

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.513 OF 2016

IN

CRIMINAL APPEAL NO.134 OF 2015

Rafiq Mohammed Shaikh ... **Applicant**

V/s.

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

Mr.Umesh V. Mohite for the applicant.

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

CORAM : A.M.BADAR J.

DATED : 27th FEBRUARY 2018.

P.C. :

1. By this application, the applicant/accused is praying for suspension of sentence and releasing him on bail during the pendency of appeal filed by him. He has been convicted of offences punishable under sections 376 and 417 of IPC and is sentenced to suffer RI for 10 years apart from payment of fine of Rs.1000/- and default sentence of two months. Lesser sentences are awarded on other counts and all substantive sentences are directed to run concurrently.

2. Heard learned Advocate appearing for the applicant/accused at sufficient length of time. He drew my attention to the charge-sheet of Crime No.428 of 2014 registered at the instance of the prosecutrix. In this case against the accused named Dr. Jayesh Arjun Katira, the learned Advocate argued that the prosecutrix has falsely implicated Dr. Katira in similar offence. The learned Advocate then drew my attention to the copy of judgment in Criminal Case No.260/PS/213 for offences under sections 509, 507 of IPC decided on 3rd December, 2013 by the Metropolitan Magistrate Mumbai as well as the copy of the chargesheet in Crime No.21 of 2007 for offences punishable under sections 354, 504 of IPC filed at Bhandup Police Station and argued that mother of the prosecutrix had indulged in lodging these crimes against others in order to extort money from them. The learned Advocate further argued that in the case in hand, the FIR came to be lodged belatedly. With this, he prayed for releasing applicant on bail during the pendency of the appeal.

3. The learned APP opposed the application.

4. In the case in hand, the FIR lodged by Shilpa Bapu Gaikwad, the prosecutrix goes to show that she is having love relation with the present applicant/accused. They had indulged in sexual relation. Ultimately, they both were seen by residents of the locality who informed this fact to the mother of the prosecutrix. The mother of the prosecutrix then inquired and the prosecutrix

insisted the applicant/accused to marry her. On refusal, the FIR came to be lodged.

5. During the course of the trial, it was found that the prosecutrix was not of consenting age and, therefore, the offence of rape was held to be proved.

6. As the prosecutrix was below the consenting age, and as the other documents which are produced in support of this application were not part of the record before the trial Court, the application is rejected.

7. The hearing of the appeal is expedited and liberty is granted to mention the appeal as and when desired by the learned Advocate for the applicant.

(A.M.BADAR J.)