

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.669 OF 2016

IN

CRIMINAL APPEAL NO.183 OF 2016

Mr.Vishal Ramesh Bhalerao .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr.Swapnil Ovalekar, Advocate for the applicant.

Mr.PH.Gaikwad Patil, APP for the Respondent State.

CORAM : PN. DESHMUKH, J

DATED : 27th SEPTEMBER 2016

P.C. :

1 Heard learned counsel for the applicant and learned APP for the State.

2 This application is filed for suspension of sentence imposed upon the applicant and for grant of bail.

3 Learned counsel for the applicant referring to the evidence of Doctor who had examined prosecutrix, had contended that as there are no injuries found on the person of prosecutrix, nor according to him, anything could be revealed from the C.A. reports, and as such, no case of alleged rape upon victim girl can be said to be established. It is also contended that conduct of minor girl is also doubtful, as from her evidence, it has nowhere

come on record that she was forced to accompany applicant. It is thus contended that application be allowed.

4 Perused the medical evidence wherefrom it reveals that prosecutrix came to be examined on the following day when she was certified to have not sustained with any fresh injuries nor she is found to have sustained external injury to *libia majora* or *libia minora*, and the expert has opined that there is evidence of multiple sexual vaginal intercourse and has accordingly issued medical certificate (Exhibit-30).

5 Evidence of prosecutrix clearly establish involvement of applicant wherein she has stated that on the following day of incident, while she was alone in the house in the noon hours, applicant arrived and on the pretext of taking her to the house of her grand-mother, took her in an auto-rickshaw and went in the forest area where, on extending threats to prosecutrix to keep quiet and inspite of her demand to return home, she was given a slap blow on her face and forcibly made to sleep on the ground where she was sexually assaulted.

6 From her evidence, it is further revealed that she was then given some amount to reach home. On reaching home, she narrated incident to her paternal aunt, who then took her to police where report came to be lodged. In view of evidence of prosecutrix and immediate disclosure made to her paternal aunt, coupled with medical evidence as from further evidence of PW 7 Mr.Vipul, it reveals that according to the history given by prosecutrix, she on the earlier day had accompanied applicant on

the pretext of taking her to her grand-mother by the accused, was taken to jungle area where she was subjected to sexual intercourse. No case is made out for suspension of substantive sentence and for grant of bail, as admittedly, even pending trial, applicant was in custody.

7 Learned counsel for the applicant, however, at this stage has submitted that applicant is in custody from the date of his arrest, and by now he has undergone 3 ½ years of his Imprisonment. Accused is found to be convicted and is sentenced to suffer 7 years of Imprisonment. Learned counsel for the applicant thus submits that Appeal be expedited.

9 Considering aforesaid facts, I find substance in the submission advanced by the learned counsel for the applicant.

10 Thus, following order is passed :

ORDER

Criminal Application is dismissed. However, for the reasons aforesaid, Appeal is expedited.

It be listed for final hearing on the board in the week commencing from 5th December 2016.

(PN. DESHMUKH, J)