

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 125 OF 2017
IN
CRIMINAL APPEAL NO. 292 OF 2017**

Dinkar Manohar Gangode
Versus
The State of Maharashtra

....Applicant

....Respondent

Ms. A.M.Z. Ansari for the applicant.
Mr. Y.M. Nakhwa, APP for the State.

***CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 23rd NOVEMBER, 2017***

P.C. :

1. By this application, the applicant herein who was an accused no.3 in Sessions Case No. 151 of 2013 on the file of District Judge-7 and Additional Sessions Judge, Nashik has sought suspension of execution of substantive sentence and has prayed for release on bail pending hearing of the appeal.

2. Heard Ms. A.M.Z. Ansari, learned counsel for the applicant and Mr. Y.M. Nakhwa, learned APP for the State. Perused the records. Considered the submissions advanced by the learned counsels for the respective parties.

3. By judgment dated 26th July, 2016, the applicant and other co-accused were convicted for offences punishable under Sections 376(2)(g), r/w. 114 r/w. 34 and 323, 504, 506 r/w. 34 of the Indian Penal

Code and sentenced to suffer three years rigorous imprisonment each and to pay total fine of Rs.8,000/- in default to suffer simple imprisonment for three months each.

4. The statement of the prosecutrix *prima facie*, reveals the role of the applicant in commission of the said offence. The testimony of prosecutrix indicates that on 23rd December, 2012 at about 02:30 p.m., she and her friend went to answer nature's call. She had stated that while they were returning to the home, they observed 8 to 10 boys went running towards them. On seeing the said boys, she ran towards the forest. One of the boys caught her and thrashed her on the ground. She had stated that the two boys raped her while third boy hold her and the others waited and watched the incident. The testimony of this witness indicates that she had identified the said persons in an identification parade.

5. The evidence of PW6-Mangala Namdeo Dalvi who had accompanied the victim also *prima facie*, indicates that she and the victim had gone towards the forest to answer nature's call. Her testimony also *prima facie* indicates that some boys had chased the victim and that the victim had ran towards the forest. PW6 had also stated that the accused are the same boys who had chased the prosecutrix.

6. The victim had narrated the incident to PW5-Nirmala Ramchandra Pawar, who is the sister of the victim. Her testimony *prima facie* indicates that the victim had complained of pain and that

she had told her that some boys had caught hold of her while she was in the forest and had committed rape on her.

7. The victim was also examined by PW7-Dr. Mandakini Kashinath Barve. Her testimony also indicates that there were linear abrasions on the right arm and contusion on the right ring finger of the victim besides hymen was torn with bleeding on touch. She had deposed that there was hymen tear and it was suggestive of recent sexual intercourse.

8. The material on record *prima facie* indicates the involvement of the applicant in the said crime. The offence is of serious nature and considering the gravity of the offence, in my considered view, this is not a fit case for grant of bail pending the hearing of the appeal. Hence, Criminal Application No.125 of 2017 is dismissed.

9. Nevertheless, since the applicant is in custody since 2012, hearing of the appeal is expedited and the same shall be listed on the board of final hearing commencing from the week of 18th December, 2017.

(SMT. ANUJA PRABHUDESSAI, J.)