

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.592 OF 2018

IN

CRIMINAL APPEAL NO.518 OF 2018

Bobbysingh Bakshisingh @

Lucky @ Mohamad Sameer Fidabaksha ... **Applicant**

V/s.

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

.....

Saswati Deb, Advocate for the Applicant (Legal Aid Center)

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

....

CORAM : A.M.BADAR J.

DATED : 28th AUGUST 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 363, 366(A) and 376 of the Indian Penal Code as well as under Section 5 read with Section 6 of the Protection of Children from Sexual Offences Act, 2012. For the

offence punishable under Section 363 of the Indian Penal Code he is sentenced to suffer rigorous imprisonment for seven years and on all other count, he is sentenced to suffer rigorous imprisonment for ten years each. Apart from this, the learned trial Court has also imposed fine and default sentence on the applicant.

3 Heard the learned Advocate appearing for the applicant/accused. She argued that during course of investigation, the spot panchanama was not prepared by the Investigating Officer. It is further argued that there is no investigation on the point as to who had called father of the prosecutrix on 21/03/2013. The Investigating Officer has not collected documentary evidence such as railway journey tickets to show that the applicant was brought back to Mumbai while in company of the victim female child. It is further argued that there are two birth certificates of the applicant and names of mother are different in both those certificates. Similarly, there is no investigation as to who was the *burkha* clad lady. With this, it is argued that as during pendency of the trial, the applicant/accused was on bail, he be released on bail during pendency of the appeal.

4 The learned Additional Public Prosecutor opposed the application by contending that in fact there is only one birth certificate, which is at Exhibit 24 and the another certificate is the School Leaving Certificate. There is no dispute so far as date of

birth of the P.W.No.2/victim child is concerned.. That evidence is not challenged. The learned Additional Public Prosecutor further argued that the applicant/accused, as seen from the evidence of the victim child, had allured her and taken her to Punjab, where he indulged in penetrative sexual assault on the victim child.

5 I have carefully considered the rival submissions and also perused copies of depositions of prosecution witnesses and Judgment and Order of conviction and resultant sentence.

6 The prosecution has placed on record birth certificate of the P.W.No.2/victim female child, which is at Exh.24. This birth certificate is issued under the provisions of the Registration of Births and Deaths Act, 1969 and it is reflecting date of birth as 14/01/1997. The same date of birth of the prosecution is appearing in her oral evidence. This evidence is not challenged by the defence during cross-examination of the prosecutrix. The incident in question allegedly took place on 22/03/2013 and thereafter for a period of twenty days during the stay of the prosecutrix with the applicant at Punjab. Evidence of P.W.No.2/victim female child shows that she was enticed by the applicant/accused and was taken to Punjab on 22/03/2013, where he had committed penetrative sexual assault on her. It is also seen from evidence of the P.W.No.2/victim female child so also from the statement of the applicant/accused recorded under Section

313 of the Code of Criminal Procedure that the applicant/accused was already having a spouse alive when he had kidnapped the P.W.No.2/victim female child and indulged in penetrative sexual assault on her. The victim female child was sixteen years and few months old at the time of alleged incident.

7 In this view of the matter, no case for bail is made out. Hence, the Order

ORDER

(i) The application is rejected

(A.M.BADAR J.)

Raju
Dattatraya
Gaikwad

Digitally signed by
Raju Dattatraya
Gaikwad
Date: 2018.09.10
15:03:46 +0530