

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1604 OF 2017

IN

CRIMINAL APPEAL NO.971 OF 2017

MEHBOOB HASAN SHAIKH

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Milind Deshmukh, Advocate for the Applicant.

Mr.V.V.Gangurde, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 18th DECEMBER 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, which is already admitted for final hearing.

2 Heard the learned advocate appearing for the applicant/accused. He argued that, there is no iota of evidence to connect the applicant/accused with the crime in question. He

further argued that during pendency of the trial, the applicant/accused, who was on bail, had already married the alleged victim of the crime in question.

3 The learned APP opposed the application by contending that the defence has admitted Medical Certificate, and therefore, the applicant/accused is not entitled for bail.

4 I have carefully considered the rival submissions and also perused the copies of depositions as well as impugned judgment and order of conviction.

5 The applicant/accused was charged for kidnapping the alleged minor victim of the crime in question and then subjecting her to penetrative sexual assault.

6 Perusal of deposition of the alleged victim of the crime in question, who is examined as Prosecution Witness No.1 by the prosecution, goes to show that she has disowned the case of the

prosecution and has stated in her chief-examination that she had been to Bangalore but she had gone there all alone. She has stated that it did not happen that when she went to Bangalore the applicant/accused was with her. The alleged victim of the crime in question denied that the applicant/accused had committed forcible sexual intercourse with her at Bangalore. The other two witnesses examined by the prosecution are Investigating Officer Suyog Waykar, Police Sub-Inspector, and Investigating Officer Balasaheb Hoval, Retired Assistant Police Inspector.

7 Though the prosecutrix has turned hostile to the prosecution, it appears that the learned trial court had convicted the applicant/accused, prima facie, on the basis of inadmissible evidence. In paragraph 21 of its judgment, the learned trial court has relied on duly proved contradictions in the version of the prosecutrix. When police statement of the prosecutrix was referred to her, a portion thereof was marked "A", and from the evidence of Investigating Officer, this contradiction was got proved. It was marked Exhibit 40. This former statement of the

prosecutrix was to the effect that she was told by the accused/ applicant that he will marry her, and on that count the applicant/ accused had committed sexual intercourse with her.

8 It is well settled that duly proved contradiction in police statement by a witness cannot take place of substantial evidence. Duly proved contradictions, if any, can at the most be used in impeaching credit of the witness, but they cannot take place of proof of the fact.

9 The applicant/accused was on bail throughout during the pendency of the trial. The learned advocate for the applicant/ accused has submitted that the applicant/accused and the alleged minor victim of the crime in question have married during pendency of the trial. In this view of the matter, the following order :

ORDER

- i) The application is allowed.

- ii) Substantive sentence of imprisonment imposed upon the applicant/accused is suspended and he is directed to be released on bail on his executing P.R.Bond in the sum of Rs.15000/- and on furnishing surety in the like amount.
- iii) The application is disposed of.

(A. M. BADAR, J.)