

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.172 OF 2018

IN

CRIMINAL APPEAL NO.109 OF 2018

DEVI HEMRAJ NAKUM

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Ms.Pracheta Rathod, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 13th FEBRUARY 2018

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by her. The applicant/accused is convicted of the offence punishable under Section 114 read with Section 376 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for 7 years apart from payment of fine of Rs.2,000/-.

2 Heard the learned Advocate appearing for the applicant/accused. She argued that the applicant/accused, only being wife of the co-accused, is falsely implicated in the crime in question with absurd and improbable allegations. The learned Advocate drew my attention to the very first version of the prosecutrix to demonstrate that she alleged that the incident in question took place at the public garden and the perpetrator of the crime was an unknown person. On the very next day of this first version, the prosecutrix again reiterated same version and subsequently, after about one and a half month, the applicant/accused is falsely implicated in the crime in question.

3 The learned APP opposed the application by contending that the offence alleged is serious and is duly proved.

4 The accused couple was prosecuted for commission of offences punishable under Sections 376, 114 read with 376 and 506 of the Indian Penal Code as well as under Section 4 and 6 of

the Protection of Children from Sexual Offences Act. The applicant/accused herein is wife of accused no.1 Hemraj.

5 After due trial, the learned trial court came to the conclusion that the prosecution has failed to prove that the alleged victim of the crime in question was a child at the relevant time. Therefore, accused persons were acquitted of the offence punishable under Sections 4 and 6 of the Protection of Children from Sexual Offences Act. However, they are convicted for the offence punishable under Section 376 as well as Section 114 read with 376 of the Indian Penal Code.

6 Perusal of evidence of the prosecutrix shows that she did not lodge report about the incident even after she became pregnant. Evidence of PW4 Dr.Kamlesh Choudhari shows that when the prosecutrix came to his hospital for abortion, he gave intimation of the incident to Antop Hill Police Station. That is how, the first version of the prosecutrix came to be recorded by the police in presence of the Medical Officer on 13th March 2015.

At that time, the prosecutrix reported that when she was coming out of the public garden, one unknown person gave a call to her, and by putting a handkerchief on her mouth, made her unconscious. She regained consciousness subsequently. On 14th March 2015, second statement of the prosecutrix came to be recorded and the same was treated as First Information Report (FIR). This second statement is also similar to the statement recorded on 13th March 2015. The third version of the prosecutrix came to be recorded on 19th March 2015 in the form of her supplementary statement, wherein, she has alleged that she had sexual intercourse with co-accused Hemraj. She did not implicate the present applicant/accused in any way in the said incident. Thereafter, on 30th April 2015, the prosecutrix came up with another story and she reported to police that the applicant/accused, who is wife of co-accused Hemraj, informed her that her brothers and sisters are in custody of the goons and if she did not sleep with co-accused Hemraj, the goons would kill her brothers and sisters. This fourth version of the prosecutrix was held to amount to abetment and by accepting the evidence of

the prosecutrix on this count, the applicant/accused, who is wife of the co-accused, is convicted of offence punishable under Section 114 read with 376 of the Indian Penal Code. Perusal of the evidence of the prosecutrix shows that she has modulated her version to suit her own convenience from time to time, ranging for the period of two months.

7 The applicant/accused was on bail during pendency of the trial and there is no iota of evidence on record to show that she has misused her liberty. Short sentence of imprisonment for a fixed term is imposed on the applicant/accused, who is a lady having young children to maintain. In this view of the matter, the following order :

ORDER

- i) The application is allowed.

- ii) Substantive sentence of imprisonment imposed on the applicant/accused is suspended and the applicant/accused is ordered to be released on bail on her executing P.R.Bond in

the sum of Rs.15,000/- and on furnishing surety in like amount.

iii) Initially, for a period of six weeks, the applicant/accused be released on furnishing cash security of Rs.15,000/- in order to enable her to arrange for surety.

iv) The application is disposed of.

(A. M. BADAR, J.)