

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.109 OF 2018

IN

CRIMINAL APPEAL NO.119 OF 2018

Kaushik Kashiram Halpati ... **Applicant**

V/s.

The State of Maharashtra & anr. ... **Respondents**

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Ms.Alpa Javeri i/b. Mrs.Teja Katdare for the applicant.

Ms.Purnima H. Kantharia for respondent no.2.

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 the applicant / accused on bail during the pendency of the appeal filed by him.

2. The applicant / accused has been convicted of the offences punishable under sections 376(i) of IPC as well as section 6 of the Prevention of Children from Sexual Offences Act, 2012 (POCSO). On each count he has been sentenced to suffer the rigorous imprisonment for 20 years apart from imposing of fine of Rs.3,000/- and default sentence for one year.

4. Heard learned advocate appearing for the applicant / accused.

5. She took me through the evidence of prosecutrix - PW-1 as well as that of her mother PW-2 Sobha in order to demonstrate that the alleged act was consensual. The learned Advocate submitted that cross examination of the prosecutrix shows that after revealing that she is pregnant, her mother scolded her and asked about the details, but she did not tell details to her mother. The learned Advocate further drew my attention to the cross examination of the prosecutrix to demonstrate that after first sexual intercourse, there was huge bleeding and mother of the prosecutrix had washed those clothes. Thereafter, the learned Advocate for the applicant pointed out the paragraph 4 of the cross examination of PW-2 Sobha, the mother of the prosecutrix, to point out that in the community of the prosecutrix there is a custom to have sexual intercourse without marriage. With this, it is pointed out that the act was not an act which can be termed as rape or penetrative sexual intercourse. The learned Advocate for the applicant further drew my attention to the paragraph 7 of the cross examination PW-9 Mithesh Trivedi, Scientific Officer, FSL Surat, in order to demonstrate that evidence of this expert is not reliable.

6. The learned Advocate representing respondent no.2 opposed the application by contending that the nature of offence needs to be seen while testing the instant application.

7. I have carefully considered the rival submission and also perused copies of the deposition of prosecution witnesses.

8. The victim of this crime is a minor female child. Her date of birth is 9th April, 2003. There is nothing in cross examination of prosecution witnesses to infer that victim of crime in question at the relevant time was not a child as defined by section 2 of POCSO. In this view of the matter, consent, if any, of the prosecutrix, or the custom, if any, prevalent in the community, pales into insignificance. In criminal trials proof of mathematical precision is never required. In the case in hand, the applicant was well acquainted with the prosecution party and evidence of the prosecutrix demonstrated that the applicant had committed rape or penetrative sexual assault on her which resulted in her pregnancy and ultimately delivery of a child.

9. PW-3 – Dr. Shailesh Arlekar had collected sample of DNA which was ultimately analysed by PW-9 Mithesh Trivedi. The report of the expert ultimately revealed that the present applicant is father of the baby boy born to the prosecutrix.

10. In this view of the matter, considering the fact, female child was subjected to rape, and ultimately she delivered the child, no case for grant of bail is made out, therefore, Application stands dismissed.

(A.M.BADAR J.)