

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 906 OF 2017
in
CRIMINAL APPEAL No. 557 OF 2017

Jalil Ahmed @ Bade Sakil Ahmed. ..Applicant
Versus

State (Union Territory of Dadra & Nagar Haveli) ..Respondent.

Mr. Sandeep Mishra for the Applicant.
Mrs. P. H. Kantharia for the Respondent.

Coram : Ranjit More &
N.M.Jamdar, JJ.
Date : **September 4, 2017.**

P. C. :

1. Heard Mr. Mishra, the learned Counsel for the Applicant and Mrs. Kantharia, the learned Counsel for the Respondent. By the impugned judgment and order dated 20th May 2017, the Applicant was convicted for the offence punishable under section 376(i) of IPC and sentenced to suffer rigorous life imprisonment and pay fine of Rs.500/-. The Applicant is also convicted for the offence punishable under section 6 of the POCSO Act, 2012 and sentenced to suffer rigorous life imprisonment and pay fine of Rs.500/-. The Applicant has challenged his conviction by filing above appeal, which is already admitted. The present application is for bail during the pendency of the above appeal. We have perused the depositions of PW1 to PW7. It

appears that at the time of incident, age of the Applicant was 21 years. The prosecutrix and accused were staying in the same chawl. The evidence further shows that the Applicant and prosecutrix were in love relationship and physical relations between them were consensual.

2. The Applicant is convicted mainly because of the fact that prosecutrix at the time of incident was a minor. In support of this contention, the prosecution examined head master of English school Padripada, Masat as PW-5. The headmaster deposed that in school record the date of birth of prosecutrix is recorded as 12th April 2000. However, in cross-examination he admitted that date of birth of the prosecutrix is recorded on the basis of affidavit of her mother, though they normally record date of birth on the basis of birth and death extract. The mother of the prosecutrix is examined as PW-6. She has admitted in her cross-examination that she did not register birth of the prosecutrix with the Birth and Death Registrar.

3. Be that as it may, in paragraph 7 the prosecutrix has admitted that initially she was ready to marry with the Applicant but at latter stage she refused. She also admitted that there is no specific reason to refuse to marry with the Applicant.

4. The Applicant is in custody for nearly about one year. Appeal is not likely to be heard in near future. Taking totality of the facts and circumstances of the case into consideration, we are of the opinion that the Applicant has made out a case for bail. In that view of the matter, application is disposed of by passing following order :

-: O R D E R :-

During the pendency of above appeal, the Applicant be released on furnishing bail bond of Rs.25,000/- with one or two sureties of like amount to the satisfaction of the trial Court.

5. The observations made hereinabove are *prima facie* and are made for the limited purpose of disposal of this application.

[N.M.JAMDAR, J.]

[RANJIT MORE, J.]