

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6439 OF 2015
IN
CRIMINAL APPEAL NO. 876 OF 2015

Avinash s/o Punjaram Buva,
Age : 21 years, Occu. Pvt. Service,
R/o Satara Area, Aurangabad APPLICANT

VERSUS

The State of Maharashtra RESPONDENT

Mr. N.S. Ghanekar, Advocate for the applicant
Mr. R.V. Dasalkar, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.
DATE : 06/01/2016

ORAL ORDER :

1. Heard both sides.
2. Aggrieved by the conviction and sentence for the offences punishable under section 363, 376 (1) of the Indian Penal Code and under section 3 and 4 of the Protection of Children from Sexual Offences Act, 2012, the present applicant has preferred criminal appeal no. 876/2015 and during the pendency of the said appeal, he wants that the substantive sentences awarded to him be suspended and he be released on bail. He was sentenced

to suffer rigorous imprisonment for seven years for the offence punishable under section 376 (1) of the I.P. Code. For the offence punishable under section 363 of the I.P. Code, he was sentenced to suffer rigorous imprisonment for three years. No separate sentences for other offences were recorded.

3. The record would show that sixteen years old prosecutrix was taken away by the present applicant who is around 20 to 21 years old. The learned Sessions Judge disbelieved the prosecution case that the present applicant had forcibly taken the prosecutrix away from the road in broad-day light. Thereafter, the couple went to various places, namely, Nizamabad, Manmad, Khandava, Bhopal, Mumbai, etc. They stayed in the lodge and ultimately, the applicant himself brought the prosecutrix to Satara Police Station. Though there are allegations of forcible sexual intercourse, no injuries were found on the person or private part of the prosecutrix and even her hymen was intact. In the circumstances, learned counsel for the applicant submits that the substantive sentences be suspended and the applicant be released on bail.

4. Learned A.P.P. opposed the application. He submitted that the prosecutrix was minor and the evidence would show that she was forcibly taken away by the present applicant. Further, her statement would reveal that she was forcibly subjected to sexual intercourse.

5. Considering the background of the case, without making any comment on merit of the case, in my view, since the hearing in the appeal would take its own time, the applicant can very well be released on bail by suspending the substantive sentences awarded to him. Hence, the following order:-

6. The substantive sentences awarded to the present applicant are hereby suspended till disposal of criminal appeal No. 876/2015. Upon deposit of the fine amount, if not deposited till this date, the applicant be released on bail on his executing P.R. bond in the sum of Rs. 20,000/- (rupees twenty thousand) and also upon furnishing surety in the like amount.

7. The present application is accordingly allowed and disposed of.

8. Hamdast allowed, at the request of learned counsel for the applicant.

[M.T. JOSHI]
JUDGE

npj/criapln6439-2015