

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.460 OF 2017
AND
CRIMINAL APPEAL NO.159 OF 2007**

Laxman Dilip Deshmukh ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Ganesh Sovani, Advocate for the Applicant.
Mr.Vinod Chate, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 3rd APRIL 2017.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him. The applicant/accused has been convicted of offences punishable under Sections 376(1)(i), 450, 342 of the Indian Penal Code ("IPC" for short) and under Section 6 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO" for short). For the offence punishable under Section 376(1) (i) of the IPC he has been sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.2000/- in default of payment of fine to further undergo rigorous imprisonment for three months.

As substantive sentences imposed on applicant/accused are directed to run concurrently, there is no need to mention on other counts on the applicant/accused.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that the prosecutrix was habitual to sexual intercourse and no injuries were found on her person during the medical examination and, therefore, the applicant/accused ought not to have been prosecuted by the police by considering the report of the medical examination of the prosecutrix. He further argued that in her first disclosure about the crime in question, the prosecutrix has not alleged commission of rape on her. Subsequently, she was called at the police station and she disclosed the incident of rape on her to police. Another crime was not registered on the basis of this disclosure of the prosecutrix and, therefore, the case of the prosecution suffers from doubt. The learned Advocate further argued that by examining Head Mistress of the School, date of the birth of prosecutrix is sought to be proved by the prosecution and her recorded date of birth is 15/12/2000. However, during investigation her Adhar Card was collected by the prosecution and it was filed along with charge sheet. That Adhar Card, according to the learned Advocate appearing for the applicant/accused was showing the date of birth of the prosecutrix as 03/06/1999. Hence according to the learned Advocate for the applicant/accused, there is no evidence to show

age of the prosecutrix. The learned Advocate further argued that the applicant/accused is a young boy and he is ready to reside at other place, if he is released on bail. He has already undergone detention for a period of about two years.

3 The learned Additional Public Prosecutor opposed the application by contending that the crime is serious and the same is proved by adducing necessary evidence on record by the prosecution.

4 Evidence of the prosecutrix, who came to be examined as P.W.No.1, goes to show that when she lodged the FIR with police, she only disclosed her wrongful confinement by the applicant/accused, but did not disclose commission of rape on her by the applicant/accused. She had disclosed about this fact on the next day to police, as seen from her evidence. The argument of the learned Advocate for the applicant/accused that second crime should have been registered on the basis of second disclosure by the prosecutrix is wholly unsupported in law. Police has rightly added Section 376 to the Crime diary by virtue of the supplementary statement of the prosecutrix. Evidence of the prosecutrix goes to show that she was under fear of her family members and the applicant/accused so also her neighbour. She was detected when she was inside the house of applicant/accused which was latched from the outside. In such circumstances, the

prosecutrix reported her wrongful confinement without disclosing any other offence including offence of rape. She was detected by her own father while she was in the house of applicant/accused. Question of lodging another FIR also does not arise because the offence alleged is from the same transaction as well as series of same transaction.

5 Evidence of the prosecutrix shows that from January 2015, she as well as the applicant/accused started to talk with each other. The applicant/accused had expressed his love towards the prosecutrix. As per version of the prosecutrix, the act of sexual intercourse by the applicant/accused with her took place in her house at least twice. Then on 22/03/2015, as per version of the prosecutrix, the applicant/accused entered in her house and took her to his house where he committed sexual intercourse with her. After hearing noise of her father, as per the version of the prosecutrix, the applicant/accused went away and locked his house from outside. She kept mum and thereafter her father with unknown persons opened the lock of house of the applicant/accused. This evidence indicates that the applicant/accused as well as the prosecutrix were in love with each other. Evidence on record does not suggest that the applicant/accused had indulged in violent act, nor there seems to be any criminal antecedents against the applicant/accused. As the applicant/accused has volunteered to stay out of local area where

the prosecutrix resides, there is no question of repetition of the act so also likelihood of threat or intimidation to the prosecutrix. In this situation, in view of observations of this Court made in paragraph 12 of its Judgment in the matter of ***Sunil Mahadev Patil v. State of Maharashtra*** reported in **2016 ALL MR (Cri.) 1710**, the applicant/accused is entitled to liberty and as such, the order :

- (i) The application is allowed.
- (ii) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to release on bail on executing PR bond of Rs.25,000/- and on furnishing surety in the like amount.
- (iii) As a condition of this Order, the applicant/accused should reside away from Khed Taluka in Pune District and he should inform his residential address to the jurisdictional police station and he should not change his address without informing the jurisdictional police station.
- (iv) He should not contact the prosecutrix or her relatives in any manner and he should not extend threat, promise or inducement to the prosecutrix or her relatives.

(A.M.BADAR J.)