

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

CRIMINAL APPLICATION NO. 3674 OF 2016
IN
CRIMINAL APPEAL NO. 421 OF 2016

Ashok Gajmal Pawar,
Age : 40 years, Occu. Labour,
R/o. Kanashi, Tq. Kalwan,
Dist. Nashik.

.. Applicant

Versus

The State of Maharashtra.

.. Respondent

.....
Mr Amol S. Sawant, Advocate for the applicant
Ms Priti Diggikar, APP for respondent/State
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CORAM : V.L. ACHLIYA, J.
DATED : 14.09.2016.

PER COURT :

. Heard. Perused the application.

2. The applicant has been convicted under Sections 376 and 506 of the Indian Penal Code. For committing offence u/s 376 of the IPC, the applicant is sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 3,000/-.

3. In nutshell, the contention of the learned counsel for the applicant is that the applicant has been falsely implicated in the case on account of matrimonial discord which the prosecutrix had with her husband. The applicant is the uncle of husband of prosecutrix. It is submitted that, except the oral testimony of the prosecutrix, there is no corroborative evidence to support the testimony of the prosecutrix. There was a delay of about two days in lodging the complaint. The spot of incident was not shown by the prosecutrix. There is no incriminating evidence to connect the applicant with the offence for which he has been charged and convicted. The Medical Officer found no injury on the body of the prosecutrix. There is no convincing evidence to sustain the conviction. It is further submitted that, the applicant was on bail during the trial. It will take long time to list the appeal for final hearing. He has, therefore, urged to release the applicant on bail.

4. Learned APP has opposed the application with contention that, there is cogent, convincing and reliable evidence to sustain the conviction. The delay in lodging the complaint has been properly explained. It is further submitted that, nothing is brought in the cross-examination of prosecutrix to treat her testimony as unreliable.

5. Having appreciated the submissions advanced, I am of the view that, a *prima facie* case has been made out to entertain the application for release of the applicant on bail. The case of the

prosecution is solely based upon the sole testimony of the prosecutrix. There is no corroborative evidence to support the testimony of prosecutrix. There was a matrimonial discord between the prosecutrix and her husband. The accused is cousin uncle of husband of the prosecutrix. Therefore, considering the overall facts of the case, evidence on record, period of sentence awarded and the submissions advanced, I am of the opinion that it is a fit case to release the applicant on bail during the pendency of appeal. The applicant was on bail during the trial. The sentence awarded is of seven years. It will not be possible to take up the appeal for final hearing. Hence, the following order.

ORDER

- (1) The Criminal Application is allowed in terms of prayer clause 'B'.
- (2) Pending disposal of the appeal, substantive sentence awarded by the trial Court stands suspended on deposit of payment of fine.
- (3) Pending disposal of the appeal, applicant be released on bail on his furnishing bail in the sum of Rs. 40,000/- (Rupees Forty Thousand) with one surety in the like amount on the following conditions:
 - (i) Applicant shall visit and record his attendance with the Shirpur Police Station, Tq. Sakri, Dist. Dhule, in the first

week of every month in between 11:00 a.m. and 12:00 a.m., till disposal of the appeal.

- (ii) Applicant shall furnish the names, addresses and phone numbers with residential proof of his three close relatives.
 - (iii) In the event of change in address, the Applicant shall inform the concerned Police Station as well as information to that effect be given to the Court.
- (4) In case of breach of any of the conditions as above, bail granted to the applicant shall be liable to be cancelled.
- (5) The applicant shall furnish fresh bail bonds in the trial Court.

[V. L. ACHLIYA]
JUDGE