

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL APPLICATION NO. 274 OF 2017
IN
CRIMINAL APPEAL NO. 354 OF 2016

Ramesh Bokha Padavi,
Age : 34 years, Occu. Agriculturist,
R/o. Mothe Dhanpur, Tq. Taloda,
Dist. Nandurbar. .. Applicant

Versus

The State of Maharashtra. .. Respondent

.....
Mr P. S. Paranjape, Advocate for the applicant
Mr K. S. Patil, APP for respondent/State
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**CORAM : V.L. ACHLIYA, J.
DATED : 02.02.2017.**

PER COURT :

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

2. Heard learned counsel for the applicant and APP for the State.
Perused the Record & Proceedings.

3. The applicant-accused was tried for the offences punishable under Sections 376, 504, 506 r/w 34 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act (herein after referred to as "POSCO Act"). On conclusion of trial, the ld. Addl. Sessions Judge, Shahada, Dist. Nandurbar, vide Judgment & Order dt. 11.05.2016 passed in Sessions Case No. 9 of 2014, convicted the applicant-accused for the offence punishable under Section 376 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and pay fine of Rs. 500/-. The applicant is also convicted for offence punishable under Section 6 r/w Section 5 of the POSCO Act and sentenced to suffer rigorous imprisonment for ten years and pay fine of Rs. 500/-. He is also convicted under Section 4 r/w Section 3 of the POSCO Act, but no separate sentence has been awarded for said offence. Being aggrieved and dissatisfied with the impugned Judgment & Order, the applicant-accused has preferred Appeal and pending disposal of appeal, prayed for release on bail on the grounds as set out in detail in the application.

4. Mr. Paranjape, learned counsel for the applicant strenuously contended that, there is no cogent, convincing and reliable evidence to sustain

the conviction under Section 376 of the IPC as well as Section 6 r/w Section 5 of the POSCO Act. Learned counsel has pointed out that there was inordinate delay in lodging the complaint. Prosecution has failed to explain the delay in lodging the complaint. Although the trial Court has convicted the applicant by holding that the prosecutrix was minor at the time of incident, but there is no evidence to that effect brought on record. The applicant along with his wife were prosecuted in the case of alleged rape without *iota* of evidence. He further submits that, there are two communities in the village namely; Dhanka and Padavi. The accused belongs to the Padavi community whereas the prosecutrix belongs to Dhanka community. Due to political animosity between two communities, the applicant was falsely implicated in the case. The FIR came to be registered pursuant to order u/s 156(3) of the Code of Criminal procedure passed by the learned Magistrate. During the trial, the applicant was on bail and he has not committed any breach of conditions of bail. He, therefore, urged that looking to the over all facts of the case and the nature of offence, the applicant be enlarged on bail.

5. On the other hand, the learned APP has opposed the application with contention that there is a strong case to connect the applicant with the

commission of offence. The girl had delivered a child conceived from applicant, who died eight days after his birth. Prosecutrix was referred for medical examination. As per the report of medical examination, the prosecutrix has undergone repeated sexual intercourse and symptoms of post delivery status were noticed during the medical examination, which corroborate the testimony of prosecutrix. He further submits that, as per the medical report issued after conducting physical and radiological examination of the prosecutrix, the Medical Officer has opined that, at the time of her medical examination the prosecutrix was about 16 years. In this view, the learned APP submits that, the Judgment & Order passed by the learned Addl. Sessions Judge is based upon due appreciation of the evidence and in consonance with the evidence on record. He therefore urged to reject the application.

6. In order to appreciate the submissions advanced, I have perused the impugned Judgment & Order as well as the Record & Proceedings of the case called for deciding the bail application. It is apparent from the record that no complaint was filed immediately after the incident. The complaint was filed much after the prosecutrix gave birth to a male child, who died after

eight days of his birth. The applicant is a married person. Except the testimony of the prosecutrix who has stated that the accused has repeatedly committed forcible sexual intercourse with her, there is no corroborative evidence. Although the prosecutrix was referred for medical examination to determine her age, the prosecution has not proved the certificate in respect of her age issued by Medical Officer. Although the trial Court has observed that the age of the prosecutrix was about 14-15 years at the time of incident, but there is no cogent and convincing evidence adduced by the prosecution to prove the age of the prosecutrix.

7. Considering the over all facts of the case, the evidence on record and the submissions advanced, I am of the view that, arguable case has been made out to be considered in appeal. During the trial, the applicant was on bail. He has not misused the liberty granted. I am, therefore, inclined to allow the application and pass the following order.

ORDER

- (1) Pending disposal of the appeal, the substantive sentence stands suspended subject to deposit of fine amount by the applicant.

- (2) Pending disposal of the appeal, the applicant be enlarged on bail on his furnishing bail in the sum of Rs. 75000/- (Rupees Seventy Five Thousand) with one or more sureties in the like amount, on following conditions.
- (i) Pending disposal of the appeal, the applicant shall attend Taloda Police Station, Tq. & Dist. Nandurbar, on last day of each month in between 10:00 to 11:00 AM.
 - (ii) The applicant shall not indulge into any offence of similar nature during the pendency of the Appeal.
 - (iii) The applicant shall furnish the names of his three close relatives with their addresses and phone numbers.
- (3) Bail be furnished in the trial Court within a period of two weeks from the date of this order, else the order passed stands vacated.
- (4) In the event of breach of any of the conditions as above, the bail granted to the applicant will be liable to be cancelled.

- (5) The Officer In-charge of the Taloda Police Station, Tq. & Dist. Nandurbar, is directed to submit the report of compliance of conditions of bail after every six months.
8. Criminal Application stands disposed of in above terms.

[V. L. ACHLIYA]
JUDGE