

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO. 378 OF 2017

IN

CRIMINAL APPEAL NO.232 OF 2017

(Mangru S/o Tulshiram Kore..vs..State of Maharashtra, through PSO.PS.Gondia(Rural),Gondia)

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

Court's or Judge's orders.

Shri R.M.Patwardhan, advocate for applicant.
Shri Rajesh Nayak,A.P.P. for State.

CORAM : V.M. DESHPANDE, J.

DATED : JULY 5 , 2017

Heard learned counsel for applicant and learned A.P.P.
for State. With their able assistance, I have gone through the
relevant portion of record and proceedings especially the notes of
evidence of factum of Dr.Payal W/o Saurabh Agrawal(PW8) and
medical certificate (Exh.34) given and proved by Dr.Payal(PW8).

2. The applicant is convicted for the offence punishable
under Sections 376(f) of the Indian Penal Code and is sentenced
to suffer R.I. for 10 years and to pay fine of Rs. 50,000/- and in
default to pay fine amount R.I. for one year.

3. The learned A.P.P. has rightly pointed out that merely
because applicant was on bail that by itself is not sufficient to

release the applicant on bail. I am in full agreement with the submissions of learned A.P.P.

4. Perusal of the evidence of Dr.Payal(PW8) and certificate (Exh.34) clearly ruled out that any intercourse was taken. However, evidence of Dr.Payal(PW8) and certificate (Exh.34) clearly show that there was attempt on the part of the present applicant to commit said offence. Therefore, prima facie the applicant could have been sentenced under Section 376(f) r/w Section 511 of the Indian Penal Code then punishment could have been half punishment of the main offence. In such circumstances, the applicant was on bail during the course of trial is a relevant factor.

5. Looking to the pendency of the criminal appeals before this Court it would not be possible for this Court to take matter for final hearing. Therefore, I exercise my power in favour of the applicant by allowing the application. Hence, I pass the following order.

ORDER

- i) The application is allowed.
- ii) The jail sentence imposed on the applicant shall remain suspended during the pendency of the appeal.
- iii) The appellant be released on bail on his executing P.R.Bond of RS. 10,000/- with two solvent sureties in the like amount.
- iv) The Court before whom the bail bond will be executed shall ensure that the applicant deposited entire fine amount of Rs. 50,000/- .
- v) The applicant shall not be released on bail unless the entire amount of RS. 50,000/- is deposited in the Court.
- vi) The applicant to remain present before this Court.
- vii) With this application is allowed and disposed of.

JUDGE