

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 1301 OF 2016
APEAL/107/2016

SURYABHAN ALISA SURESH S/O SHESHRAO YEVLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Rajendra S. Deshmukh.
APP for Respondent No.1 : Mr. S. N. Morampalle.

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CORAM : **INDIRA K. JAIN, J.**
DATE : 05th April, 2016.

P.C.:

. This application is for suspension of substantive sentence of imprisonment passed on 16th February, 2016 by the learned Additional Sessions Judge, Kandhar in Sessions Case No.08000038 of 2009.

2 Heard Mr. R. S. Deshmukh, learned counsel for Applicant and Mr. S. N. Morampalle, learned APP for Respondent No.1 / State. Perused record.

3 Applicant alongwith two other juvenile offenders was prosecuted for the offences punishable under Sections 376 (2) (f) (g) and 506 of the Indian Penal Code. Learned counsel for Applicant

submits that both the juvenile in conflict with law were tried by Juvenile Justice Board and they have been acquitted of alleged offences. Learned counsel would submit that Applicant was on bail during trial.

4 It can be seen from case papers that incident occurred on 22nd July, 2009 between 01:30 and 02:00 p.m. in the field. Victim was 11 years old girl. It is alleged that present Applicant and two juvenile in conflict with law had been to the field where victim was grazing the she-goat and committed gang rape on her.

5 On perusal of evidence of prosecutrix it can be seen that she immediately disclosed the incident to her mother. She stated that her clothes were stained with blood. Seizure of clothes of prosecutrix is not duly proved by prosecution as Panch witness has not supported seizure Panchanama. C.A. report negatives detection of blood on the private part of victim.

6 Another important fact revealed during cross-examination of PW-5 Dr. Shabnam Khan is that at the time of her admission to hospital victim had given history of fall from tree. Medical case papers also indicate that history of sexual assault was not disclosed to doctor but history of fall from tree was given and accordingly it was recorded in medial papers.

7 Considering the evidence of medical officer who examined the victim, absence of injuries on her person and negative C.A. report this Court is inclined to suspend the substantive sentence of imprisonment. Hence the following order –

ORDER

- I. Criminal Application No.1301 of 2016 is allowed.
- II. Substantive sentence of imprisonment is suspended till decision of Criminal Appeal No.107 of 2016.
- III. Applicant Suryabhan alias Suresh s/o Sheshrao Yevle is released on bail on P.R. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand Only) each.
- IV. Bail before the Trial Court.

[INDIRA K. JAIN, J.]

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