

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

**CRIMINAL APPLICATION NO.388 OF 2016
IN
CRIMINAL APPEAL NO.1066 OF 2015**

Imran Moula Kalawant ... **Appellant/Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Amin Solkar, Advocate for the Appellant/Applicant.

Mr.S.V. Gavand, APP for the Respondent/State.

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CORAM : A. M. BADAR J.

DATED : 16th NOVEMBER 2016.

P.C.

1 This is an application under Section 389 of the Code of Criminal Procedure for suspension of sentence and releasing the applicant/accused on bail during pendency of an appeal challenging the Judgment and Order of conviction in Sessions Case No.16 of 2010 for offence punishable under Section 376(2)(f)(n) of the Indian Penal Code.

2 Heard the learned counsel appearing for the applicant/accused. He argued that the applicant/accused was arrested on 02/07/2008 and ultimately he was convicted. Since his arrest, the applicant/accused has undergone sentence of about eight years and therefore, he is entitled to be released on bail. In order to buttress this contention, reliance is placed on the following Judgments :

- (a) ***Bhagwan Rama Shinde Gosai & Ors. v. State of Gujarat***, 1999 Supreme Court Cases (Cri.) 553;
- (b) ***Dadu @ Tulsidas v. State of Maharashtra***, 2000 Supreme Court Cases (Cri.) 1528;
- (c) ***Mansingh v. Union of India***, (2006) 1 Supreme Court Cases (Cri.) 279;
- (d) Order dated 30th July 2007 in **Criminal Application No.736 of 2007 *Mr.Begani Talab Suleman @ Bashir @ Tkara v. Union of India & Anr.*** decided by this Court.
- (e) ***Dinesh Kumar Sinha v. State of Jharkhand through C.B.I.***, 2009 CRI.L.J. 2994;
- (f) ***Samir Mustafabhai Bajariya v. State of Gujrat***, 2013 (0) Supreme (SC) 415;
- (g) Order dated 25th April 2013 passed by this Court in **Criminal Application No.17 of 2012, *Mohamed Arshad Moh. Asgar Qureshi v. State of Maharashtra.***

3 With the aid of these rulings, it is argued that orders of suspension of sentence under Section 389 of the Code of Criminal Procedure are required to be exercised liberally, and if sentence of short duration is not suspended then the accused suffers heavy prejudice.

4 The learned Additional Public Prosecutor by pointing that the applicant/accused betrayed the trust reposed by his minor female student and committed rape on her repeatedly. Therefore, the application deserves to be rejected.

5 I have gone through the impugned Judgment and Order of conviction. The learned Additional Sessions Judge upon examination of evidence adduced by the prosecution has recorded the finding that the present applicant/accused had committed rape on the minor victim girl and while committing such act, he had recorded the act by using electronic device. It is further held that the recorded video clips involving the applicant/accused and the victim girl were transferred and published to various persons.

6 Nature of offence and enormity of charge are requires consideration while releasing the accused on bail. Considering the nature of offence established during trial, I do not consider this to be a fit case for releasing the applicant/accused on bail during pendency of the appeal, though the Courts are required to be liberal while suspending the sentence. Instead I choose to expedite the hearing of the appeal and therefore, the following order :

- (i) The application is rejected.
- (ii) Hearing of the appeal is expedited.
- (iii) Put up the appeal for final hearing in the week commencing from **5th December 2016**.

(A. M. BADAR J.)