

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. 293 OF 2017

IN

CRIMINAL APPEAL NO.39/2017

DILIP S/O PANDURANG SALVE

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr.R K Temkar.

APP for Respondents/State: Smt.S.S. Raut.

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CORAM : V.L. ACHLIYA, J.

Dated: JUNE 23, 2017

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The applicant has moved this application seeking suspension of sentence and release on bail, on the grounds set out in the application.

2. Heard the learned Counsel for the applicant and APP for the State and perused the record & proceedings of the case.

3. In nutshell, it is contention of the learned Counsel for the applicant – appellant that the applicant has a good case to succeed in appeal. He submits

that the judgment and order passed by the trial Court is not sustainable in law. The prosecution has failed to prove that at the time of incident, the victim was minor in age. He submits that though the prosecution has placed on record copy of the school leaving certificate and birth certificate to establish that the victim was minor, the defence witnesses examined by the accused have deposed raising serious doubts as to the age recorded in the birth register. He submits that the mother and maternal uncle have been examined as defence witnesses. The testimonies of the defence witnesses raise serious doubt as to the correctness of the birth date recorded in the birth register maintained in the village panchayat. He submits that the evidence as adduced by the prosecution clearly indicates that the victim was in affair with the accused and sexual intercourse was consensual. It further reflects that the victim has left custody of her guardian at her own. She stayed with the accused for a period of more than four months in the agricultural field. She had every opportunity to run away if she was forced to stay against her wish. He further submits that the applicant is a married person and looking

to his age and the pendency of appeals and overall nature of the case and evidence on record, the applicant be enlarged on bail.

4. On the other hand, learned APP opposed the application with the contention that there is strong evidence to connect the applicant with the offence with which he has been charged and convicted by the trial Court. By referring the evidence, learned APP pointed out that the prosecution has conclusively established that the victim was about 15 years of age at the time of commission of incident. The prosecutrix has deposed that she was minor and accused forcibly took her away on the false pretext to marry with her though he was a married person. She has deposed that the accused had repeatedly committed sexual intercourse with her against her wish and desire. It is further pointed out that the DNA test conducted has established that the accused and prosecutrix were the biological father and mother of the child in womb. It is further contended that during trial, the applicant was not on bail. Release of applicant on bail may lead to causing threats to the victim and her family.

5. In order to appreciate the submissions advanced, I have perused the record and proceedings of the case. The applicant was charged for committing offence punishable under Section 363, 366A, 376(2)(n) of IPC and sections 5(j)(i)(I), (q) of the Protection of Children from Sexual Offences Act with the allegation that he has kidnapped the minor girl aged 15 years from the custody of her lawful guardian i.e. father, under the false pretext to marry with her and took her to village Nimgaon Mhalunge, Taluka Shirur, Dist. Pune and during the period of more than four months stayed there, repeatedly committed sexual intercourse with the minor girl and made her pregnant.

6. In order to establish the case, prosecution has examined eleven witnesses which include, prosecutrix, her father and other witnesses. Prima facie, it reflects that the prosecution has established by leading oral as well as documentary evidence that at the time of incident, the prosecutrix was minor. It reveals from the record that the girl was in affair with the accused and the physical relationship between them was consensual. However, the fact remains that the girl was minor and

therefore, her consent was immaterial for physical relationship. Looking to the overall evidence, nature of offence and conviction awarded, I am of the view that no case is made out to release the applicant on bail. It is contended by the Counsel for the applicant that the applicant is lying in the jail since 2014 as under-trial prisoner. The paper-book is already prepared and received. Looking to these facts, I am of the view that hearing of appeal be expedited and matter be listed for final hearing. Hence, the following order:

:ORDER:

- I) Application is rejected.
- II) List the appeal for final hearing on 24th July, 2017.

(V.L. ACHLIYA, J)