

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

**CRIMINAL APPLICATION NO. 1250 OF 2017
IN
CRIMINAL APPEAL NO. 742 OF 2017**

Yogesh Balwant Thavari.

..Applicant.

Vs.

The State of Maharashtra.

..Respondents

Mr. Aniket U. Nikam, advocate for applicant.

Mr. Y.M. Nakhwa, APP for State.

**CORAM : RANJIT MORE, J &
SMT.SADHANA S. JADHAV,J
DATE : SEPTEMBER 27, 2017**

P.C.

1 Heard Mr. Nikam, learned Counsel for the applicant and Mr. Nakhwa, learned APP for State.

2 The applicant-original accused No. 3 came to be convicted alongwith two others for offence under section 376D, 452, 323, 504, 506 read with section 34 of the Indian Penal Code and sentenced to suffer R.I. for 20 years, 2 years and one year respectively by the District Judge-6 & Addl. Sessions Judge, Nashik vide Judgment dated 20/7/2017 in Special Case(Atro)

No. 281 of 2015.

3 The appeal filed by the applicant is already admitted. The present application is filed under section 389 of the Code of Criminal Procedure, 1973 for bail during the pendency of the said appeal.

4 With the help of the Counsel for the respective parties, we have perused the deposition of P.W. 1 prosecutrix. In examination-in-chief she has taken names of all the three accused including the present applicant. However, in paragraph-8 of the cross-examination she has stated that she was not knowing name of the present applicant prior to incident. She also admitted that on that day there was darkness in the hut and she was not knowing him well, so she could not identify him in the identification parade. The prosecutrix identified the present applicant for the first time in the court. In paragraph-5 of the cross-examination, she has also admitted that the accused was shown to her in the police station and therefore, she identified in the central jail.

5 That apart the investigating officer P.W. 10 has admitted in cross-examination that T.I. Parade of the present applicant was not conducted. He

also admitted that blood group of the present applicant was not detected and his blood stains were not found on the clothes of the prosecutrix. He also admitted that present applicant was arrested from his house.

6 In the light of the above evidence, we are of the opinion that the case of the present applicant be distinguished and separated from the other accused. The applicant has made out case for bail.

7 The aforesaid observations are prima facie in nature and restricted to the application for bail only.

8 We pass following order :

ORDER

(i) The Criminal Application is allowed.

(ii) The applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall report to the Court of Addl. Sessions Judge,

Nashik once in six months on the date specified by the learned Court. On failure of the applicant to report on two consecutive dates, the prosecution is at liberty to move for cancellation of bail.

(iv) The application is disposed of accordingly.

[SMT.SADHANA S. JADHAV,J]

[RANJIT MORE, J]