

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

CRIMINAL APPLICATION NO.3073 OF 2017

IN

CRIMINAL APPEAL NO.263 OF 2017

BALU S/O. UTTAM SAKHARE
VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Hange Rajendra G.
APP for Respondents/State: Smt.S.S. Raut.

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CORAM : V.L. ACHLIYA, J.

Dated: JUNE 29, 2017

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The applicant has moved this application seeking suspension of sentence and release on bail, on the grounds set out in the application.

2. In nutshell, it is contention of the learned Counsel for the applicant that there is no cogent, convincing and reliable evidence to sustain the conviction of the applicant – appellant for the offence punishable under Section 7 r.w. Section 8 of the Protection of Children from Sexual Offences Act and section 452 of IPC. He submits that there was unexplained delay of more than three days in lodging the complaint. There is no corroborative evidence to prove the guilt of the applicant - accused. It is

contended that though the prosecutrix deposed that, to rescue herself from the clutches of the accused, she took bite to his hand, there is no evidence to corroborate that testimony of the prosecutrix. He further submits that during the trial the applicant on bail. In order to prefer an appeal, the trial court suspended the sentence. Applicant has deposited the fine amount in the trial court. He further submits that it will take long time for final hearing of the appeal. In case the sentence is not suspended, there is every likelihood that appeal may become infructuous. He, therefore, prayed for release of the applicant on bail.

3. On the other hand, learned APP appearing for respondent - State opposed the application with contention that there is sufficient evidence to prove the guilt of the applicant – accused beyond reasonable doubt. She submits that the prosecutrix has stood by the case of the prosecution. There is nothing to infer that the accused was falsely implicated in the case. She further submits that the delay in lodging the FIR has been properly explained.

4. Having appreciated the submissions advanced in the light of prosecution case, the evidence adduced in the case and, the judgment and order passed by the trial court, I am of the view that pending disposal of the appeal the applicant be enlarged on bail, as arguable case has been made out to be considered in appeal. In case, the sentence is not suspended there is every likelihood that the appeal may become infructuous.

During the trial, applicant was on bail. In order to prefer the appeal, the trial court has suspended the sentence. Therefore, looking to the nature of the offence committed by the applicant and the sentence awarded, I am of the view that during the pendency of appeal, the applicant deserves to be enlarged on bail. I am, therefore, inclined to allow the application and pass 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 Police Station, Ambhora, Tq. Ashti, District Beed, 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 make any attempt to contact the prosecutrix or her family members and cause threats to them.

- (v) In case, he contacts the prosecutrix or her parents and cause threats, in any manner, the bail granted to the applicant shall be liable to be cancelled.
 - (vi) Hearing of appeal is expedited. The trial Court is directed to prepare paper-book and submit the record & proceedings with paper-book.
- (3) In the event of breach of any of the conditions of bail, the bail granted to the applicants will be liable to be cancelled.
 - (4) Bail be furnished in the trial Court.
 - (5) The Officer In-charge of the concerned Police Station is directed to submit the report of compliance of conditions of bail after every six months.
 - (6) After receipt of record & proceedings with paper-book, the appeal be listed for final hearing.
5. Criminal Application stand disposed of in above terms.

(V.L. ACHLIYA, J)