

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

**920 CRIMINAL APPLICATION NO. 2005 OF 2017
IN
APEAL/160/2017**

ANGAD S/O TUKARAM CHANDANE

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. S.S.Rathi
Advocate for R – 2 : Mr. Y.P.Narwade
APP for R - 8 – State : Mrs. S.S.Raut

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CORAM : V.L.ACHLIYA, J.

DATE : 7th JULY, 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, for the reasons set out in detail in the application and the grounds raised in the Appeal memo.

2. Heard learned counsel for the applicant and learned A.P.P. as well as the counsel representing respondent No. 2/complainant.

3. The applicant was tried for the offence punishable u/s 376, 417 of the Indian Penal Code with allegations that by making false promise to marry, the applicant/accused committed repeated sexual intercourse with the prosecutrix and caused her pregnant. After causing the pregnancy, the applicant/accused refused to perform marriage with the prosecutrix. The prosecutrix has given birth to male child. On the basis of complaint lodged by the prosecutrix, the offence came to be registered and the applicant/accused was subjected to trial to face criminal prosecution for the said offences. On conclusion of trial, the applicant is held guilty of the offence punishable u/s 376 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of Nine years and to pay fine of Rs. 50,000/- and in default of payment of fine, to suffer simple imprisonment for two years. For committing the offence punishable u/s 417 of the Indian Penal Code the applicant/accused is convicted and sentenced to suffer rigorous imprisonment for a period of seven months and to pay fine of Rs. 5,000/- and

in default of payment of fine, to suffer simple imprisonment for one and half months. The amount of fine was ordered to be paid to the victim as compensation. Being aggrieved, the applicant has preferred Appeal. During pendency of Appeal, the applicant has urged to release him on bail.

4. Mr. Rathi, learned counsel for the applicant strenuously contended that the Judgment and order passed by the trial Court is not sustainable in law. He submits that the evidence of the prosecutrix itself demonstrate that the sexual intercourse was not forcible sexual intercourse but it was consensual. It is contended that the testimony of prosecutrix is not such to base conviction on the basis of sole testimony of the prosecutrix. It is pointed out that as per the facts deposed by prosecutrix, she had sexual intercourse with accused at various places, which includes her own house as well as house of the accused. He further submits that consensual sex not amounts to offence of rape. He has further submitted that there is no evidence to show that right from the inception, the applicant/accused acted with dishonest intention and made false promise to marry to allure the prosecutrix to submit for physical relationship.

He further submits that the applicant was on bail during the trial. It is contended that the applicant is now 25 years of age and in order the applicant being fall in company of hardened criminals, the applicant be enlarged on bail. He further submits that the applicant is ready and willing to abide by any condition imposed in the event of his release on bail.

5. On the other hand, learned A.P.P. and the counsel representing respondent No. 2 opposed the application with contention that there is strong evidence to establish the guilt of the applicant/accused. It is pointed out that after the disclosure of pregnancy by the prosecutrix, the applicant/accused left the village, which itself reflects the dishonest intention on the part of accused. Learned A.P.P. submits that the evidence on record show that while the prosecutrix was returning to her house after completing the work in the agricultural field, taking advantage of her loneliness, the applicant has forcibly taken her to nearby brook and committed sexual intercourse with her. After the first incident, the accused repeatedly committed such act by giving threat to her. Prosecutrix has given birth to male child who is now four years of age. Learned A.P.P. submits that the application

be rejected.

6. Having appreciated the submissions advanced, over-all facts of the case, the evidence adduced by prosecution, the nature of offence and sentence awarded by the trial Court, I am not inclined to enlarge the applicant/accused on bail during the pendency of Appeal. Prima facie there is sufficient evidence to sustain the conviction. Prosecutrix has deposed as per case of prosecution. Although the accused claims that sexual intercourse was consensual but the prosecutrix has categorically deposed that it was forcible and against her wish. DNA report proves that the applicant as biological father of child given birth by prosecutrix. There is a child aged about four years born out of physical relationship between appellant and prosecutrix. Hence, in the facts and circumstances of the case, I am not inclined to entertain the application.

7. In the result, the application is rejected. Hearing of the Appeal is expedited. As the paper book is ready, list the Appeal for final hearing on 07/08/2017.

[V.L.ACHLIYA, J.]