

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

CRIMINAL APPLICATION [APPA] NO.713 OF 2017

IN

CRIMINAL APPEAL NO.317 OF 2017

[Baburao Vyankuji Upare .vs. State of Maharashtra]

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

Court's or Judge's orders

CORAM : KUM. INDIRA JAIN, J.

DATED : OCTOBER 06, 2017.

Heard Shri Mir Nagman Ali, learned counsel for applicant-appellant and Smt. Shamsi Haider, learned APP for respondent-State.

This is an application for suspension of substantive sentence of imprisonment imposed by the learned Additional Sessions Judge, Chandrapur vide judgment and order dated 6.6.2017 in Sessions Case No.1/2012.

By the said judgment and order, accused/appellant has been convicted of the offences punishable under sections 376 and 506 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and fine of Rs.50,000/- in-default rigorous imprisonment for six months for the offence punishable under section 376 of the Indian Penal Code and rigorous imprisonment for two years and fine of Rs.10,000/- in-default rigorous imprisonment for three months for the offence punishable under section 506 of the Indian Penal Code.

The learned counsel for applicant submits that applicant is 77 years old. He was on bail during trial. He is permanent resident of Kolgaon, Tahsil-Rajura, District-Chandrapur and there is no likelihood of his fleeing away from justice. The learned counsel submits that initially prosecution has not made out a case of rape, but after a considerable delay, the theory of rape was introduced just to falsely implicate the accused.

Per contra, the learned APP submits that offence is serious in nature. Prosecutrix was a girl of 14 years at the relevant time. It is submitted that medical evidence corroborates the evidence of prosecutrix that she was sexually assaulted. The learned APP submits that considering the nature of offence applicant may not be released on bail.

With the assistance of the learned counsel for the parties, this court has perused the impugned judgment and order, evidence of prosecutrix and the medical evidence. It is apparent that initially in FIR case of molestation was made out by the complainant. After about a week, allegations of rape were levelled.

Considering the delay in disclosing allegations of sexual assault and taking into consideration facts elicited in cross-examination of prosecutrix, this court is inclined to suspend the substantive sentence of imprisonment during pendency of appeal, particularly when applicant was on bail during trial.

In view of the above, Criminal Application No.713/2017 is allowed.

The execution of substantive sentence of imprisonment is suspended during pendency of appeal on applicant's furnishing PB & SB of Rs.15,000/- each to the satisfaction of the trial court.

JUDGE

Gulande