

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders

CRIMINAL APPLICATION NO.123 OF 2017

IN

CRIMINAL APPEAL NO.9/2017

ASHOK S/O YESHWANT GHARAT

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr.Shinde S.K.

APP for Respondents/State: Mr.K.N. Lokhande.

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CORAM : V.L. ACHLIYA, J.

Dated: February 15, 2017

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The applicant has moved this application seeking suspension of the sentence and release on bail during pendency of appeal.

2. Heard learned Counsel for the applicant and learned APP for the State and further perused the record and proceedings and the impugned judgment.

3. The applicant – appellant was tried for committing offences punishable under sections 376(2)(n), 506 of the Indian Penal Code and sections 3 and 4 of the

Protection of Children from Sexual Offences Act, 2012. On conclusion of trial, the trial Court has convicted the applicant - appellant under Section 376(2)(n) of IPC and sentenced to suffer R.I. for seven years and to pay a fine of Rs.500/-. He is also convicted for committing offences punishable under Sections 3, 4 of the Protection of Children from Sexual Offences Act, 2012 and section 506 of IPC, and sentenced to suffer S.I. for one month.

4. Mr. Shinde, learned Counsel for the applicant strenuously contended that the impugned judgment and order passed by the trial Court is not sustainable in law and the applicant has fair chances to succeed in appeal. He submits that the testimony of the prosecutrix finds no corroboration from the medical evidence as well as report received from the Chemical Analyzer. He submits that the applicant has been falsely implicated in the case at the behest of the complainant who was interested in purchasing the house owned by sister of the accused. He submits that as per the medical report, there was no external injury except three nail marks detected in physical examination of the

prosecutrix. Similarly, no marks of violence were noticed during the examination. In the cross-examination, the Medical Officer has admitted that the injury to the hymen was more than seven days old. In this view, the applicant has fair chances to succeed in appeal. He further submits that the applicant is an aged person and the entire family depends upon him. He, therefore, urged to enlarge the applicant on bail during pendency of appeal.

5. On the other hand, learned APP opposed the application with contention that there is strong case to connect the applicant with the offence. By referring the case of the prosecution, the complaint and depositions of the witnesses to the incident, the learned APP submits that there is absolutely no perversity in the impugned judgment and order passed by the trial Court. He further submits that the applicant is found to be guilty of committing a heinous offence of rape and that too, against a minor girl aged about 12 years. He further submits that looking to the nature of the offence and the sentence awarded, the application may be rejected.

6. In order to appreciate the submissions advanced, I have perused the impugned judgment and order, and the record and proceedings. I am of the prima facie view that there is evidence to connect the applicant with commission of the offence. The victim has deposed as per the prosecution case. The complainant has also supported the case of the prosecution. The accused was alleged to have been caught in the temple in a compromising position with the prosecutrix. There is one child witness to the incident who has also deposed as per the case of the prosecution. No doubt, no semen stains were detected on the clothes of the prosecutrix as well the quilt (*Godhadi*) but as per the settled position of law, even the sole testimony of the prosecutrix, if found to be trustworthy, can form basis to convict person for such offence u/s 376 of IPC. In this view, no much importance can be attached to absence of corroborative evidence. During the trial, the applicant was not on bail.

7. Considering the overall facts of the case, the nature of offence, I am not inclined to entertain the application. However, looking to the fact that the

incident has occurred in the year 2015 and the applicant is in jail since 30.11.2015, I am inclined to expedite hearing of the appeal. The paper-book is ready. Hence, the following order:

8. :ORDER:

I) The application is rejected.

ii) Hearing of the appeal is expedited.

Iii) List the appeal for final hearing in the first week of April, 2017.

(V.L. ACHLIYA,J)