

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 186 OF 2016
IN
CRIMINAL APPEAL NO. 67 OF 2016

**RUKMUDDIN KUDMINCHI @ RUKMUDDIN
KUNBENCHI, PRESENTLY IN CENTRAL
JAIL COLVALE.,**

... Applicant

Versus

STATE THR. PUBLIC PROSECUTOR.,

... Respondent

Shri Roshan Tarikar, Advocate for the applicant.

Shri S. R. Rivankar, Public Prosecutor for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 11th April 2018

P.C.

Heard the learned Counsel for the applicant and the learned Public Prosecutor for the respondent.

2. This is an application for suspension of sentence. The applicant has been convicted for the offence punishable under Section 377 of Indian Penal Code (IPC) read with Section 8(2) of Goa Children's Act, 2003. For the offence punishable under Section 377 of IPC, the applicant has been sentenced to undergo imprisonment for a period of seven years and to pay fine of Rs.1,000 and in default, to undergo Simple Imprisonment for

eight days, while for the offence under Section 8(2) of the Goa Children's Act, the applicant has been sentenced to undergo Rigorous Imprisonment for 10 years and to pay fine of Rs.2 Lakhs and in default, to undergo Simple Imprisonment for two years. The applicant was in custody during the course of trial.

3. The learned Counsel for the applicant submitted that the victim has stated in his evidence that the applicant/ accused made a call to the father of the victim, which is prior to the incident. However, this is not substantiated from the call data records. He submits that in such circumstances and further considering the fact that the applicant is in custody since 16/09/2011, the applicant is entitled to be released on bail on suspension of sentence.

4. It is submitted that there is no injury on the private part of the applicant, which would show that no incident, as alleged, has happened.

5. On hearing the learned Counsel for the parties, I do not find that any case for suspension of sentence is made out.

6. Prima facie, at this stage, there is evidence of PW2, who is the victim, which is supported by medical evidence and which has been accepted by the learned Sessions Judge. At this stage,

detailed examination and appreciation of the evidence cannot be made. As noticed earlier, the applicant was in custody during the course of trial and no compelling reasons have been shown to suspend the sentence, particularly when now the applicant has been convicted and the charge has been found to be substantiated. In the circumstances, the Criminal Application is dismissed.

7. Criminal Appeal is expedited.

C. V. BHADANG, J.

SMA