

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1571 OF 2016
IN
CRIMINAL APPEAL NO.672 OF 2014**

Raju Dhondiram More)...Applicant

V/s.
State Of Maharashtra)...Respondent

Mr. Bhaskar Sarwade, Advocate for the Applicant.

Mr. Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 8th MARCH, 2017.

P.C. :

This is an application by the Applicant/Original Accused No.1 for suspension of sentence and releasing him on bail during the pendency of the appeal filed by him. The Applicant/Original Accused No.1 has been convicted of the offence punishable under Sections 376, 323, 506 and 341 of IPC. For the offence punishable under Section 376 of IPC, he is sentenced to suffer RI for 10 years apart from payment of fine of Rs.500/- and in default to undergo further RI for one month.

Lesser punishment is imposed on him for rest of the offences held to be proved against him. All sentences are directed to run concurrently.

2 Heard learned advocate appearing for the Applicant/Accused No.1. By drawing my attention to the evidence of the prosecutrix, he argued that despite alleged rape on her by the Applicant-Accused on one occasion, on the very third day of that incident, she again visited house of the Applicant-Accused as per prosecution case and then she was again subjected to rape by him. This in submission of the learned Advocate for the Applicant-Accused No.1 is improbable and the Applicant-Accused No.1 is falsely implicated in the crime in question because prosecutrix had paid an amount of Rs.5,000/- to him for doing her work of ration card and the same work was pending.

3 The learned APP opposed the application by contending that offence of rape on married woman is serious and by examining 8 witnesses, prosecution has proved offences. He argued that application is not maintainable because earlier application moved by the Applicant-Accused No.1 was dismissed.

4 I have carefully considered the rival submissions and also perused copies of deposition of witnesses examined by the prosecution.

5 The first application of the Applicant-Accused No.1 for releasing him on bail was not dismissed on merits but as preparation of paper-book was expedited by the Court, the learned Advocate for the Applicant-Accused had not pressed that application.

6 According to the prosecution case, Applicant-Accused No.1 has committed rape on prosecutrix/P.W.1 on 2.4.2012 and 4.2.2012 in his house. As seen from the evidence of the prosecutrix, she had work with the rationing office and for getting the ration card, she approached that office on 2.4.2012. Officials working there referred her to Accused No.2-Shantabai. It is in the evidence of the prosecutrix that Accused No.2-Shantabai told her that she is not having sufficient time for her work and she should approach present applicant-accused. Prosecutrix has further deposed that then Accused No.2-Shantabai had taken the prosecutrix to the house of the Applicant-Accused no.1. There they

had discussion. It was settled that prosecutrix will pay Rs.5,000/- to the Applicant-Accused No.1 for getting ration card issued for her family. As per version of the prosecutrix then Shantabai left the spot and the Applicant-Accused No.1 committed rape on her. She further stated that she then returned home and has not disclosed incident to anybody. Thereafter, according to the statement of the prosecutrix, on 4.2.2012 she once again went to Accused No.2-Shantabai for the same work. Shantabai told her that amount of Rs.5,000/- will be required. She then again returned to her house and brought Rs.5,000/- from her husband then was accompanied by Shantabai went to the house of the Applicant-Accused No.1. As per version of the prosecutrix, then Accused No.2-Shantabai pushed her inside room of the Applicant-Accused No.1. Then Applicant-Accused again committed rape on her.

7 Prima-facie, it is seen that evidence of the prosecutrix is improbable. Once, subjected to rape, no lady will again go to the house of the Applicant-Accused on the pretext of same work. Cross-examination of the prosecutrix makes it clear that she had

paid an amount of Rs.5,000/- to the Applicant-Accused No.1 for getting the ration card and it was agreed that soon after the amount is paid she will get ration card. It is seen from her cross-examination that despite payment of the amount of Rs.5,000/- to the Applicant-Accused No.1, prosecutrix could not get ration card and she was required to visit Applicant-Accused No.1 for several times on this count. In cross-examination, the prosecutrix admitted that she had demanded back an amount of Rs.5,000/- paid to the Applicant-Accused No.1 as her work was not done. This material elicited from cross-examination, prima-facie, indicates that prosecutrix was not satisfied with the service promised to her by the Applicant-Accused No.1. It also indicates false implication. It is worthwhile to note that though the prosecutrix, according to the prosecution case was subjected to rape on two occasions, she had not taken any steps to book the Applicant-Accused No.1 promptly. In fact, the first incident was never informed by her to her husband.

8 In the wake of this evidence against the Applicant-Accused No.1, he deserves liberty during the pendency of the

appeal filed by him. Therefore, the order:

- (1) Application is allowed.
- (2) Substantive sentence of imprisonment against the Applicant-Accused No.1 is suspended. He is released on bail on executing PR bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.
- (3) Application stands disposed of.

(A. M. BADAR, J.)