

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1606 OF 2017
IN
CRIMINAL APPEAL NO. 399 OF 2016**

Ramjan Mohammad Ghudubhai ... **Applicant**

V/s.

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

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Mr.Amin H. Solkar i/b. Mr.Misbaah Solkar for the applicant.

Mr.Prashant Jadhav, APP for the respondent/State.

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CORAM : A.M.BADAR J.

DATED : 22nd FEBRUARY 2018.

P.C. :

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

2. The applicant/accused is convicted of offences under sections 363, 366, 376(2)(i), 506 of IPC. He has been sentenced to suffer rigorous imprisonment for 10 years apart from payment of fine of Rs.20,000/- and default sentence of simple imprisonment for one year for the offences punishable under section 376(2) of IPC. Lesser sentence are awarded on other counts and all sentences are directed to run concurrently.

3. Heard learned Advocate appearing for the applicant / accused. He argued that the applicant / accused was on bail during the trial and he has not misused the liberty. Learned advocate further argued that medical evidence is not supporting the case of prosecution and even if case of the prosecution is accepted, then also the offence disclosed is that of sexual molestation and not that of rape. The learned Advocate drew my attention to the evidence of medical officer Dr.Ranjeet Jadhav and argued that medical report was disclosing that the hymen tear was healed one and no final opinion was given by CPR Hospital as to whether the victim girl was sexually assaulted or not. Therefore according to the learned Advocate for the applicant, the applicant is entitled for bail.

4. Learned APP opposed the application by contending that the evidence of the prosecutrix is reflecting offence of rape on her.

5. PW-2 is the alleged victim of crime in question she was born on 27th July 1999 and the incident in question took place on 13th August 2013. As such, at that time of the incident, she was about 14 years of age.

6. The PW-2, at the relevant time was taking education in Janata Madhyamik Kala, Vaniya Jr. College, Hupri in 9th standard. On 13th August, 2013, as seen from the evidence of PW-7-Dattatraya Patil/ teacher in the said school that elder brother of PW-2 came to the school for delivering tiffin to PW-2. However, the PW-2 found to be absent from the school. Her absence was reported by PW-7-Patil teacher to the

Head Master and then brother of the victim girl as well as her mother again visited the school. Subsequently, search of the PW-2 was undertaken.

7. It is seen from the evidence of PW-1 Yogita, mother of PW-2 that after on her visit to the school of the PW-2, she found PW-2 was absent from the school. Ultimately, her daughter was seen at the house when she returned home. That made PW-1 Yogita to question her daughter i.e. PW-2. It is seen from the evidence of PW-1 Yogita, then upon questioning PW-2, the PW-2 disclosed the incident to her by narrating that at the back seat of the car the appellant /accused had committed sexual intercourse with her. The PW-2 in her statement before the Court has stated that upon being asked by the appellant/accused, she sat in the car and the appellant/accused had established sexual relationship with her in that car and subsequently dropped her near her house.

8. In medical examination of the Pw-2, medical officer has noted torn healed hymen.

9. Evidence on record shows that at the time of incident, the victim girl was 14 years of age and as such her consent is immaterial. Evidence of the PW-2 in respect of sexual intercourse by the appellant / accused with her, is gaining corroboration from her previous statement made to her mother Yogita . In case of sexual offence, non finding of injuries on the private part of the victim is of no consequences and prima facie there is nothing in cross examination of the PW-2 to infer

that she is falsely implicated the applicant / accused in the crime in question. I have also noted her consent to the act is of no consequence.

10. Evidence on record prima facie indicates that girl below consenting age was subjected to the crime in question which is held to be proved after due trial. No case is for bail is made out. The application therefore rejected.

(A.M.BADAR J.)