

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.229 OF 2017
IN
CRIMINAL APPEAL NO.428 OF 2016**

Mithilesh C. Yadav)...Applicant

V/s.
State Of Maharashtra)...Respondent

Mr. S.H.Joshi, Advocate for the Applicant.

Ms. A.A.Takalkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 15th MARCH, 2017.

P.C. :

This is application for suspension of sentence and releasing the Applicant/Accused on bail during the pendency of the appeal filed by him challenging his conviction for the offence punishable under Section 376(2)(f)(i) of the IPC read with Sections 4 and 12 of the Protection of Children from Sexual Offences Act, 2012 (For the sake of brevity 'POCSO Act'). He has been sentenced to suffer RI for 10 years and to pay fine of Rs.5,000/- in default to undergo SI for six months.

2 Heard learned Advocate appearing for the
Applicant/Accused. By taking me through the evidence of the
prosecutrix, the learned Advocate argued that her cross-
examination shows that there was quarrel between the mother of
the prosecutrix as well as the Applicant-Accused on account of
fetching water from tap. It is argued that as seen from the
evidence of the prosecutrix, her mother was aggrieved because of
acts of the Applicant-Accused due to which they have been asked
to leave the house. It is further argued that cross-examination of
prosecutrix shows that she was tutored by her mother to identify
the Applicant-Accused. Omissions from version of the mother of
the prosecutrix were pointed out in order to demonstrate that
prosecution has failed to prove case beyond reasonable doubt.

3 The learned APP opposed the application by
contending that apart from version of the prosecutrix, two eye
witnesses are stating that they had seen the prosecutrix coming
out of the house of the applicant-accused while crying.

4 I have carefully considered the rival submissions and
also perused the copies of deposition of prosecution witnesses as

well as impugned judgment and order.

5 According to the prosecution case, the Applicant-Accused has committed rape on the prosecutrix /girl child aged about 5 years residing in the neighbourhood. In her evidence, prosecutrix has categorically deposed about commission of rape on her by the applicant-accused. Her evidence does not reflect that she has been tutored by her mother so far as the alleged act is concerned. In the tradition bound Indian society, stigma is always attached to the victim of the rape. In the light of this, one will have to consider whether there is possibility of false implication of the applicant-accused by staking the future of girl child aged about 5 years for raking the vengeance against him.

6 Evidence of P.W.7-Dr. Mugdha, prima-facie indicates that prosecutrix was subjected to rape. Shivram Bind and Geeta Singh are two prosecution witnesses, who are deposing the fact that they had seen the victim girl coming out of the house of the applicant-accused at the time of incident and that at that time, she was crying. There is forensic evidence to support the case of the prosecution.

7 Considering the nature of the offence and the evidence available against the Applicant-Accused, no case for bail is made out. Hence, the application is rejected.

8 Hearing of the Appeal is expedited in the category of jail appeals.

(A. M. BADAR, J.)