

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1236 OF 2016

IN

CRIMINAL APPEAL NO.393 OF 2015

RAJA VENU NADAR @ K.D.RAJA @ MANIKAM)
NADAR)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

None for the Applicant.

Ms.A.A.Takalkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 22nd MARCH 2017

P.C. :

1 On 16th November 2016, none appeared for the applicant to argue out this application for suspension of sentence and releasing the applicant / accused on bail during pendency of the appeal filed by him. Similarly, on 22nd February 2017 also, none appeared for the applicant / accused when the application

was called out for hearing. Today, in the morning session also, none appeared for the applicant /accused when the application is called out for hearing. Now in second session also nobody appeared for the applicant / accused. As such, there is no alternative but to decide the application on the basis of record made available and after hearing the learned APP.

2 The applicant / accused has been convicted of offences punishable under Sections 323, 366 and 506(II) of the IPC as well as under Section 4 of the Protection of Children from Sexual Offences Act, 2012, (POCSO Act). For the offence punishable under Section 4 of the POCSO Act, he is sentenced to suffer rigorous imprisonment for 7 years apart from payment of fine of Rs.6500/-, in default, to undergo further simple imprisonment for one month. Lesser sentences are imposed on other counts and as all substantive sentences are directed to run concurrently, it is not necessary to point out other sentences for deciding the instant application.

3 PW2 is the victim female child. She is acquainted with the present applicant / accused. She was calling him as “Anna.” On the day of the incident, the applicant / accused had given lift to PW2 – victim female child on his motorcycle. PW6 Shilpa was also a pillion rider on that motorcycle. Evidence of PW2 – victim female child shows that the applicant / accused had taken her to a room situated behind the temple at Indira Nagar and then committed rape on her.

4 Though PW6 Shilpa turned hostile to the prosecution, her evidence reflects that on the day of the incident, the applicant / accused had given lift to the victim female child and had taken her towards the temple.

5 Evidence of PW7 Dr.Baban Shinde who was working as Medical Officer with Nagpada Police Hospital shows that he had medically examined PW2 – victim female child and found that there was bruise over inner aspect of her right labia majora of size 1 cm x 0.8 cm red in colour. Tenderness was found present. The

Medical Officer also noticed that hymen of the victim female child was torn at positions 1, 3, 5, 7, 9 O' Clock. Tears were found to be reddish, oedematous and were bleeding on touch.

6 It is, thus, *prima facie*, seen that, evidence of the victim female child is gaining corroboration from evidence of PW6 Shilpa as well as the medical evidence adduced by the prosecution on record.

7 Nature of offence and circumstances in which it is committed are relevant considerations for deciding bail application of the applicant / accused. In the case in hand, the applicant / accused had kidnapped the minor female child and subsequently committed rape on her.

8 Considering the nature of offence, no case for bail is made out and therefore the order :

i) The application is rejected.

(A. M. BADAR, J.)