

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

CRIMINAL APPLICATION NO. 1724 OF 2016
IN
CRIMINAL APPEAL ST. NO. 128 OF 2016

Lahu S/o Bhausahab Sonwane .. Applicant

Versus

The State of Maharashtra. .. Respondent

.....
Mr M. A. Tandale, Advocate for the applicant
Mr K. N. Lokhande, APP for respondent/State
.....

**CORAM : VL. ACHLIYA, J.
DATED : 16.01.2017.**

PER COURT :

. The applicant herein has preferred this application seeking suspension of sentence and release of the applicant on bail during the pendency of the appeal. The applicant was tried for committing offences punishable u/s 363, 366A and 376 of the Indian Penal Code, with an allegation that he had kidnapped a minor girl aged 15 years from the lawful guardianship of her elder brother and by making false promise to marry with her, committed sexual intercourse with her. On conclusion of the trial, the ld. Addl. Sessions Judge, Shrirampur has convicted the applicant for committing offence punishable u/s 363, 366A and 376 of the IPC. He is convicted u/s 376 of the IPC and sentenced to undergo rigorous imprisonment for 10 years

and to pay fine of Rs. 20,000/-. Separate sentences have been awarded for committing offences punishable u/s 363, 366A of IPC. All the sentences are ordered to run concurrently.

2. Mr Tandale, learned counsel for the applicant has invited my attention to the testimony of Pradeep (PW1) – the complainant and the brother of the victim-girl. He has categorically admitted in cross-examination that, his sister had gone with accused on her own accord and the complaint was lodged due to misunderstanding. He has further invited my attention to the testimony of victim-girl to point out that no element of force was employed in taking away the victim girl. On the contrary, the evidence of prosecutrix reflects she left the house on her own accord. It is pointed out that, though the prosecution has claimed that victim girl was minor in age, the prosecution has utterly failed to prove the age of the prosecutrix. It is pointed out that, in the cross-examination the prosecutrix has deposed that she has studied upto 5th std. and left the school about 10-15 years prior to the incident. It is pointed out that, though the prosecution has relied upon the date of birth of the prosecutrix recorded in the school register, no witness was examined to prove the same. It is further pointed out that, though the girl was referred for medical examination to determine her age, no medical officer was examined to prove the outcome of medical examination conducted to determine the age of the prosecutrix. It is further pointed out that, the incident was occurred in the

year 2011 and as per prevailing law, the girl below 16 years of age alone to be treated as minor. As per the fact deposed by prosecutrix, she has stated that her menstruation period started five years prior to the incident. In this background, learned counsel has argued that, it can be inferred that the girl was more than 16 years of age and matured enough to take decision of her life. He further pointed out that, the applicant was on bail during the trial and urged to release the applicant on bail during the pendency of the appeal.

3. Learned APP has strongly opposed the application with contention that, there is a cogent, convincing and reliable evidence to sustain the conviction. He submits that, the prosecutrix has deposed that her age was 15 years at the time of the incident and further deposed that her date of birth as 22.03.1995. He, therefore, submits that, taking into consideration that the girl was below 16 years of age, the consent of prosecutrix is of no relevance. He further submits that, the judgment is well reasoned and calls for no interference and urged for rejecting the application.

4. Having appreciated the submissions advanced in the light of the record & proceedings of the case, I am of the view that a case is made out to enlarge the applicant on bail during the pendency of the appeal. The incident is alleged to be occurred in between the night of 13.03.2011 and 14.03.2011. The victim girl was found to be missing from the Hut. While Pradeep (PW1) went in search of his sister,

somebody from the locality disclosed to him that, he had seen his sister going along with the accused. He, therefore, lodged complaint against the accused. After lodging complaint on 20.03.2011, the accused and the victim-girl were brought to the Police Station by elder brother of the accused. The girl was referred for medical examination. In the medical examination, her hymen was found to be torn and showing admission of two fingers, suggestive of the fact that the girl was habituated to sexual intercourse. Although, the Medical Officer examined by the prosecution i.e. Dr. Jaya Thakkar (PW5) has deposed that the girl was referred for medical examination to determine her age, no efforts were made by the prosecution to summon the doctor, who has conducted the medical examination to determine the age. Similarly, the prosecution has made no efforts to prove the date of birth of the victim-girl recorded in the school register. In the cross-examination, the prosecutrix has deposed that, she has studied upto 5th std. and left the school about 10-15 years prior to the incident. She has disclosed that, she has started menstruation period about 5 years prior to the incident. With this evidence on record, I am of the view that, the arguable case has been made out to be considered in Appeal. During the trial, the applicant was on bail. I am, therefore, of the view that the applicant be enlarged on bail on certain condition.

5. It is clarified that, the observations made herein above are made for the limited purpose of deciding this application and it shall have no bearing upon the merits of the matter. Hence, the following order.

ORDER

- (1) Pending disposal of the appeal, the execution of substantive sentence stands suspended subject to deposit of fine amount from the date of release of the applicant on bail.
 - (2) Pending disposal of the appeal, the applicant be released on bail on his furnishing bail in the sum of Rs. 50,000/- (Rupees Fifty Thousand) with one surety in the like amount, on following conditions.
 - (i) Pending disposal of the appeal, the applicant shall attend Shrirampur Police Station on last day of each month.
 - (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) In the event of breach of any of the conditions of bail, the bail granted to the applicant will be liable to be cancelled.
 - (4) Bail be furnished in the trial Court.
 - (5) The Officer In-charge of the Police Station, Shrirampur is directed to submit the report of compliance of conditions of bail after every six months.
6. Criminal Application stands disposed of in above terms.

[V. L. ACHLIYA]
JUDGE

