

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

**CRIMINAL BAIL APPLICATION NO. 570 of 2017
IN
CRIMINAL APPEAL NO.339 OF 2017**

Agrajit Kumar Mahendra Shah ... **Applicant/Accused**
V/s.
The State of Maharashtra ... **Respondent**

Ms.Pracheta Rathod i/by Mrs.Anjali Patil, Advocate for the Applicant.
Ms.P.N.Dabholkar, APP for the Respondent/State.

CORAM : A.M.BADAR J.

DATED : 8th September 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.

2. The applicant/accused is convicted of offences punishable under Sections 354 and 376 of the I.P.C. However, he came to be acquitted of offences under Protection of Children from Sexual Offences Act, 2012, by the impugned judgment and order dated 4th April, 2017 passed by the learned Additional Sessions judge, Greater Mumbai.

3. Heard the learned Advocate appearing for the applicant/accused. She argued that the applicant/accused was on bail during pendency of the trial. There is delay of about 2 years in lodging the FIR against the applicant/accused. In submission of the learned Advocate for the applicant/accused, parties were on hostile terms and infact two reports against the first informant came to be lodged in the year 2013 itself by the applicant /accused as well as wife Chandani. Subsequently, the FIR came to be lodged against the applicant .

4. The learned A.P.P. opposed the application by contending that evidence of the victim is supported by the medical evidence on record and the prosecutrix was minor as seen from the evidence.

5. I have carefully considered the rival submissions and also perused material made available on record. On 7th March, 2014 informant-Sudha who is mother of alleged victim of the crime in question lodged report regarding commission of rape on her daughter on applicant/accused. The FIR itself shows that first informant-Sudha and the applicant/accused were residing jointly. Averments in the FIR as well as testimony of the first informant shows that the alleged incident took place in the year 2011 or 2012. The only explanation for delay of two years in lodging the report is to the effect that the applicant/accused had told the first informant that his father is Mukhiya of four villages. It is

worthwhile to notice that at the time of lodging the FIR or just prior to that the applicant/accused was not residing jointly with the first informant. He had left the house subsequently. The first informant never alleged that she is required to go to the village where father of the accused was Mukhiya nor she has stated that she was under the spell of terror of the applicant/accused. The first informant is resident of Mumbai.

6. Though the first informant has stated that it was applicant/accused who was residing with her house, DW 2 Zubeda-landlady of the room has stated that the applicant/accused was her tenant and first informant-Sudha was residing in that room. Evidence of DW 2-Zubeda shows that there used to be quarrels between the applicant and first informant-Sudha. She stated that on 18th December, 2013 also Sudha had not allowed the applicant/accused to take household utensils from the room. In this factual background, it is seen that on 18th December, 2013 the present applicant/accused had lodged report against the first informant alleging commission of offence by the first informant, punishable under Sections 323 and 504 of the I.P.C. and accordingly, N.C.R. No. 4670 of 2013 came to be registered. Few days thereafter and precisely on 22nd December, 2013 wife of the present applicant had lodged another report against first informant-Sudha for offences punishable under sections 323 and 504 of the I.P.C., which resulted in registration of N.C.R.No. 4710 of 2013. More than two months thereafter the

first informant lodged the FIR by which the said crime came to be registered against the present applicant. The FIR is dated 7th March, 2014 and it contains averments in respect of the incident which took place in the year 2012. The only reason for this delay is to the effect that the applicant had informed the first informant that his father is Sarpanch of four villages. On this factual background, at the time of final hearing of the matter, it will have to be considered whether such explanation is plausible or whether the FIR is counter-blast to two reports lodged by the applicant and his wife against the first informant.

7. So far as medical evidence is concerned, the Medical Officer is stating that tear of hymen was old.

8. The applicant/accused was on bail during pendency of the trial. It is not pointed out that he has misused his liberty in any manner. He has already been acquitted for offences under Protection of Children from Sexual Offences Act, 2012. Considering this nature of evidence against applicant/accused and the fact that his bail may not be heard in near future, the applicant deserves to be released on bail. Therefore, the order:-

ORDER

1. The application is allowed.
2. Substantive sentence of imprisonment imposed on the applicant/accused is suspended and is directed to be released on executing P.R.Bond of Rs.15,000 and on furnishing surety in the

like amount.

3. As a condition of this order, the applicant should not contact prosecutrix or her relatives in any manner and he should not commit any offence in future.

As the learned Advocate for the applicant has stated that the applicant is not in a position to arrange surety immediately and for interim period he be released on cash security, it is hereby directed that initially the applicant be released on furnishing cash security for the amount of Rs.15,000/- for a period of four weeks from today and he should furnish surety immediately at the conclusion of four weeks.

(A.M.BADAR J.)

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