

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

CRIMINAL APPLICATION NO. 3675 OF 2016
IN
CRIMINAL APPEAL NO. 422 OF 2016

Harish S/o Sadashiv Kakade .. Applicant

Versus

The State of Maharashtra. .. Respondent

.....
Mr Rahul Mote, Advocate for the Applicant
Mr A. V. Deshmukh, APP for respondent/State
.....

**CORAM : V.L. ACHLIYA, J.
DATED : 23.08.2016.**

PER COURT :

1. Heard learned counsel for the applicant and APP for State. Perused the application and the impugned judgment and order passed by the trial Court and evidence adduced by the prosecution to prove the guilt as against the accused.

2. The applicant was tried for committing offence u/s 363, 366-A and 376 of the Indian Penal Code. On conclusion of the trial, the accused has been convicted for said offences. For committing offence u/s 376 of IPC, the applicant has been convicted to undergo rigorous imprisonment for ten years

and for offence u/s 366-A of IPC, the accused has been convicted to undergo rigorous imprisonment for five years. For offence u/s 363 of IPC, the accused has been ordered to undergo rigorous imprisonment for three years. He is also convicted for committing offence u/s 3 r/w 4 of the POSCO Act and sentenced to suffer imprisonment for 10 years. All the sentences have been ordered to be run concurrently.

3. Mr Mote, learned counsel for the applicant vociferously contended that, the trial Court has not properly appreciated the evidence. By referring the testimony of the prosecutrix, the learned counsel has pointed out that there was a love affair between the applicant and the prosecutrix. He has further pointed out that, according to Medical Officer, who examined the prosecutrix, the hymen was found to be intact. He has further pointed out that, on the date of incident the accused was at Nanded. By referring the cross-examination, it is pointed out that, the defence has brought on record that in all probability the victim has left the house at her own accord. He has further submitted that, though the prosecution claims that the girl was minor at the time of incident, the evidence on record shows that, she was sufficiently matured to understand and to take the decision of her life. He has further submitted that, the accused is in jail since 05.03.2013 and spent more than three years in jail and the appeal may not be heard and decided within short time.

4. Learned APP has opposed the application with contention that, the prosecution has proved its case beyond reasonable doubt. Prosecutrix has supported the case of the prosecution. There is sufficient evidence on record to

connect the applicant with the commission of offence in question. He has further submitted that the victim girl was minor and, therefore, the consent of the victim is immaterial.

5. Having perused the judgment and order passed by the trial Court as well as the testimonies of the prosecutrix and the Medical Officer, it is not in dispute that the prosecutrix had a affair with the applicant. The applicant was working as a trainer of the Cricket and the brother of the victim girl was taking training from him. It has also brought on record that, the victim girl has played as State Level Holly Ball player. On the basis of the evidence on record, the possibility cannot be ruled out that the victim girl has left the house on her own accord. I am therefore of the view that, the *prima facie* case has been made out to entertain the request of the applicant to enlarge him on bail. The applicant was arrested on 19.03.2013 and since then he is in jail and almost completed more than three years period in jail. The appeal will take considerable time to be heard finally. Therefore, taking into consideration over all facts of the case and evidence on record and age of applicant, I am of view that, the applicant deserves to be enlarged on bail pending disposal of the appeal. Hence, the following order.

ORDER

- (1) The Criminal Application No. 3675 of 2016 is allowed in terms of prayer clause 'B'.
- (2) Pending disposal of the appeal, sentence awarded by the trial Court stands suspended.

- (3) Pending disposal of the appeal, applicant be released on bail on his furnishing bail in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand) with one or two sureties in the like amount on the following conditions:
- (i) Applicant shall visit and record his attendance with Cidco Police Station, Dist. Aurangabad, on every 2nd & 4th Sunday in between 10:00 AM to 11:00 AM in each month, till disposal of the appeal.
 - (ii) Applicant shall furnish the names, addresses and phone numbers with residential proof of his three close relatives.
 - (iii) Applicant shall not cause any threat to the complainant, victim and witnesses in the case.
 - (iv) Applicant shall not indulge in any criminal activities.
- (4) In case of breach of any of the conditions as above, bail granted to the applicant shall be liable to be cancelled.
- (5) Bail to be furnished in trial Court.

[V. L. ACHLIYA]
JUDGE