution is based on the testimony of PW-2 i.e. the prosecutrix girl. According to the

medical examination report, her age is ascertained between 15 to 16 years with margin of six months (plus and minus). Though during the examination-in-chief PW-2 girl denied having love affair with the applicant, while she was taken for medical examination, the history is given as follows and which was recorded by the attending doctor PW-6 :

“victim girl states that she is in love with Mr. Manoj for last one month. She went with him on 11.4.12 to Malad and stayed at rental room. History of 3-4 times sexual intercourse during last one month willingly.”

4. The medical certificate, which is Exhibit-36 before the Court also shows the condition of hymen as under :

“Torn. Old healed.”

5. It is also an admitted position that PW-1 the first informant, father of the victim girl, admitted in his cross-examination that he had arranged engagement of his daughter and as such by pointing out this to the Court, learned appointed Counsel for the applicant stated that though it was a case of love affair between the prosecutrix girl and the applicant, it was so denied by the girl as she was being engaged to some

other person and it so happened during pendency of trial. Further it is argued that the girl is of age of under 16 years with margin of six months on either side. It is also brought to the notice of the Court that the exact birth date of the girl is not established by producing any birth certificate or other document and the age has been ascertained only by way of her medical examination. Lastly, it is stated that though during the trial the applicant was not on bail, since the date of his arrest he is inside and as such he has completed more than three years of imprisonment.

6. Counter to the above arguments, learned APP stated that it is not a case of grant of bail during pendency of appeal inasmuch as the girl is of minor age and she was kidnapped from the lawful guardianship and there was forcible sexual intercourse on the girl against her will and wish.

7. The rival arguments are required to be construed in the light of the factual position of the history given to the doctor and also revelation in the medical examination report as detailed earlier. Considering the scope of the matter as to evidence and considering that the matter will take longer time

for final adjudication in the appeal, in the opinion of this Court the present applicant can be released on bail. Hence, the application is allowed. The applicant be released on bail on his executing a PR bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one or two sureties for the like amount. After availing the bail, the applicant shall attend the concerned police station on first Sunday of each alternate month so as to ascertain his availability during final adjudication of the appeal. Application is accordingly disposed of.

(A. R. JOSHI, J.)

Deshmane (PS)