

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

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| Office Notes, Office<br>Memoranda of Coram,<br>appearances, Court's<br>orders or directions<br>and Registrar's orders |  | Court's or Judge's orders |
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**CRIMINAL APPLICATION NO.1559 OF 2017**

**IN**

**CRIMINAL APPEAL NO.117/2017.**

RAHUL S/O. KONDIRAM SALVE  
VERSUS  
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr.Shermale K. N.  
APP for Respondents/State: Mr.G.O. Wattamwar.

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**CORAM : V.L. ACHLIYA, J.**

**Dated: JUNE 13, 2017**

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Applicant has moved this application seeking suspension of sentence and release on bail during pendency of the appeal, on the grounds set out in the application.

2. Heard learned Counsel for the applicant and APP appearing for the respondent – State, and further perused judgment and order passed by the trial Court as well as copies of the depositions of the witnesses examined by the prosecution.

3. The learned Counsel for the applicant submits that there is no cogent, convincing and reliable evidence to sustain the conviction of the applicant - appellant under Section 3 r/w 4 of the Protection of Children from Sexual Offences Act, 2012 and section 376 of IPC. He submits that it is apparent on the face of record and the depositions of the witnesses that there was affair between the accused and prosecutrix and physical relationship was consensual. He submits that the prosecution has failed to establish that at the time of incident, prosecutrix was minor. He submits that no birth certificate in respect of birth date of the prosecutrix was produced. The findings are based upon oral testimony of the prosecutrix and her father coupled with school leaving certificate produced in support of age of the prosecutrix. He submits that even if we accept case of the prosecution, then the prosecutrix was at the verge of attaining age of majority. By referring testimony of prosecutrix, he pointed out that by no stretch of imagination, it can be believed that 8 to 9 times sexual intercourse was committed by putting the prosecutrix under threats of bodily hurt. According to the

prosecutrix, sexual intercourse was committed some times in the lodge at Shirdi and some times behind temple of Vetalbaba. He submits that the complaint was lodged after a period of more than six – seven months after the alleged incident. He submits that the appellant has good case to succeed in appeal. During the trial, appellant was on bail.

4. The prosecution has not filed reply though granted time to file reply to bail application. The learned APP has opposed the application with contention that there is strong evidence to support the conviction. He submits that the prosecutrix as well as father of prosecutrix have entirely supported the case of the prosecution. The report of DNA has established that the appellant is biological father of the child delivered by the prosecutrix. He further submits that the school record of the prosecutrix has reflected her date of birth as 5.7.1998, which establishes that the prosecutrix was below 18 years of age at the time of incident. He, therefore, submits that consent of the prosecutrix is immaterial and irrelevant. He further submits that there are three theft cases

registered against the applicant during pendency of trial.

5. In order to appreciate the submissions advanced, I have thoroughly perused the impugned judgment and order of the trial Court and further perused depositions of the witnesses examined by the prosecution to prove the guilt against the accused. On the face of the record, it reflects that at the time of incident, prosecutrix was at the verge of attaining majority. It is apparent on the face of record that there was affair between accused and the prosecutrix. prosecutrix has deposed that accused had sexual intercourse with her eight – nine times at various places which include lodge at Shirdi and place behind Vetalbaba temple. She developed pregnancy and disclosed the fact to the accused. However, accused asked her not to disclose the same to others. She further deposed that her father had solemnized her marriage with one Rahul on 26.8.2015. After her marriage, as it was detected that she was carrying pregnancy of more than 5 months, her in-laws left her at her maternal home. On due consideration of evidence of prosecutrix and the complainant, it

appears that the prosecutrix was a consenting party to the physical relationship. It is difficult to believe that sexual intercourse was committed by the accused with the prosecutrix in a manner as deposed by the prosecutrix i.e. putting her under fear to cause bodily harm. There is no cogent and convincing evidence to conclusively establish that prosecutrix was below 18 years of age when the incident occurred. At the time of taking her for sonography, prosecutrix disclosed her age as 19 years. No primary evidence showing birth date of prosecutrix was produced before the Court. The conclusions drawn by the Court as to age of prosecutrix entirely based upon oral testimony of the prosecutrix coupled with school leaving certificate. Considering overall facts of the case and evidence on record, I am of the view that arguable case is made out to be considered in appeal. During the trial, applicant was on bail. It is nowhere the case of the prosecution that during trial, the applicant has misused the condition of bail and caused threats to the prosecutrix or her family members.

6. In this view, I am inclined to allow

the application. Hence, the following order:

**ORDER**

- (1) Pending disposal of the appeal, the execution of substantive sentence stands suspended subject to deposit of fine amount.
- (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 City Police Station, Samgamner, Tq. Samgamner, District Ahmednagar, 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.
  - (iv) The applicant shall not enter local limits of Sangamner city except for the purpose of recording appearance before officer in-charge of police station. He shall not try to establish contact with the prosecutrix to cause any threats to prosecutrix and

her family members;

- (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 City Police Station, Samngamner, Tq. Samgamner, District Ahmednagar is directed to submit the report of compliance of conditions of bail after every six months.

7. Criminal Application stands disposed of in above terms.

**(V.L. ACHLIYA,J)**

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