

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.254 OF 2018

IN

CRIMINAL APPEAL NO.191 OF 2018

Mr.Ajay Mahavir Ghechand ... **Applicant**
V/s.

The State of Maharashtra ... **Respondents**

.....

Mr.Vikas K. Singh, Appointed Advocate for the Applicant.

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

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CORAM : A.M.BADAR J.

DATED : 8th OCTOBER 2018.

P.C. :

1 By this application, the applicant/accused No.1 is seeking 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(D), 377, 366, 354, 341, 342, 323, 506-II read with Section 120-B as well as under Section 120-B of the Indian Penal Code. Substantive sentences imposed on him are

directed to run concurrently. He is sentenced to suffer rigorous imprisonment for twenty years apart from payment of fine and default sentence so far as the offence punishable under Section 376(D) read with Section 120-B of the Indian Penal Code. Lessor sentences are imposed on other counts, except for the offence punishable under Section 120-B of the Indian Penal Code for which again the applicant/accused is sentenced to suffer rigorous imprisonment for twenty years.

3 Heard the learned Advocate appearing for the applicant/accused. He argued that co-accused named Mahesh Maragaje has already been released on bail by this Court. Role attributed to the present applicant is also the same and, therefore, on the principle of parity, he is entitled for bail. My attention is drawn to the evidence of P.W.No.20 Vishnu Kanhekar, Naib Tahsildar, who conducted test identification parade and it is argued that only the guidelines so far as age were followed, but other guidelines were not followed. Dummies were not of physic of the accused persons. The test identification parade was not witnessed by the panchas, as seen from the evidence of this witness. Therefore, the evidence regarding identification of the accused is unbelievable. Reliance was also placed on evidence of P.W.NO.41 Sarita Bhosle, API to point out that the the place of tempo where the incident took place were at the distance of 15 to 20 minutes from the police station. It was pointed that the victim

had omitted to state material facts before the police on the first count. With this, it is prayed that the applicant be released on bail.

4 The learned Additional Public Prosecutor opposed the application by contending that presence of the applicant on the scene of the offence is established from the call detail record of the applicant/accused. The indent was established by the medical evidence placed on record. It is further argued that case of the applicant is different from the case of the accused who was released on bail.

5 I have carefully considered the submissions so advanced and also perused copies of depositions of prosecution witnesses as well as Order releasing co-accused Mahesh Maragaje. The said accused was released on bail as his name had not figured in the FIR as well as statement of the prosecutrix recorded under Section 164 of the Code of Criminal Procedure. The reason for convicting him by the learned trial Court was to the effect that he was arrested on day after the incident and had he been innocent, he would have made hue and cry and would have lodged grievance against the higher authority.

6 Evidence of the Medical Officer shows that the victim had suffered 26 injuries in the incident and, therefore, even if

P.W.No.41 Sarita Bhosle, API has stated that the victim had not complained about body pain to her. This admission is of no consequence at this stage. The victim of the crime in question in her evidence has stated the role played by the applicant/accused and his location on the spot of the incident is seen from the call detail record produced and proved by the prosecution during the course of trial. The test identification parade is not substantive piece of evidence. Dock identification of the accused is the substantive evidence. Even otherwise, it is seen from the evidence of the Naib Tahsildar that the dummies, who were present at the time of test identification parade were ranging from the age of 23 to 28 years. As such, at this stage, the evidence regarding the test identification parade cannot be ignored.

7 In this view of the matter, the following Order

ORDER

- (i) The application is rejected.
- (ii) The application is disposed of accordingly.

(A.M.BADAR J.)

Raju
Dattatraya
Gaikwad

Digitally signed
by Raju
Dattatraya
Gaikwad
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