

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.253 OF 2017
IN
CRIMINAL APPEAL NO.131 OF 2017**

Sameer B. Jadhav)...Applicant

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

Mr. Yashodhan Gavankar, Advocate for the Applicant.

Mr. S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 15th MARCH, 2017.

P.C. :

This is an application for suspension of sentence and releasing the Applicant-Accused on bail during the pendency of the Appeal filed by him. The Applicant-Accused has been convicted of the offences punishable under Sections 376, 504 and 506 of IPC apart from offence punishable under Section 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and Other Inhuman Evil and Aghori Practices and Black Magic Act, 2013. For the offence punishable under section 376 of IPC, he is sentenced to suffer RI for 7 years apart from payment of fine of Rs.5,000/-. For other offences, smaller sentence is imposed on him apart from direction to pay fine. As all the substantive sentences

are directed to run concurrently, there is no need to mention other sentences imposed on the Applicant-Accused.

2 Heard learned Advocate appearing for the Applicant-Accused. He argued that the Applicant-Accused had not disputed sexual relations with the prosecutrix. In his submission, there is delay of about 11 months in lodging report and version of the prosecutrix herself reveals improbability of the alleged incident.

3 As against this, according to the learned APP as seen from the evidence of the prosecutrix, she was abducted by the Applicant-Accused and then was taken to a lodge by tying her mouth and then the incident in question took place.

4 I have carefully considered the rival submissions and also perused the copies of depositions made available by the learned Advocate for the Applicant-Accused.

5 Prosecutrix/P.W.1 is an adult lady, aged about 23 years. So far as the incident is concerned, she deposed that on 11.6.2014 she left her village and reached village Shiroda by bus at about 8 a.m. While she was going by walk to the house of her sister at Village: Shiroda, the Applicant-Accused came from behind by Sumo vehicle. He stopped that vehicle, dragged her inside the vehicle, tied her mouth by handkerchief and then took that vehicle

to Dilip Lodge, Shiroda where she was subjected to rape by the Applicant-Accused. Report of this incident was ultimately lodged on 23.5.2015, i.e. after a period of about 11 months. During this period as admitted by the prosecutrix, she was undergoing her routine activities. The prosecutrix has not deposed that anybody accompanied the Applicant-Accused at the time of her abduction. Prima-facie, it appears that the theory put up by the prosecutrix is improbable in the sense that she wants the Court to believe that an adult woman can be dragged inside Sumo vehicle by only one male person and then her mouth can be tied by a handkerchief and in that position, a man is able to drive vehicle for taking her to the hotel while her hands were not tied. Evidence of the prosecutrix does not show any resistance by her despite the fact that her hands were free and the Sumo vehicle was being driven by the Applicant-Accused. Apart from this, report of this incident is lodged after about 11 months. It is seen that the prosecution has not adduced any evidence to corroborate version of the prosecutrix in the light of fact that prima-facie the incident appears to be improbable.

6 During the pendency of the trial, the Applicant-Accused was on bail. There is nothing on record to suggest that he has misused the liberty while on bail. In this view of the matter, the following order:

- (1) Substantive sentence of imprisonment imposed on the Applicant-Accused is suspended and he is directed to be released on bail on executing PR Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.
- (2) As condition of this order, the Applicant-Accused should not contact the prosecutrix in any manner and he should not extend threat, promise or inducement to her.
- (3) Application stands disposed of accordingly.

(A. M. BADAR, J.)