

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
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CRIMINAL APPLICATION NO.1888 OF 2017

IN

CRIMINAL APPEAL NO.194/2017.

SUBHASH S/O. RAMDAS MORE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr.Shejwal Arun S
APP for Respondents/State: Mr.S.Y. Mahajan.

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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 appeal, on the grounds set out in the application.

2. Heard learned Counsel for the applicant and APP appearing for the respondent - State and, perused the impugned judgment and order of the trial Court as well as copies of depositions placed on record.

3. The applicant was tried for

committing offence punishable under Section 366-A of IPC and section 4 r/w 3 of the Protection of Children from Sexual Offences Act, 2012. On conclusion of trial, learned Additional Sessions Judge vide judgment and order dated 22.7.2016 passed in Special Case No.71 of 2015 convicted the appellant for the offence punishable under Section 366-A of IPC and section 4 r/w 3 of the Protection of Children from Sexual Offences Act, 2012. The accused is sentenced to suffer R.I. for seven years and to pay a fine of Rs.1000 for each of the offences committed by him. Being aggrieved, appellant has preferred the appeal.

4. The learned Counsel for the applicant strenuously contended that there is a good case to succeed in appeal. He submits that there is no cogent, convincing and reliable evidence to sustain the conviction. By referring testimony of father of the prosecutrix i.e. complainant, the learned Counsel submits that testimony of the complainant is not of avail to establish complicity of the accused. He further submits that the testimony of the prosecutrix reveals that she had left her house on her own and

there was actually no act committed on the part of accused to induce her to give up custody of her parents and to go along with accused. He further submits that prosecution has failed to prove that prosecutrix was minor in age.

5. On the other hand, learned APP appearing for the State has opposed the application with contention that there is cogent, convincing and reliable evidence to sustain the conviction. The prosecutrix has fully supported the case of the prosecution. Prosecutrix as well as complainant have categorically deposed that at the time of incident, age of the prosecutrix was 12 years and she was studying in 7th standard. There is no challenge to the testimony of the prosecutrix as well as her father as regards age of prosecutrix. He further submits that prosecution has further adduced evidence as regards birth date of prosecutrix and proved that she was born on 3.9.2002 and minor in age at the time of incident. Testimony of the prosecutrix clearly make out a case to sustain the conviction. He further submits that prosecutrix has categorically deposed that she was compelled to go with the accused.

She has deposed that accused gagged her mouth and forced her to go with him. He also committed sexual intercourse with her. The learned APP submits that medical evidence corroborates testimony of the prosecutrix that she was subjected to repeated sexual intercourse.

6. In order to appreciate submissions advanced by the learned Counsel for applicant and APP for the State, I have perused the impugned judgment and order as well as copies of depositions placed on record. In my view, no case is made out to entertain the request to enlarge the applicant on bail. There is strong evidence to connect applicant with the offence with which he has been charged and convicted by the trial Court. Prosecutrix has deposed as per case of the prosecution. There is overwhelming evidence to establish the fact that at the time of incident, the prosecutrix was minor and her age was about 12 – 13 years. She was studying in 7th standard. In this view, consent of the prosecutrix is immaterial. The testimony of prosecutrix finds due corroboration from other evidence adduced by the prosecution. During trial, the applicant was not on

bail. There exists no reason to enlarge applicant on bail. In case, the applicant is released on bail, there is every possibility that prosecutrix may be harassed and threatened by applicant. So also the possibility of abscondence of applicant cannot be ruled out. I am, therefore, not inclined to allow the application.

7. In the result, application is rejected. Hearing of the appeal is expedited.

The Sessions Court, Aurangabad is directed to expedite the work of preparation of paper-book and submit record & proceedings with paper-book within twelve weeks from today. On receipt of record & proceedings, appeal be listed for final hearing in the category of "Accused in Jail." Application stands disposed of.

(V.L. ACHLIYA, J)