

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2854 OF 2017
in
Criminal Appeal No. 234 of 2017

Shrimant S/o Sahebrao Thombare, Age 40 Years,
Occ. Agriculture, R/o. Nivali (Khurd), Tq. Jintoor,
District Parbhani

Applicant

V E R S U S

(1) The State of Maharashtra

Respondents

(2) Pooja Baburao Ghansawant, Age 17 Years, Occ.
Labour, through Guardian Bhagubai Tulshiram
Ghansawant, Aged 65 Years, Occ. Labour, Resident
of Nivali (Khurd), Taluka Jintoor, District Parbhani

Mr. S.J. Salunke, Advocate for the Applicant
Mr. S.Y. Mahajan, A.P.P. for the respondents/State

CORAM : V.L. ACHLIYA, J.

DATE : 20TH JULY, 2017

ORAL 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.

2. Heard the learned counsel for the applicant, learned A.P.P. for the respondent-State and further perused the record and proceedings.

3. The applicant was tried for committing offences punishable under Sections 3 (1)(xi), 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Beside the said offence, the applicant was also tried for committing offences punishable under Sections 354, 324, 448, 504 and 506 of the Indian Penal Code. The prosecution has alleged that on 1st December, 2012, while the victim-girl was sleeping in the room, the accused went there and slept by the side of the victim and tried to improperly touch her body and also attempted to drag her close to him. When the victim-girl woke-up, the accused ran away. She disclosed the incident to her grand-mother, who in turn disclosed the incident to elder brother of applicant-accused. On the assurance given by the elder brother of the accused that no such incident would be repeated, the complaint was not lodged immediately after the incident. However, on 5th December, 2012, the accused again

went to the victim-girl and tried to caught hold her hand and pulled her towards him. Due to the repeated act of outraging modesty of the victim-girl, the complaint came to be lodged on 5th December, 2012. On investigation, the charge-sheet was filed against the accused. The applicant-accused was tried for the said offences. On conclusion of trial, the applicant was held guilty for offence punishable under Section under Section 3 [1] [xi] of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and sentenced to undergo rigorous imprisonment for three years and fine of Rs. 1,000/- [Rupees One Thousand]. Beside this, the applicant-accused was also held guilty for offences punishable under Sections 323, 354 and 448 of the Indian Penal Code. The maximum sentence awarded is three years rigorous imprisonment. Being aggrieved, the applicant-accused has preferred this appeal and pending disposal of appeal urged to release him on bail.

4. Mr. S.J. Salunke, learned counsel for the applicant submits that the reasons and findings recorded by the trial Court are perverse. He submits that there is delay of five days in

lodging the complaint. He further submits that the applicant is victim of false complaint lodged by the informant at the behest of his political rivals. He further submits that during the trial, the applicant was on bail and in order to prefer Appeal, the Appellate Court has suspended the sentence.

5. On the other hand, the learned A.P.P. opposed the application with contention that there is strong evidence against the applicant. He submits that the applicant has committed the offence of outraging the modesty of the minor girl. He submits that the applicant is addicted to liquor, and in case, the applicant is released on bail, there is every possibility that he may cause threat to victim as well as her relatives and may indulge in to commission of similar type of offences. He, therefore, urged to reject the application.

6. I have carefully considered the submissions advanced in the light of Judgment and order passed by the trial Court. Considering the overall facts of the case, nature of offence and sentence awarded, I am of the view that the case is made out to

entertain the application. There is arguable case which needs to be considered in Appeal. During the trial, the applicant was on bail. There is no case that during the trial he has committed breach of conditions of bail and misused the liberty granted during the trial. In order to prefer Appeal, the trial Court has suspended the sentence. In case, the sentence is not suspended, then there is every likelihood that the Appeal preferred by the applicant-accused may become infructuous. I am, therefore, inclined to allow the application and pass the following order :-

O R D E R

[1] Pending disposal of the appeal, the execution of substantive sentence stands suspended subject to deposit of fine amount by the applicant.

[2] Pending disposal of the appeal, applicant be enlarged on bail on his furnishing bail in the sum of Rs.15,000/- [Rupees Fifteen Thousand] with one surety in like amount on following conditions.

[i] Pending disposal of the Appeal, the applicant shall appear and record his appearance before the Police Inspector of Police Station, Bori, Taluka Jintoor, District Parbhani on last day of every month in between 10.00 to 11.00 a.m.

[ii] The applicant shall not threaten the victim or her relatives as well as witnesses examined in the case by the prosecution.

[iii] The applicant shall not indulge in the commission of similar offence.

[iv] The applicant shall furnish the names and addresses of his three close relatives with their Mobile numbers.

[3] In case of breach of any of the conditions, the bail granted to the applicant shall be liable to be cancelled.

[4] The Officer Incharge of the Police Station Bori, Taluka Jintoor, District Parbhani is directed to submit the report in respect of compliance of conditions by the accused after every six months, and in case of breach of any condition by the accused, forthwith submit report to cancel the bail.

[5] Bail to be furnished in the trial Court within two weeks from the date of this order. Failure to furnish the bail within the stipulated period, the order of grant of bail shall stand cancelled. Compliance report be sent to this Court.

(V.L. ACHLIYA, J.)