

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.238 OF 2018

IN

CRIMINAL APPEAL NO.150 OF 2018

Raju @ Rajkumar Balbhim Jadhav ... **Applicant**
V/s.

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

.....

Ms.Pranali Kakade i/b. Hulyalkar & Associates, Advocate for the Applicant.

Mr.P.H.Gaikwad-Patil, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 4th OCTOBER 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 him.

2 The applicant/accused is convicted for the offences punishable under Sections 376, 504 and 506 of the Indian Penal Code by the learned trial Court. For the offence punishable under Section 376 of the Indian Penal Code, he is sentenced to suffer

rigorous imprisonment for ten years. Lessor sentences are imposed on the applicant/accused on other count and all substantive sentences are directed to run concurrently.

3 Heard the learned Advocate appearing for the applicant/accused. She argued that even if the prosecution case is accepted as it is, then also it reflects consensual sex between two adult persons and, therefore, it cannot be said that offence of rape is proved by the prosecution.

4 The learned Additional Public Prosecutor opposed the application by contending that the prosecutrix has stuck to her version and the Investigating Officer has stated that there was no houses nearby the place of the incident.

5 I have carefully considered the rival submissions and also perused copies of depositions of prosecution witnesses including that of the prosecutrix, who is examined as P.W.No.1.

6 The prosecutrix is a married lady having one son. It is also seen from her evidence that her husband and the applicant/accused are neighbourers. The prosecutrix averred that the incident took place at 8.00 p.m. of 08/05/2012. The place of incident as stated by her is open space where villagers of village Hotgi used to go to easing themselves. The prosecutrix has

candidly stated in her chief-examination itself that there is no latrine facility in the area where she resides. She further stated in chief-examination that all residents used to go to attend nature's call at the place where the incident took place. With this, she further stated that while she was returning after answering the nature's call, the applicant/accused came from behind, caught hold of her, caused her fall on the ground and then committed sexual intercourse with her. Thereafter, he put knife on her throat and threatened her. In her chief-examination itself, the prosecutrix has stated that on the day of the incident, soon after the incident, she disclosed the incident to her husband. At the same time, the prosecutrix has also stated in her chief-examination that she disclosed the incident to her mother after two to three days of the incident. She also stated in chief-examination that she did not state about the incident to her husband and neighbourers because of fear of desertion. Her cross-examination shows that the open place where the incident took place was used by inmates of about 400 to 500 houses for defecation. She further admitted in her cross-examination that time of about 8.00 p.m. was the time for the ladies from the village to go to that place for attending nature's call.

7 Cross-examination of the prosecutrix further reveals that husband of the prosecutrix and the applicant/accused were friend. The prosecutrix further stated that from 08/05/2012 to

15/05/2012 she was doing her household work and her household duties. She had gone to attend the village fair and was watching T.V. for this period. However, the report came to be lodged by her on 16/05/2012. If really the prosecutrix had suffered forcible sexual intercourse at the hands of the applicant/accused and if she has disclosed that incident to her husband on the day of its happening i.e. on 08/05/2012, there seems to be no reason for lodging the FIR by the prosecutrix belatedly on 16/05/2012. Evidence on record shows that the prosecutrix was prosecuting her daily chore and household activities right from 08/05/2012 till lodging of the FIR on 16/05/2012. There is no iota of evidence on record to show that the prosecutrix was under the spell of threat of the applicant/accused during this period. All this, *prima facie*, indicates that even if evidence of the prosecutrix which is not corroborated by any other evidence is accepted as it is then also it appears to be case of consensual sex between two adult persons. During pendency of the trial, the applicant/accused was on bail and he has not misused his liberty.

8 Considering the nature of evidence against the applicant/accused I am inclined to release him on bail during pendency of the appeal filed by him. Hence, the Order :

ORDER

- (i) The application is allowed.

- (ii) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail on his executing P. R. Bond of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) As a condition of this order, the applicant/accused should not contact the prosecutrix or her relatives in any manner and he should not repeat commission of similar offence.
- (iv) The application is disposed of accordingly.

(A.M.BADAR J.)

Raju
Dattatraya
Gaikwad

Digitally signed
by Raju
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Gaikwad
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