

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.679 OF 2018

IN

CRIMINAL APPEAL NO.519 OF 2017

Saddam Ilai Shaikh ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

Mr.Viresh V. Purwant for the applicant.

Ms.Anamika Malhotra, APP for the respondent/State.

CORAM : A.M.BADAR J.

DATED : 22nd JUNE 2018.

P.C. :

1. This is an application for suspension of sentence and for releasing the applicant/accused on bail during the pendency of the appeal filed by him.

2. The applicant /accused is convicted of offences punishable under Section 4 of the Protection of Children from Sexual Offences Act so also under section 376 of the Indian Penal Code. He is sentenced to suffer rigorous imprisonment for seven years. Apart from payment of fine of

Rs.5,000/- and default sentence of rigorous imprisonment for four months. Lesser punishments are imposed on another count and no separate sentence is awarded for offence punishable under Section 376 of the Indian Penal Code.

3. Heard the learned Advocate appearing for the applicant/accused. He took me through the evidence of PW3 / Victim female child and argued that her cross-examination reveals that the alleged incident took place at crowded place where there were houses on both sides of the road. As such it is improbable that the victim would have been kidnapped from such a place. The learned Advocate further argued that cross-examination of the PW3 / Victim female child shows that she is one year younger to her elder sister Arti who is about 20-21years of age. My attention is drawn to the defence of the appellant/accused to the effect that the victim female child was having illicit relationship with Arjun Pawar. With this, it is argued that the applicant who is also young person and was on bail during the pendency of the trial needs to be released on bail.

4. The learned APP opposed the application by contending that the prosecution has established the age of the victim and her cross-examination reveals that she was not knowing the applicant/accused

and therefore the applicant is not entitled for bail. The evidence of the prosecution is further corroborated with medical evidence.

5. I have carefully considered the rival submissions and also perused the matter placed on record. Though the applicant/accused also appears to be young person of about 23 years of age, it was not defence of the applicant/accused that there was love relation between him and the alleged victim female child. On the contrary, the defence is taken to the effect that one Arjun Pawar was having illicit relation with the prosecutrix and in cross-examination of the prosecutrix/victim female child, it is brought on record that she was not at all knowing the applicant/accused and had seen him for the first time in the Court. Thus, it cannot be said that the case in hand is that of love affair between two young persons.

6. The prosecutrix/victim female child has stated that she was taken on the two wheeler vehicle and was raped by the applicant/accused behind the Yarn Mill. PW7 Dr. Vijaysing Sathe, upon medical examination of the victim found her hymen ruptured and tear was fresh. PW8 Dr.Santosh Bhoi found external injuries on the person of the victim child. Her age is proved by the prosecution on the basis of certificate issued by the Registrar under Registration of Births and

Deaths Act, 1969. The entry taken under the Birth Register is relevant under Section 35 of the Indian Evidence Act and it carries presumption of correctness.

7. Thus, there is evidence on the basis of which the applicant came to be convicted for the offence of penetrative sexual assault on the minor female child after kidnapping her. Hence, no case for bail is made out. The application, therefore, is rejected.

8. Hearing of the appeal is expedited.

(A.M.BADAR J.)