

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.230 OF 2017
IN CRIMINAL APPEAL NO.148 OF 2015
(Ramesh s/o Chandrakant Yadav vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri S.V. Sirpurkar, Advocate for applicant.
Shri P.S. Tembhre, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : APRIL 6, 2017

Heard Shri Sirpurkar, learned Counsel for
applicant, and Shri Tembhre, learned Additional Public
Prosecutor for respondent.

This application is filed for suspension of
substantive sentence imposed upon applicant and for
grant of bail.

Shri Sirpurkar, learned Counsel for
applicant, at the outset, has submitted that applicant is
in Jail since more than two and half years and there is no
likelihood of appeal being heard in near future. It is
submitted that since applicant is of a young age,
application be allowed.

On merits, it is contended by learned
Counsel for applicant that no case is made out
establishing involvement of applicant as from the
evidence of prosecutrix, case of prosecution of forcible
intercourse is not established. It is further contended
that learned trial Court has convicted applicant by

raising presumption under Section 114-A of Evidence Act wrongly as no such presumption can be attracted in the present case since charge explained to accused was for the offence punishable under Section 376(1) of Indian Penal Code while presumption as aforesaid can be raised when accused is charged for the offence of rape under clause (a) to (n) of sub-section (2) of Section 376 of Indian Penal Code and where sexual intercourse by accused is proved and question is whether it was without consent of woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent. In that event, Court has to presume that she did not consent.

It is further contended by learned Counsel for applicant that from the evidence of prosecutrix, it has come on record that she is above 18 years of age on the day of incident, which aspect has also been dealt with by learned trial Court in favour of accused. It is submitted that since the incident took place on 9/4/2012, amended provision with regards to age of prosecutrix, which has come into force with effect from 3/2/2013, cannot be applied. It is thus prayed that application be allowed.

Shri Tembhre, learned Additional Public Prosecutor for respondent, has opposed the application and contended that there is direct evidence establishing involvement of applicant.

In the background of submissions advanced as aforesaid, on perusal of evidence of prosecutrix, it is noted that she has complained that incident took place in a ditch adjacent to road forcibly and admitted that in the

course of said incident and while attempting to run from the clutches of accused, she tried to bite to his hands when he pushed her, due to which she fell down and sustained injuries on her head. She has specifically stated that said injury was shown by her to Doctor and she sustained scratches on her wrist, which were caused by hand nails of accused, which were also shown to the Doctor. She has further stated that as she was subjected to rape for 15 minutes, she sustained injuries on her back, waist and thighs. Said evidence of prosecutrix is, however, found belied from the medical evidence on record as according to medical report, it is certified that no visible injuries were noted on the entire body of prosecutrix during examination, though from the injury report it is specifically certified that prosecutrix was subjected to intercourse within 24 hours of her examination by Doctor.

It is to be noted that from the evidence of prosecutrix herself, it has come on record that at the time of incident, she was above 18 years of age. Learned trial Court has dealt with this aspect and has noted that prosecution has failed to lead any reliable and cogent evidence to show that at the time of incident, age of prosecutrix was below 18 years and as such, has held that prosecutrix was above 18 years at the time of incident.

In view of facts as aforesaid, prima facie it is found that prosecutrix was above 18 years of age at the time of incident and in the light of said evidence on record, there appears substance in the case of applicant

when it is suggested to prosecutrix that when she was proceeding with applicant on his motor-cycle, both of them were seen by two persons residing in Mahakali Ward, of which prosecutrix appears to be resident and on their informing said fact to her parents, her father assaulted her and thus, false report came to be lodged against applicant. Said case as suggested finds substantiated when prosecutrix in fact has admitted that on the day of incident she on her own went with applicant.

Having considered the facts as aforesaid and also that applicant was on bail pending trial, criminal application is liable to be allowed as per order below :

Substantive sentence imposed upon applicant stands suspended. Applicant shall be released on bail on his executing a P.R. bond in the sum of Rs.25,000/- with one surety in like amount. While on bail, applicant shall mark his attendance with Police Station, Ram Nagar, Chandrapur on first day of every three months pending appeal. Applicant shall furnish proof of his residential address to said Police Station and shall update the same in the event of any change therein.

The criminal application is accordingly allowed.

JUDGE

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