

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

**CRIMINAL APPLICATION NO.6449 OF 2016
IN
CRIMINAL APPEAL NO. 334 OF 2016**

Rajratan S/o. Sahebrao Nawghare .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr. Mahesh V. Ghatge, Advocate for the applicant
Mr.B.V.Virdhe, APP for the respondent/State

**CORAM : V.L.ACHLIYA, J.
DATED : 13.12.2016**

P.C. :-

1. The applicant/appellant has moved this application seeking bail on the grounds set out in detailed in the application. The applicant/Appellant was tried for committing offence under Section 376(2)(g) and 506 r/w 34 of the Indian Penal Code and Sections 5(g), 5(j)(ii), 5(1) and 5(n) r/w Section 6 of the Protection of Children from Sexual Offence Act (POCSO Act). The Co-accused was tried separately before the Juvenile Court. On conclusion of the trial Court the learned Sessions Judge, Nanded has convicted the applicant/Appellant under Section 376(1) of the Indian Penal Code and sentenced to suffer R.I. for ten years and to pay fine of Rs.1000/-

I/D. to suffer R.I. for three months. He also convicted under Section 5(j)(ii), 5(1) and 5(n) and Section 6 of the Protection of Children from Sexual Offences Act (POCSO Act), and collectively sentenced to suffer rigorous imprisonment for ten years and fine of Rs. 1,000/-. Being aggrieved by the judgment and order passed by the learned Sessions Judge, Nanded the applicant/appellant has preferred appeal and pending disposal of appeal urged to released him on bail.

2. Mr. Mahesh V. Ghatge, learned counsel appearing for the applicant/ appellant vehemently contended that prosecution has failed to prove guilt against the applicant/appellant beyond reasonable doubt. There is no cogent and convincing evidence to sustain the conviction. As per the DNA test the applicant/appellant is not found to be biological father baby delivered by the prosecutrix. The co-accused was also tried for similar offence for committing rape on the prosecution. He further submits that prosecutrix was in relation with the applicant and married with the applicant/appellant. He further submits that it will take long time to hear the appeal and urged to release the applicant/appellant on bail. He further submits that the offence was committed much prior to Criminal Amendment Act of 2013 brought in force i.e. Prior to 13.02.2013 and sentence

less than 10 years can be awarded in the instant case.

3. On the other hand learned APP has opposed the application with contention that there is a strong evidence to establish the complicity of applicant in commission of offence. The prosecutrix has fully supported the case of the prosecution. She was minor at the time of incident. At the time of incident the prosecutrix was about 12 to 13 years of age. He therefore urged not to entertain the request to enlarge the applicant/appellant on bail.

4. Having appreciated the rival submissions in the light of over all facts of the case, evidence on record and findings recorded by the trial Court I am of the view that no case is made out to entertain the request to enlarge the applicant on bail. The applicant/appellant was tried for committing the offence of rape on minor girl aged about 12 years. The prosecutrix fully supported the case of prosecution and categorically deposed that the applicant has forcibly committed rape on her and she conceived from Sexual intercourse committed by applicant/appellant with her and gave birth to female child. Testimony of p.w.4 is duly corroborated through the testimony of P.W.1 the mother of the prosecutrix and other circumstantial evidence. Thus there is strong

evidence against the applicant/appellant to connect with the offence for which he has been convicted by the learned trial Court. The possibility of applicant may abscond cannot be ruled out. During the trial also the applicant/appellant was in jail. In this view I am not inclined to entertain the request to enlarge the applicant /appellant on bail. In the circumstances at the most the hearing of the appeal can be expedited. Hence the following order:

ORDER

I. Criminal Application No.6449 of 2016 stands rejected. However the hearing of the appeal is expedited. List the Appeal for final hearing in the week commencing from the month of February-2017.

[V.L.ACHLIYA, J.]