

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.6810 OF 2015
IN
CRIMINAL APPEAL NO.931 OF 2015

Narayan s/o Pandurang Thakre,
Age-27 years, Occu:Labourer,
R/o-Pimpri(Vadjai),
Tq. & Dist-Dhule

...APPLICANT
(Orig. Accused)

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Mohadinagar Police Station,
Tq. & Dist-Dhule.

...RESPONDENT

...
Mr. R.S. Shinde Advocate h/f. Mr. N.L.
Choudhari Advocate for Applicant.
Mr. M.M. Nerlikar, A.P.P. for Respondent.

...

CORAM: S.S. SHINDE AND
V.K. JADHAV, JJ.

DATE : 30TH SEPTEMBER, 2016

ORAL ORDER [PER V.K. JADHAV, J.] :

1. The Applicant - accused is convicted by

the Additional Sessions Judge, Dhule by Judgment and order dated 2nd December 2015 in Sessions Case No.59 of 2015 for the offence punishable under Section 376(2)(1) of the Indian Penal Code and thereby sentenced him to suffer rigorous imprisonment for fifteen years and to pay fine of Rs.5000/- and in default he should suffer simple imprisonment for 50 days. The Applicant-accused has challenged the said Judgment and order of conviction by preferring the present Appeal. The Applicant also filed the Application for suspension of the order of conviction and to release him on bail till the disposal of the Appeal.

2. The learned counsel for the Applicant submits that the evidence of informant appears to be improbable for many reasons. Furthermore, though in the prosecution evidence it has come before the Sessions Court that victim was a person of unsound mind, the medical officer who had

examined the said victim, had given such an opinion about the unsound mind some 20 to 22 years back. Learned counsel submits that the C.A. Report in respect of vaginal swab and pubic hair is negative and as per the report no semen was detected. Learned counsel submits that even though the semen was detected on petticoat, the blood group of accused is not available for comparison since the result of the analysis of the blood of the accused was inconclusive.

3. The learned A.P.P. submits that the informant is the eye witness to the incident and she had actually witnessed that the accused was committing intercourse with the victim. Furthermore, the informant had tried to throw chili powder in the eyes of the accused in order to prevent him continuing the intercourse, however, she could not succeed. Furthermore, it has come in the evidence of PW-3 Dr. Jitendra Sachdev that though he had examined victim long

back, according to his opinion the victim is suffering from chronic schizophrenia and she is of unsound mind and disease of victim is not curable. Learned A.P.P. submits that even PW-4 Dr. Pravinkumar has also deposed that the victim was insane and not oriented to time, place and persons. Learned A.P.P. lastly submits that blood group of the accused was of "B" and as per the C.A. Reports, the semen was detected on the pettycoat and it was of blood group "B". Learned A.P.P. submits that Applicant-accused was not on bail during the course of trial and since there is sufficient evidence, he has been rightly convicted by the Additional Sessions Judge and is not entitled for bail.

4. Considering the above submissions and the fact that informant is eye witness to the incident, we are not inclined to grant bail to the Applicant-accused. Thus the following order:

O R D E R

(I) Criminal Application No.6801 of 2015 is hereby rejected.

(II) Record and Proceedings be send back to the trial Court forthwith for preparation of the Paper-Book and after completion of the Paper-Book the Applicant-accused would be at liberty to file an application for early hearing of the Appeal.

[V.K. JADHAV, J.]

asb/SEP16

[S.S. SHINDE, J.]