

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.419 OF 2016

IN

CRIMINAL APPEAL NO.511 OF 2016

Sagar @ Shiva Bharat Pawar)...Applicant

v/s.

State of Maharashtra)...Respondent

Ms. Anjali Awasthi, Advocate for the Applicant.

Ms. V.S.Mhaispurkar, APP for the Respondent - State.

CORAM : P N. DESHMUKH, J.

DATE : 6th OCTOBER 2016.

P.C. :

This is an application for suspension of sentence and for grant of bail.

2 Heard learned counsel for applicant and learned APP at length and with their assistance, I scrutinised evidence on record and copies of the documents and the application.

3 Applicant is found convicted for the offence punishable under Section 366 of the I.P.C. and is sentenced to suffer R.I. for 7 years and to pay fine of Rs.5,000/- in default to suffer R.I. for 4 months. Applicant is further convicted for the offence punishable under Section

376(1) of the I.P.C. and is sentenced to suffer R.I. for 10 years and to pay fine of Rs.5,000/- in default to suffer R.I. for 4 months. The learned counsel for applicant by referring to the evidence on record has submitted that the prosecutrix was never forced by applicant to accompany him and as such, was consenting party, who was major at the time of incident and has submitted that as such no case of rape is made out against applicant nor there is evidence to establish that applicant has kidnapped her. The learned counsel by referring to medical papers has submitted that these documents do not corroborate evidence of prosecutrix of forcible sexual assault as according to the medical evidence, there are no injuries found on the person of victim. In the light of evidence as above, it is contended that application be allowed by imposing conditions upon applicant as he has no criminal antecedents.

4 The learned APP, on the other hand, opposed the application and by referring to evidence of prosecutrix and all other witnesses and documents on record has submitted that there is direct evidence, establishes involvement of applicant and thus prayed that application is liable to be rejected.

5 In the background of submissions as aforesaid, before considering the evidence of prosecutrix, it is material to note that prior to incident in the year 2012-14, applicant was working with father of prosecutrix and on his coming from Ratnagiri to Bombay, as he was knowing father of the prosecutrix, he on sympathetic ground was allowed to stay on the first floor in the house of the prosecutrix. Record

reveals that father of the prosecutrix was considering applicant as his brother.

Similar is the evidence of P.W.2-Smt. Jayashree Sandeep Gajakosh, mother of prosecutrix where she has deposed that applicant was known to the family members of the prosecutrix since two years prior to the incident as he was also in business of manufacturing Ganpati idols and had arrived from Ratnagiri to Bombay informing that he has no place to stay in Bombay and is unmarried and thus parents of the prosecutrix allowed him to stay on the first floor of their house and was treated as their family member. Applicant accordingly stayed as such for a period of one year.

6 In the background of above facts, which are not disputed evidence of prosecutrix reveals that while applicant was staying in their house one day he informed her that he loves her, which proposal at that time was accepted by the prosecutrix, however after six months, on one occasion applicant assaulted her in the presence of 12-13 workers and thus she stopped meeting applicant in spite of his making her phone calls, informing prosecutrix that he wanted to marry her. As such from the evidence of prosecutrix, it is established that after the incident of assault on her in the presence of workers, prosecutrix was not interested to continue her meeting with applicant. However, applicant in spite of this was calling her informing that he wanted to marry. On 26.4.2014, applicant threatened prosecutrix to accompany him to Ramdev Hotel at Sion. Due to threat extended, prosecutrix went with him as according to her evidence applicant as that time had extended threats to kill her and her family members and thereafter used to make

phone calls to prosecutrix everyday and on 30.4.2014 took her to Vashi and from there to Hamrapur where she was made to stay with him in the house of P.W.3-Bhagvan Damodar Patil till 8.5.2014 during which period she was sexually exploited on number of occasions daily by applicant.

7 Evidence of prosecutrix is found fully corroborated with the evidence of her mother when she has stated that after prosecutrix went missing on 30.4.2014, missing report was lodged and on learning on 7.5.2014 about prosecutrix residing at Hamrapur at Kalwa, she visited house of Patil and found prosecutrix in the company of applicant when on enquiring with her prosecutrix informed her that applicant had forcibly, on extending threats to kill her and her family members had brought her to that place and was subjecting to sexual assault everyday. Prosecutrix has also stated that though she was not willing to accompany applicant, due to threat extended to her and as per her knowledge as applicant had already committed two murders, she accompanied him. At this stage, evidence of P.W.4-Mrs. Neeta Sagar Pawar when perused reveals that she was second wife and had two children from applicant, whose first wife died about three years before and had three children from first wife. As per evidence on 2.5.2014, one of her neighbour informed her that her husband/applicant married one another female and on her reaching to police station found applicant alongwith prosecutrix. Her evidence also reveals that while residing with second wife, applicant was also indulged with 2-3 other females and has also attempted to commit murder of some man and has also played fraud upon one man involving 5-6 lakhs of rupees.

8 Having considered aforesaid evidence, it cannot be said that prosecutrix willingly accompany applicant but there appears much substance in the evidence of prosecutrix that due to threats extended to her to kill herself and her family members, she has no other option but to accompany applicant.

9 Evidence of P.W.5-Dr. Dhruv Pravin Gohil reveals that on 13.5.2014 that is on the second day of lodging of report, which is dated 11.5.2014, prosecutrix was referred by Nagpada hospital for confirming pregnancy test and ultra sonography when she had given history of sexual assault by known person with whom she was forced to accompany on 30.4.2014 and was forced to have sexual intercourse everyday till 7.5.2014. Evidence of Dr. reveals that during the course of his evidence, he was confronted with certain medical papers, however, his evidence is silent with regard to the contents of his documents, which are proved on record at Exhibits 24 to 26, copies of which are placed on record with application. On perusal of one such document dated 11.5.2014 that established case of prosecution prosecutrix having been examined on 11.5.2014 when she had given history of sexual assault by known person. The learned counsel for applicant by referring to this document has submitted that there is reference of prosecutrix having no external injury visible and about reference to evidence about no forcible sexual penetrate caused to her. However, contents of this document as aforesaid, by itself do not doubt the evidence of prosecutrix when she has in clear terms stated that she was threatened and as such was forced to submit her to applicant. In that view of the matter, there are no possibilities of prosecutrix having external injuries

on her person or of forceful penetration. In fact, record reveals that specific question was put to P.W.8 Atmaram Shelke to the effect that what was the information as per medical report to which he answered that prosecutrix was raped. Having considered facts involved in application as aforesaid, no case is made out for suspension of sentence or for bail.

10 Application is, thus, rejected.

(P. N. DESHMUKH, J.)