

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.810 OF 2018

IN

CRIMINAL APPEAL NO.538 OF 2018

Prashant Eknath Ghorpade ... **Applicant**

V/s.

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

Mr.S.D. Paithane for the applicant.

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

CORAM : A.M.BADAR J.

DATED : 23rd JULY 2018.

P.C. :

1. This composite application's prayer clause indicates that prayer is made for staying the conviction as well as suspension of sentence and for releasing the applicant/accused on bail.

2. The applicant / accused is convicted of offence punishable under Section 376 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for seven years apart from imposition of fine of Rs.10,000/- and in default to suffer simple imprisonment for six months.

3. Heard the learned Advocate appearing for the applicant at great length of time. He took me through evidence of the victim of crime in question as well as that of the medical officer and the Investigating Officer and contended that the applicant is in no way concerned with the crime in question. He was serving at Pune and Investigating Officer has not conducted investigation as to the availability of the applicant at the spot of the incident when the incident took place. The learned Counsel further argued that evidence adduced by PW5 Dr. Swati Deshpande, medical officer who has terminated pregnancy of the victim is not corroborated with version of the victim in as much as dates of incident are not tallying of the age of the foetus. My attention is also drawn to the cross examination of the victim of the crime in question to point out that she accepted the fact that prior to 19th June, 2011 and after 25th June, 2011 she never met the accused. With this, it is argued that it is improbable for the applicant/accused to impregnate the victim of the crime in question.

4. It is further argued that forensic evidence is not collected to bring home the guilt to the accused. The learned Counsel further argued that other points framed by the learned Trial Court such as house tress-pass, criminal intimidation are answered in negative, but

only point in respect of commission of rape on victim is answered in positive and this finding is perverse. The learned Additional Public Prosecutor opposed the application.

5. I have carefully considered the rival submission and also perused copies of deposition witnesses placed on record. PW1 is the victim of crime in question. At the relevant time, she was taking education in 10th standard. Her evidence is to the effect that there was nobody at her home, on 19th June, 2011 and 25th June, 2011, the applicant/accused committed forceful sexual intercourse on her which ultimately resulted in conception. She deposed that because of growth of foetus, she stop attending school and then upon enquiry by her parents she disclosed the fact to them. As per version of first informant / victim, under threat of the applicant, she did not disclose the incident to anybody else. It is also seen from the evidence of the victim of the crime in question that there after, there were talk between both family and writing on the stamp paper came to be executed between parties in which it was agreed that the applicant would marry the victim of the crime in question. There after the medical termination of pregnancy took place and it was done by PW5 Swati Despande on 29th November, 2011. Date of engagement was fixed on 18th December,

2011. But as per the version of the victim girl, the applicant did not attend that ceremony, hence she lodged First Information Report on 23rd December, 2011.

6. For making out offence, proof of mathematical precision is not required. Requirement of Criminal Law is to prove the fact beyond a reasonable doubts. Conclusive proof is never warranted. Therefore, even if it assumed that medical evidence regarding age of foetus is not in tune with the dates of commission of rape the same is of no consequence. Even otherwise, it is well settled that when medical evidence is not in tune with the ocular evidence, then the ocular evidence if reliable should always prevail. In case in hand, the victim girl deposed about dates of incident of commission of rape on her. Even medical evidence broadly indicates act of sexual intercourse in June, 2011 and that of resultant pregnancy.

7. By now, it is well settled that finding of guilt in rape case can be based on the basis of uncorroborated testimony of the victim of the crime in question as the very nature of such offence makes it impossible to seek corroboration. In the case in hand, writing of stamp paper was got executed and those writings are at Exhibits 69 and 70. Termination of the pregnancy took place subsequently on the assurance of marriage

and therefore the question of availability of foetus for DNA does not arise. The FIR was lodged after failure of the applicant to attend the engagement ceremony.

8. At the stage of considering the application for grant of bail and for suspension of sentence, appreciation of evidence cannot be done. Still considering length of arguments, I have narrated the nature of evidence precisely in the foregoing paragraphs. So far as the suspension of conviction is concerned, in such case of offence of commission of rape, it cannot be granted as matter of rule. Exceptional circumstances are required to be pointed out for stay to the order of conviction, which are absent in the instant case. Mere fact that the applicant was on bail during pendency of the trial is not sufficient for granting relief of suspension of sentence. The nature of offence and the manner in which it is committed are relevant, for the purpose.

9. Considering overall evidence adduced by the prosecution and the nature of the offence, no case for bail as well as for staying conviction is made out. The application is therefore rejected.

10. Hearing of the appeal is expedited.

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(A.M.BADAR J.)