

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2214 OF 2016 IN
CRIMINAL APPEAL NO.259 OF 2016

Chandrakant Dnyaneshwar Barne ... APPLICANT

VERSUS

The State of Maharashtra ... RESPONDENT

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Shri H.P. Kshirsagar, Advocate for applicant
Shri K.D. Mundhe, A.P.P. for respondent
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CORAM: A.I.S. CHEEMA, J.

DATED: 27th June, 2016.

ORAL ORDER :

1. Heard learned counsel for the applicant and learned A.P.P. for the State. The present application is for bail by the convicted accused, who has filed Criminal Appeal No.259/2016 and the appeal has been admitted. The accused has been convicted for offence under Section 377 of the Indian Penal Code as well as offence under Section 12 of the Prevention of Children from Sexual Offences Act. He has also been convicted for offence under Section 323 of the Indian Penal Code.

2. The learned appointed counsel for applicant has

submitted that, in this matter, although it is a case of the prosecution that when the applicant accused had gone to the hostel where his son was staying, and the victim boy was sent with him to get the gate pass, the accused had lured the boy to the bathroom and committed unnatural offence on 11.8.2013, still the offence came to be registered on 27.8.2013. Thus, according to the counsel, there is inordinate delay in filing the F.I.R. According to the counsel, P.W.7 Khandagale, the teacher, who had sent the victim along with the accused, did not depose that immediately after the incident the victim told him about accused committing unnatural offence. The evidence of P.W.7 Khandagale remained limited to the claim of the victim of attempt by accused for committing unnatural offence. The learned counsel further submitted that, there is evidence of doctor recorded in the matter, but the doctor did not find any injury to the private part of the victim. The counsel further stated that, there were contradictions and omissions in the evidence. It is argued that, though the case of prosecution was that, incident took place at 12.30 in the noon, in the evidence the victim state that the incident took place between 11.00 - 11.30 a.m. The counsel states that, the applicant is in Government service and the only bread winner in his house. The learned counsel submitted that, the applicant was on bail during the course of trial and thus, bail should be granted in the appeal

also.

3. Against this, the learned A.P.P. submitted that, the accused took advantage of a minor boy who was sent by the teacher to help the accused in getting gate pass made and the accused, on the excuse of going to bathroom, took the boy along with him in the bathroom and bolting from inside, committed unnatural offence. The learned A.P.P. submitted that, the victim was staying in the hostel and after the incident, they had informed the teacher Magar about the incident, but the school authorities did not immediately take necessary action. The A.P.P. submitted that there is evidence to show that the victim, after such incident of unnatural offence against him, became sick and after some days, was sent home. At such time, the victim informed the incident to his mother and only thereafter when the parents took up the matter, the offence was registered. Thus, according to the learned A.P.P., the delay was properly explained and the same has been dealt with by the trial Court and trial Court, after considering all the evidence, held the accused guilty. The trial Court found the evidence unshattered in the cross-examination and relied on the victim. According to A.P.P., such applicant - accused is not entitled to bail.

4. Having heard counsel for both sides and having gone through the material available, what appears is that, a minor boy

was violated in the premises of one Trimurti Pawan Pratishtan. The victim was studying in the institute in 6th Standard. He was residing in the hostel. The accused went in hostel as he wanted to meet his son and when the victim was along with the accused to get the gate pass made, the incident occurred. The judgment of the trial Court shows that the victim deposed regarding the incident against the accused. According to the trial Court, the evidence of the victim remained unshattered and in the cross-examination, further details came on record. The trial Court was aware that the doctor did not find any injury to the private part when the victim was examined after the offence came to be registered on 28.8.2013. However, trial Court referred to the other evidence like evidence of P.W.6 Gaurav Kanchan, who supported the prosecution. The evidence of Gaurav Kanchan shows that the incident was brought to the notice of teacher and the accused even asked the victim boy to forgive him. The trial Court further found the evidence of P.W.7 Vikram corroborating the victim although to some extent he did not support. The trial Court discussed the delay and also found that the evidence of the victim was unshattered. The trial Court thus convicted the accused.

5. Prima facie what appears is that, a serious offence has been established against the accused. It would be risky that such accused should be released on bail. The appeal has been

admitted and the merits of the matter are yet to be examined. However, looking to the prima facie material, it does not appear appropriate to release such accused on bail.

6. For the above reasons, I do not find substance in the bail application. The application is rejected.

7. The applicant is in jail and the appeal has already been admitted.

8. Paper Book be got prepared urgently. Moment the Paper Book is ready, the learned counsel for applicant may mention for urgent hearing of the appeal.

9. Fix the appeal for hearing finally on 25th July 2016, by which time the Paper Book be got prepared.

(A.I.S. CHEEMA, J.)

fmp/cr2214.16