

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.665 OF 2018

IN

CRIMINAL APPEAL NO.482 OF 2018

Vijay Sakharam More ... **Applicant**
V/s.

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

.....

Ms.Megha S. Bajoria, Advocate for the Appellant/Applicant.

Mr.A.R.Kapadnis, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 16th JULY 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 Heard the learned Counsel appearing for the applicant/accused at sufficient length of time. She pointed out variance in statements of prosecution witnesses and submitted that those amount to major contradiction. It is further argued that Vinay Mishra as well as Rekha are not examined as witness by the

prosecution. Statement of Babali suffers from omission and medical evidence is not supporting the prosecution. My attention was drawn to evidence of P.W.No.6 Dr.Vaishali. It is further argued that the applicant is behind bars for more than four years and sentence imposed on him is only of ten years.

3 The learned Additional Public Prosecutor opposed the application.

4 In the matter of *Ranjit Hazarika v. State of Assam*¹ and *B.C.Deva v. State of Karnataka*² the Honourable Apex Court observed that non-finding of injury on the body of the victim of the sexual offence is not of any assistance to accused in the said case. Similarly, in the case in hand, the victim was examined after about 28 days from the date of alleged incident. As such, non-finding of any external or internal injury is of no consequence at least at this stage. The incident was witnessed by sister of the victim child. Her evidence as well as evidence of the victim child which is recorded with the help of psychologist, *prima facie*, points out penetration sexual assault on the victim child.

5 Father of the victim child is suffering from AIDS and her family is seen to be suffering from poverty. In such situations, delay about one month by itself is not sufficient to throw out the prosecution case. No case for bail is made out.

1 (1998) 9 SCC 635.

2 (2007) 12 SCC 122.

6 The application is, therefore, rejected.

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Dattatraya
Gaikwad

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(A.M.BADAR J.)