

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.72 OF 2017

IN

CRIMINAL APPEAL NO.34 OF 2017

GANESH GORAKH JADHAV

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.V.B.Shivarkar, Advocate for the Applicant.

Mr.P.H.Gaikwad-Patil, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 23rd JANUARY 2017.

P.C. :

1 The applicant / accused by this application is seeking his release on bail by suspending the sentence imposed upon him by the learned trial court.

2 Heard both sides. The learned APP opposed the application by contending that the offence punishable under Section 376 of the IPC is proved and the prosecutrix was a minor girl.

3 The applicant / accused has been convicted of the offence punishable under Section 376 of the IPC and he is sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/-, in default, to undergo further rigorous imprisonment for 1 year. Apart from this, he is also convicted of the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act (POCSO Act) and similar sentence is imposed upon him on that count.

4 It is not disputed by the learned APP that the prosecutrix was 17 years of age at the time of commission of alleged offence. Evidence of the prosecutrix shows that she eloped with the applicant / accused in the midnight of 9th March 2015 and by joining his company, she had stayed with the

applicant / accused up to 3rd April 2015. Though the prosecutrix has denied the fact that she was having love affair with the applicant / accused, her evidence indicates that she was having love affairs with the applicant / accused and therefore, she has stayed with him for a period of about one month by accompanying him in the midnight.

5 It is seen that the applicant / accused was on bail throughout the trial and he has not misused his liberty. In the matter of Sunil Mahadev Patil vs. The State of Maharashtra (Bail Application No. 1036 of 2015) (decided on 3rd August 2015) in paragraph 12, this court has given the relevant aspect which needs to be considered at the time of releasing the accused on bail, when the accused and the minor girl are in love with each other and choose to live together without consent of their parents. The applicant / accused is satisfying all those considerations enlisted in paragraph 12. It is not seen that the applicant / accused was violent and had taken

the prosecutrix by force.

6 The appeal will take its own time for disposal and considering the fact that the applicant / accused was on bail during the trial, he deserves liberty and therefore, the order :

- i) The application is allowed.
- ii) The substantive sentence imposed upon the applicant / accused is suspended and he is directed to be released on bail on executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.
- iii) As a condition of the order, the applicant / accused should not contact the prosecutrix or her relatives in any manner.

(A. M. BADAR, J.)