

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Criminal Application (APPA) Nos.162/2015.

In

Criminal Appeal No. 94 of 2015

Dilip s/o Dadaji Thool

-Vrs.-

The State of Mah. through P.S.O., P.S. Allipur, Tah. Hinganghat, Dist.
Wardha.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri R.M. Daga, Advocate for applicant.
Shri Ahirkar, APP for respondent - State.

CORAM : P.N. DESHMUKH, JJ.

DATED : 7th APRIL, 2015

Heard both sides.

By this application, the accused convicted for the offence punishable under Section 376 of IPC and sentenced to suffer R.I. for seven years and to pay a fine of Rs. 2,000/-, in default to undergo R.I. for one month and for the offence punishable under section 506 of IPC to suffer R.I. for one year and to pay fine of Rs.1,000/-, in default to undergo R.I. for 15 days has prayed for suspension of substantive sentence.

I have perused the impugned judgment as well as the copies of depositions. In the evidence of P.W.2 prosecutrix it is stated that incident took place on 4.4.2012 when she left the house to answer the nature's

call in the field situated behind her house. The prosecutrix appears to be aged about 21 years and a married woman and on the date of incident she was residing with her husband and in-laws. prosecutrix has stated that immediately after the incident apart from other villagers one Pooja Bhagat had arrived who has not supported the case of the prosecution.

From the evidence of Baban, husband of prosecutrix, it reveals that he had stated about presence of accused as he had seen him running. P.W. 7 Medical Officer on examination of prosecutrix has noted external injuries on the buttock of prosecutrix to whom prosecutrix has stated history of being subjected to rape while in the house. From the medical evidence it appears that the contusion sustained by prosecutrix is stated to be possible if a woman is ravished on the floor. In the cross-examination Medical Officer has admitted that the prosecutrix has told her that the incident took place in her house. In view of above contradictory evidence which can be scrutinized and considering entire other evidence while considering the application, the accused/applicant prays that he should be released on bail suspending his substantive sentence in view of the ratio laid down in the case of **Bhagwan Ram Shende Vs. State of Gujrat** reported in **1999 SC 1859**. In that view of the matter, considering the fact that the appeal is not likely to come up for final hearing in near future and also considering the fact that the applicant/accused was on

bail during trial, he should be released on executing P.R. Bond of Rs.10,000/- with surety in the like amount. While on bail the applicant shall mark his presence at Police Station Allipur in every three months on the first day of month.

JUDGE

Hirekhan