

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1513 OF 2016

IN

CRIMINAL APPEAL NO.790 OF 2014

AMOL KANTILAL ADSUL

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Ritesh Thobde, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 13th FEBRUARY 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, challenging the judgment and order passed by the Special Judge, Solapur, dated 24th September 2014, convicting and sentencing the applicant / accused for the offences punishable under Sections 363 and 376 of the IPC. For the offence punishable under Section 363 of the IPC, the applicant /

accused was sentenced to suffer rigorous imprisonment for 5 years apart from payment of fine of Rs.2,000/-, in default, to undergo further rigorous imprisonment for 3 months. For the offence punishable under Section 376 of the IPC, the applicant / accused was sentenced to suffer rigorous imprisonment for 10 years apart from payment of fine of Rs.2,000/-, in default, to undergo further rigorous imprisonment for 3 months.

2 Heard the learned advocate appearing for the applicant / accused. He argued that evidence of the prosecutrix shows that she was having love relation with the applicant / accused and there is no element of “taking her” by the applicant / accused. He further argued that there is no medical evidence or evidence of birth certificate of the prosecutrix to show that she was minor at the time of the alleged incident.

3 The learned APP opposed the application by contending that the prosecutrix was minor at the time of the incident, as seen from evidence of PW3 Arjun Randive,

Headmaster of Nootan Madhyamik Vidyalaya, Kem, Taluka Karmala, District Solapur, where the prosecutrix took education. She, therefore, submitted that the application is liable to be rejected.

4 I have carefully considered the rival submissions and also perused copies of deposition placed on record.

5 It is seen from the record that the applicant / accused has move Criminal Application bearing no.1420 of 2014 for suspension of sentence and releasing the applicant on bail, but the said application was withdrawn unconditionally on 11th September 2015, when the court expressed that the appeal itself can be expeditiously heard. It is, thus, clear that there is no decision on merit on the application for suspension of sentence and releasing the applicant / accused on bail.

6 Perusal of evidence of prosecutrix goes to show that she accompanied the applicant / accused from Kem in Taluka

Karmala, to Pune, where according to her version, she was raped by the applicant / accused. Perusal of her evidence shows that she accompanied the applicant / accused by train to Pune and the couple lived at Pune. Even as per version of Headmaster Arjun Randive (PW3) regarding date of birth of prosecutrix in the record of the school is 18th December 1998. The alleged incident of rape took place on 16th January 2014. It is, thus, clear that, at the time of the alleged incident, the prosecutrix, even according to the case of prosecution, was about 15 years 10 months old.

7 In the matter of **Sunil vs. State of Maharashtra**¹ this court in paragraph 12 has considered the factors for grant of bail when a boy and minor girl are in love with each other, which reads thus :-

The overall considerations while deciding such applications can be summed up as -

When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered :

i) What is the age of the prosecutrix, who is minor.

¹ Bail Application No.1036 of 2015 decided on 3rd August 2015

- ii) Whether the act is violent or not.
- iii) Whether there are antecedents or not.
- iv) Whether the offender is capable of repeating the Act or not.
- v) Whether there is likelihood of threats or intimidation, if at all the boy is released.
- vi) Whether any chance of tampering with the material witnesses when their statements are recorded.
- vii) It is also to be taken into account in such cases that a boy in his early 20s deserves to get employment and to plan, stabilize and secure his future.

8 It is seen from the evidence of prosecution that the prosecutrix was about 15 years and 10 months old at the time of the alleged incident and her evidence, prima facie, does not disclose that she was subjected to violence while taken her. The evidence on record does not show that the applicant / accused is having any criminal antecedents. As the matter is in appeal, there are no chances of tampering the evidence of prosecution. In this view of the matter, there is no reason to reject the application. Therefore the order :

- i) The application is allowed.
- ii) Substantive sentence imposed upon the applicant / accused is suspended and the applicant / accused is directed to be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount, till pendency of the appeal.

(A. M. BADAR, J.)