

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 1516 OF 2015
IN
CRIMINAL APPEAL NO. 295 OF 2016

Mohan Pandu Gare

.....Applicant

V/s.

The State of Maharashtra and another

....Respondents

Mr. Sanjay Ghaisas Advocate for Applicant.

Mrs. A. A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : APRIL 28, 2016.

PC :

Heard. This is an application under section 389 of Code of Criminal Procedure, 1973 seeking suspension of substantive sentence. Applicant herein is convicted for offence punishable under section 376 (2) (i) of Indian Penal Code and is sentenced to suffer rigorous imprisonment for 10 years and fine of Rs. 5000/- in default to suffer further rigorous imprisonment for 2 years. He is also convicted for offence punishable under section 363 of Indian Penal Code and sentenced to suffer rigorous imprisonment for 3 years and fine of Rs.

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5,000/- in default to suffer further rigorous imprisonment for 2 months. He is also convicted for offence punishable under section 366 of Indian Penal Code and sentenced to suffer rigorous imprisonment for 3 years and fine of Rs. 5,000/- in default to suffer further rigorous imprisonment for 2 months by Special Judge & Additional Sessions Judge – 3 Nashik vide Judgment and Order dated 11/08/2015 in Session Case No. 239 of 2014.

2) Perused the substantive evidence of the prosecutrix who has been examined as P.W. 1. The school leaving certificate of the prosecutrix shows that her date of birth is 01/06/1998. The date of incident is 09/06/2014.

3) In the substantive evidence, prosecutrix has deposed before the court that she was acquainted with the applicant as he was her one door neighbour i.e. he was residing adjacent to her house. According to her, on the date of incident, she was spreading rock crush in the cattle shed. Applicant herein approached her and asked her to accompany him and that she should cohabit with him. Initially she had refused as the applicant was a married man and father of 3 children, however, her

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own cousin Govind Dhage, original accused no. 2 had insisted upon her to accompany the applicant. Her cousin had told her that he would perform her marriage with the accused. She therefore, accompanied the accused to her maternal uncle's house i.e. Hiranman Shikre at Pimplad. After they had reached the house of her maternal uncle, applicant had allegedly assured her that he would get married to her. He had sexual intercourse with her. She stayed at the house of her maternal uncle for 11 days. Thereafter, she had accompanied the accused to his sister's house at Nanashi. She stayed with sister of the applicant and thereafter applicant had not returned. His sister had brought her to her sister's house namely Chaya Bagmare. She disclosed the incident to her sister. Her parents had taken her back and thereafter, her statement was recorded by Judicial Magistrate First Class under section 164 of Code of Criminal Procedure, 1973.

4) In the cross-examination prosecutrix has admitted and reiterated that she had stayed at the house of her maternal uncle for 10 days. She has also admitted that her parents were trying to settle her marriage with some people from Gujarat who had approved the proposal prior to

3 years of the incident.

5) The substantive evidence of the prosecutrix would undoubtedly indicate that she had accompanied the accused/applicant at the instance of her cousin. The incident has taken place in the house of her own maternal uncle. The story put forth by the prosecutrix does not inspire confidence. It simply appears that there has been some misunderstanding. No report was lodged by her parents which would again indicate that they were fully aware that she has accompanied the applicant.

6) Taking into consideration the facts of the case and moreover applicant has been in jail since 25/06/2014, applicant deserves to be enlarged on bail during the pendency of appeal.

ORDER

(i) Application is allowed.

(ii) The substantive sentence imposed upon the applicant is hereby suspended. He be enlarged on bail on furnishing PR. bond in the sum of Rs. 20,000/- and one or more sureties in the like amount.

(iii) Applicant shall not reside at village Mandanpade, Taluka : Peth,

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District : Nashik for about 6 months from the date of his release.

(iv) Applicant shall furnish his address to the court at the time of furnishing bail.

(v) Applicant shall report to Court of Sessions, Nashik, once in six months, on the date as specified by the Sessions Judge, till the conclusion of appeal.

(vi) Upon failure to attend any two consecutive dates, prosecution would be at liberty to seek cancellation of bail.

7) Application is allowed and disposed of in the above terms.

(SMT. SADHANA S. JADHAV, J.)