

*Ladda*FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 660 of 2016

IN

CRIMINAL APPEAL No. 377 of 2016.

Gajanan @ Haribhajan Baburao Jadhav Vs. The State of Maharashtra

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr Umesh Mankapure a/with Mr Vinod Sangvikar, for the applicant.

Smt. M.R.Tidke, APP for the State.

CORAM : A.S.GADKARI, J.

DATE : 22nd July, 2016

P.C.

- 1) Heard the learned counsel for the applicant.
- 2) This is an application for suspension of substantive sentence and for releasing the applicant on bail.
- 3) The applicant has been convicted under section 376 (1) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs.10,000/-, in default of payment of fine to further suffer rigorous imprisonment for six months by the learned Additional Sessions Judge, Pune by its Judgment and Order dated 19.3.2016 in Special Case No.326/2014.
- 4) The learned counsel for the applicant submitted that the evidence of the prosecutrix reveals that, it is the case of love affair. It is submitted that even after the prosecutrix was conceived, the

applicant and the prosecutrix decided not to perform abortion as the applicant was intending to perform marriage with the prosecutrix. It has come in the evidence of the prosecutrix that as a matter of fact the applicant had approached the parents of the prosecutrix with a proposal of marriage. However, the father of the prosecutrix denied and/or refused to perform the marriage of the prosecutrix with the applicant, and, therefore, the applicant could not perform the marriage. He further submitted that the prosecutrix gave birth to a male child on 18/6/2014 and the present crime is registered two months thereafter. He submitted that after taking into consideration the evidence on record, it reveals that it is the case of a consensual act and as a matter of fact, the applicant has never shrugged of his responsibility of performing marriage. He further submitted that the applicant was on bail during the trial. He, therefore, prayed that the applicant may be released on bail.

5) The learned APP, per contra, opposed the bail application and submitted that the Trial Court has recorded a finding that the accused under the guise of marriage, sexually assaulted the prosecutrix due to which she remained pregnant and ultimately gave birth to a child. She further submitted that in view of the facts mentioned in the impugned Judgment and Order, the application may be rejected.

6) The perusal of the evidence on record reveals that there is substance in the submissions of the learned counsel for the applicant. The applicant was on bail during the trial. There is no report that the applicant breached any of the conditions of bail. In view of the same, I am inclined to release the applicant on bail.

7) Hence, the following order :

:ORDER :

(a) The applicant be released on bail on his furnishing a P.R. bond of Rs.25,000/- with one or two solvent local sureties in the like amount;

b) After his release from jail, the applicant shall attend the Trial Court once in three months on every first Monday of the said month between 11:00 a.m. to 1:00 p.m. during the pendency of the appeal;

c) Any two consecutive defaults, in attending the Trial Court, will entitle the prosecution for seeking cancellation of bail granted to the applicant;

8) The application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)