

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

**CRIMINAL BAIL APPLICATION NO. 842 OF 2017
IN
CRIMINAL APPEAL NO. 521 OF 2017**

Mohammed Sher Ali Mohammed

Siddiqui Shaikh

V/s.

The State of Maharashtra

... Appellant/Applicant

... Respondent

Mr.Doodhnath Saroj, Advocate for the Applicant.

Mr.Vinod Chate, APP for the Respondent/State.

CORAM : A.M.BADAR J.

DATED : 4th 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. Heard the learned Advocate for the applicant/accused. He argued that co-accused Kanija Shaikh is already released on bail by this Court. The learned Advocate drew my attention to the evidence of the prosecutrix-PW 1 and submitted that she had deposed that she did not take oath in the name of Kuran in respect of the incident, when accused No. 2 asked her to swear in the name of Kuran. The learned Advocate pointed out cross-examination of PW 4-

Tahminabanu and submitted that as per evidence of this witness the prosecutrix had taken oath by taking Kuran in her hand and told that the present applicant has not touched. The learned Advocate further argued that the incident of rape allegedly took place prior to five days, whereas the Medical Officer has stated that pulse rate of the victim was normal and there was no injury to her private part and by relying on the judgment of Punjab and Haryana High Court in the matter of **Dharam Pal Vs. State of Haryana reported in 2017 Cri.L.J.2137**, the learned Advocate further argued that the applicant is behind bar for a period of about 3 years and 8 months and therefore, he is entitled to be released on bail as per the ratio of this judgment.

3. I have also heard the learned APP.

4. According to the prosecution case, co-accused Kanija Shaikh brought the prosecutrix-PW 1 from Bihar on the pretext of providing education to her and subsequently, at her house the present applicant committed penetrative sexual assault on her. The prosecutrix according to the case of the prosecution is a child.

5. The learned Trial Court after considering the evidence adduced by the prosecution was pleased to held that the applicant has committed penetrative sexual assault on the female child and accordingly, the applicant is held guilty of the offence punishable under Sections 4,8 and 12 of the Protection of Children from Sexual Offences Act, 2012. He is sentenced to suffer rigorous imprisonment for 7 years, apart from direction to pay fine of Rs.7,000/-.

6. I have carefully considered the arguments so advanced. The co-accused being a lady was released on bail by this Court as she was found to be guilty of the offence punishable under section 17 of the Protection of Children from Sexual Offences Act, 2012. Evidence of the prosecutrix shows that initially the applicant had outraged her modesty and at the next night he committed penetrative sexual assault on her thrice. Despite her complaint to the co-accused nothing was done by the co-accused. Ultimately, PW 4- Tahminabanu took her to P.C.O. and subsequently, to the police station. The prosecutrix has stated that though the co-accused has asked her to take an oath in the name of Kuran, she refused, whereas PW 4 Tahminabanu is stating about this in affirmative. The evidence on this aspect will have to be appreciated

keeping in mind that the prosecutrix was hailing from Bihar and she was brought to Mumbai at the pretext of giving education. While in custody of the co-accused the applicant committed penetrative sexual assault on the prosecutrix.

7. The prosecutrix was subjected to medical examination. PW 5-Dr.Mugdha examined her medically and found her hymen torn with minimum redness and tenderness. She opined while this can be caused due to forcible sexual intercourse. Prima facie it is seen that forcing of the prosecutrix was corroborated by this medical examination. It is well settled that he found truthful and trustworthy evidence of the sexual assault does not require any corroboration.

8. Though it is stated that the applicant has undergone 3 years and 8 months sentence, considering the nature of the offence i.e. penetrative sexual assault on a female child, I do not find this case to be a fit case for grant of bail. Hence, the order.

ORDER

1. The application is rejected.
2. Hearing of the Appeal is expedited.

(A.M.BADAR J.)