

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

**CRIMINAL APPLICATION NO. 1378 OF 2017
IN
CRIMINAL APPEAL NO. 106 OF 2017**

Kishhor @ Vadya s/o Shivdas Koli **..... APPLICANT**

V E R S U S

The State of Maharashtra & Anr. **..... RESPONDENTS**

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Mr. V.B.Patil, Advocate for Applicant.

Mr. K.N.Lokhande, A.P.P. for R – 1 – State.

Mr. S.G.Kawade, Advocate for R – 2.

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CORAM : V.L.ACHLIYA, J.

DATE : 20th APRIL, 2017

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ORDER :

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

2. Heard learned counsel for the applicant, learned A.P.P. and the counsel representing respondent

No. 2/complainant.

3. In nut-shell, it is the contention of the learned counsel for the applicant that the reasons and findings recorded by the trial Court to convict the appellant u/s 376 read with section 511 of the Indian Penal Code are not sustainable in law and based upon improper appreciation of evidence. He submits that the applicant was on bail during the trial. The sentence awarded is too harsh. He submits that there is no evidence to corroborate the testimony of the prosecutrix. On medical examination of the prosecutrix, nothing was found suggestive of the fact that the accused had attempted to commit rape.

4. On the other hand, learned A.P.P. and the counsel representing respondent No. 2/complainant have opposed the application with the contention that there is cogent, convincing and reliable evidence to sustain the conviction. Nothing has been extracted from the cross examination of the prosecutrix to find favour to the defence of the accused.

5. In order to appreciate the submissions advanced, I have perused the impugned Judgment and

copies of the depositions placed on record by the learned counsel for the applicant. While dealing with the application, it is not desirable to make observations as to the merit of the case. I am, therefore, refraining myself to deal with the submissions in detail. *Prima facie*, there is sufficient evidence to connect the applicant with the offence for which he is convicted. The testimony of the prosecutrix coupled with the medical evidence and other evidence on record, make out a case for which the trial Court has convicted the applicant/appellant. In my view, the reasons and findings recorded by the trial Court appears to be quite consistent with the evidence on record. I am, therefore, not inclined to release the applicant on bail. However, looking to the fact that the applicant has been convicted for the offence of attempt to commit rape and sentence of imprisonment for seven years awarded, I am inclined to expedite the hearing of the Appeal.

6. It is clarified that the observations recorded as above are recorded for the limited purpose for deciding the bail application and the same can not be treated as a view of this Court on the merits of the case.

Hence, I pass the following order.

[i] The application is rejected.

[ii] Hearing of the Appeal is expedited.

[iii] Trial Court is directed to expedite the preparation of paper book and send the record and proceedings with paper book within twelve weeks from the date of passing of this order.

[iv] On receipt of the record and proceedings, the applicant will be at liberty to move the Court for fixing date for final hearing.

[v] In case, the Appeal is not finally decided within one year from the date of listing of Appeal for final hearing, the applicant will be at liberty to make fresh application for bail.

7. Criminal Application is disposed of with above order and directions.

[V.L.ACHLIYA, J.]