

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

CRIMINAL APPLICATION NO.2611 OF 2017
IN
CRIMINAL APPEAL NO.210 OF 2017

Kishna Nandkishor Chandak ... **Applicant.**

Versus

The State of Maharashtra ... **Respondent.**

.....
Shri. S.J.Salunke, Counsel for applicant
Shri. S.Y.Mahajan, A.P.P. for State
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CORAM : V.L. ACHLIYA, J.

Dated: June, 21, 2017.

PER COURT:

1. The applicant has moved this application, seeking suspension of the sentence and to release him on bail during pendency of the appeal on the grounds set out in the application.

2. Heard learned counsel for the applicant and learned APP for the State. Perused the impugned judgment and order passed by the Trial Court as well as copies of depositions placed on record.

3. Learned counsel for the applicant / appellant strenuously contended that, if we consider the overall case and evidence adduced by

the prosecution, then it can be safely inferred that, there was an affair between the prosecutrix and the accused. Both of them were teenagers and living in same locality. Phisycal attraction between them led to run away from their respective homes, as the parents of the accused were trying to settle his marriage. He further submits that, the evidence on record and particularly, the testimony of the prosecutrix points out that, she had an ample opportunity to run away if really she was taken forcibly. He submits that, at the time of incident applicant was 19 years old and studying in pharmacy. During trial, the applicant was on bail. He has not breached the conditions of bail. He further submits that, denial of the bail, will result in keeping the applicant with hardened criminals in jail. He further submits that, there are no criminal antecedents of applicant. He, therefore, urged to enlarge the applicant on bail and further submits that, applicant will abide by the conditions imposed by this Court.

4. On the other hand, the learned APP opposed the application with contention that, there is strong evidence to connect the applicant with the offence for which he has been convicted. He submits that, age of the prosecutrix at the time of incident was 15 years and she was minor. In view of the age of the prosecutrix, the consent is immaterial. The evidence as adduced by prosecution is sufficient to prove the charge under Section 376 of IPC and Section 4 of Protection of Children from Sexual Offences Act. He further submits that, if the

applicant is released on bail, the possibility cannot be ruled out that, he may harass or cause threat to the prosecutrix and her family members. He, therefore, urged to reject the application.

5. In order to appreciate the submissions advanced, I perused the impugned judgment and order of the Trial Court, copies of deposition and particularly the testimony of the prosecutrix. The fact is not in dispute that, the prosecutrix and the accused were neighbours and teenagers at the time of incident. It has come on record that, from 30th December, 2013 till they were brought to the Police Station i.e. 03.01.2014, they were staying together in a lodge at Latur. The fact is also not in dispute that, the prosecutrix and accused had consumed large quantity of sleeping pills with intention to commit suicide. Both of them were lying admitted in hospital before they brought to Osmanabad. It also appears from the record that, the prosecutrix and the accused were from different community. The girl had passed 10th standard examination with 81 %, top marks. She was born and brought up at Osmanabad. Although the prosecutrix is said to be minor in age, it can be inferred that, she had sufficient maturity. The evidence leads to draw inference that, the incident occurred on account of love affair between prosecutrix and accused. Learned Judge of the Trial Court also observed that, act of taking away the minor girl was proved on the part of accused. Prosecutrix has left the custody of her guardian on her own.

6. Considering the overall facts of the case, nature of offence, the age of the accused, I am of the view that, the applicant deserves to be enlarged on bail during of the pendency of appeal. At the time of commission of offence, the accused was 19 years old. He is a young person. He has no criminal antecedents. The offence in question occurred on account of affair between prosecutrix and accused. Pending disposal of appeal, it is not desirable to keep the applicant in the company of hardened criminals. The accused has been convicted for the reason that, a girl was found to be minor in age.

7. I am, therefore, inclined to allow the application and release the applicant on bail with certain conditions. Hence, I pass the following order.

ORDER

1) Pending disposal of the appeal, the applicant be released on bail on furnishing bail in the sum of Rs.15,000/- (Rupees Fifteen thousand only) with one surety in the like amount, on following conditions.

(i) Pending disposal of the appeal, the applicant shall attend Osmanabad (City) Police Station, District Osmanabad, 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) In the event of breach of any of the conditions of bail, the bail granted to the applicant will be liable to be cancelled.
- (v) The applicant shall not make any attempt to contact the prosecutrix and her family members or to indulge into any act of causing harassment to them. In case, he contact the prosecutrix or her parents and cause threats to them in any manner, the bail granted to the applicants liable to be cancelled.

2) The Officer In-charge of the Police Station, Osmanabad (City) is directed to submit the report of compliance of conditions of bail after every six months.

3) Bail to be furnished in trial Court.

(V.L. ACHLIYA, J.)