

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1147 OF 2016
IN
CRIMINAL APPEAL NO.99 OF 2016

Vitthal Rajendra JogadeApplicant/Appellant
V/s.
State of MaharashtraRespondent

Mr. Ritesh Thobde, Advocate for Applicant/Appellant.
Mrs. G.P.Mulekar, APP for Respondent-State.

CORAM : SANDEEP K. SHINDE, J.

DATE : July 3, 2017.

P.C. :

Pending appeal, the applicant seeks enlargement on bail. He has been convicted under Section 376(2)(i) of the IPC and sentenced to undergo rigorous imprisonment for 10 years vide judgment and order dated 13.1.2016 in Sessions Case No.202 of 2014 passed by the Special Judge, Solapur. The applicant was on bail during the trial and it was submitted that he has not misused the liberty when the trial was pending.

2 Heard learned counsel for the applicant and the

learned APP for the State. Perused the evidence of the victim (P.W.3) who has narrated the incident in detail and I see no reason to disbelieve her at-least at this stage. Evidence of the medical officer, P.W.5 also suggests that there was some sexual assault on the victim as she was examined soon after the incident. Admittedly, victim was born on 22.12.2003 and the incident is dated 22.4.2014. The complainant is mother of the victim to whom it was suggested that the complaint was lodged at the behest of one Sarjerao. Taking into consideration nature of the incident and evidence of the victim on record, I am not inclined to release the applicant on bail.

3 The learned counsel for the applicant has placed reliance on **Kiran Kumar v. State of M.P.** reported in **(2001) 9 Supreme Court Cases 211**. In the said case, the Supreme Court has held that when a person is convicted and sentenced to a short-term imprisonment, the normal rule is that when his appeal is pending the sentence should be suspended and rejection is only by way of exception. It further held that every endeavour should be

made to have the appeal posted for early hearing and disposal. If the short-term sentence is allowed to run out during the pendency of the appeal, the appeal itself will become, for all practical purposes, infructuous so far as the appellant is concerned. In the said judgment, Kiran Kumar was convicted under Sections 460, 376, 325 and 506 of the IPC. The maximum sentence imposed on him was imprisonment for a period of seven years. In the case in hand, the applicant was convicted on 13.1.2016 for a period of 10 years. In my view, it may not be said to be 'short-term' imprisonment. Be that as it may, the applicant is granted liberty to renew his request after a period of one year.

4 Application is rejected and stands disposed of.

(SANDEEP K. SHINDE, J)