

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1443 OF 2015
IN
CRIMINAL APPEAL NO.1142 OF 2013

Nandlal Zagadu Yadav

.... Applicant /
Original Accused

Versus

The State of Maharashtra,
Through Malwani Police Station

.... Respondent

Mr. M.M. Khokhawala and Ms. Meena Puralkar
for the Applicant.

Mrs. A.S. Pai, A.P.P., for the Respondent-State.

CORAM : SMT. V.K. TAHILRAMANI, ACTING C.J. &
DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 5TH FEBRUARY 2016.

P.C. :

1. This application is preferred by the Original Accused seeking suspension of his substantive sentence of imprisonment and for his release on bail during pendency of the Appeal.

2. The Applicant is convicted for the offence punishable under Section 376 of IPC for committing rape on a mentally challenged Prosecutrix and hence sentenced, inter alia, to suffer R.I. for life along with payment of fine of Rs.10,000/-, in default to suffer further R.I. for two years.

3. The submission of learned counsel for the Applicant is that the Prosecutrix in the present case, though was a major girl of 21 years, is not examined as a witness in the case. The medical evidence of PW-9 Dr. Baban Shinde, who has examined the Prosecutrix, does not show the presence of any external injuries on her person. Conversely, it showed that hymen was admitting two fingers with old tears. It is further urged that there is also no corroborating forensic evidence and in such situation, according to learned counsel for the Applicant, Applicant deserves to be released on bail. It is further submitted that, during the course of trial also, he was on bail.

4. Per contra, learned A.P.P. has opposed the application strongly by submitting that there is more than sufficient evidence to prove the occurrence of the incidence and having regard to the gravity of the offence and the punishment imposed on the Applicant, his application for bail cannot be allowed.

5. For the purpose of deciding this application for bail, we have perused the evidence on record and found that the Prosecutrix in the present case, though a major girl, was suffering from schizophrenia and

hence mentally challenged. The certificate issued by K.E.M. Hospital is produced on record along with the observations made by the Trial Court to the effect that the Prosecutrix was, though asked to enter into the witness box, she could not answer the questions properly and became violent. In this back-drop, her evidence could not be adduced by the prosecution.

6. However, there is evidence of PW-3 Khaliluddin, who has, on that day, found the Prosecutrix weeping and, on enquiries, informing him about the forcible sexual intercourse committed by the Applicant with her. He has also deposed about the Applicant making extra judicial confession of committing the mistake and pleading that he may be excused. There is also evidence of PW-1 Police Naik Nitin Shinde, who was posted on Mobile Van and PW-3 Khaliluddin, the Auto-Rickshaw Driver, who had brought the Prosecutrix to him with the complaint of rape. According to his evidence, on enquiries with the Prosecutrix, she has disclosed about the incidence to him and also pointed out to the Applicant as the culprit.

7. There is also evidence of PW-2 Tirumal Konar, the Manager of Jogaiwadi Guest House, where the Prosecutrix was taken by the Applicant. Applicant has hired there one room, where, as per prosecution case, the Applicant has committed rape on her.

8. In our considered opinion, prima facie, at this stage, this evidence is more than sufficient to prove the involvement of the Applicant in the offence, as held to be proved against him by the Trial Court.

9. In view of the above and having regard to the gravity of the offence, this application for bail cannot be allowed. Hence, the application stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [ACTING CHIEF JUSTICE]