

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.984 OF 2018  
IN  
CRIMINAL APPEAL NO. 805 OF 2018**

Shri. Viju Valmik Bhusare                      ....      Applicant  
@ Viju Eknath Mali

Vs.

1. The State of Maharashtra                      ....      Respondents  
2. Shakuntala Valiba More

Mr. Rameshwar Navnath Gite for the Applicant.  
Mr. S.H. Yadav, APP for the State.

***Coram : Smt. Sadhana S. Jadhav, J.***  
***Date : 27<sup>th</sup> November 2018***

P.C.:

1                      Heard the learned counsel for the applicant.

2                      This is an application under Section 389 of Code of Criminal Procedure. The applicant herein is convicted for the offences punishable under Sections 376 (2)(i), 376(2)(j), 376(2)(n), 323, 506 of the Indian Penal Code and under Section 4 of the Prevention of Children from Sexual Offences Act, 2012. The accused

is sentenced to suffer rigorous imprisonment for fifteen years and to pay fine of Rs.1,000/-, in default to suffer rigorous imprisonment for six months for the offences punishable under Sections 376 (2)(i), 376(2)(j) and 376(2)(n) of the Indian Penal Code and also sentenced to suffer rigorous imprisonment for three months and to pay fine of Rs.500/-, in default to suffer rigorous imprisonment for three months for the offences punishable under Sections 323 and 506 of Indian Penal Code. As the accused is convicted under Sections 376 (2)(i), 376(2)(j), 376(2)(n) of Indian Penal Code, no separate sentence is awarded under Section 4 of the POCSO Act.

3           Perused notes of evidence, more particularly, the substantive evidence of the original complainant PW-1, Ms. "X".

4           It is the case of the prosecution that the applicant herein was working as sugar-cane cutter. He used to do said work alongwith his family. That the applicant alongwith his mother was residing in front of the house of the victim. They were on cordial terms. The complainant used to visit the house of the accused quite often. The

applicant was going for working alongwith the father of the victim. That on 25<sup>th</sup> December 2014, the victim had accompanied the accused and had stayed with him in a hut. They stayed there for 2-3 days. They had moved from one place to another. They were working together on a brick kiln. They stayed there for one month. On 14<sup>th</sup> August 2015, she withdrew herself from the company of the accused-applicant and returned home. It had transpired that she was carrying pregnancy for one month. Thereafter she alongwith her parents had approached Sinnar police station and lodged a report alleging therein that the accused-applicant had forcibly taken her on his motorcycle on 25<sup>th</sup> December 2014 and had sexually assaulted her. That he had suspected her character. It appears that at present the complainant is married to Avinash Barde.

5            In the course of cross-examination, the victim was confronted with her previous statement, wherein she had disclosed that she had fallen in love with the applicant and that he had expressed his desire to marry her. The said inconsistency is marked

at Exhibit “A”. She had also disclosed in her previous statement that her mental condition was not proper as she feared her parents. The said omission amounting to the contradictions has been marked at Exhibit “B”.

6           Upon perusal of the substantive evidence of the complainant, the Hon'ble Division Bench of this Court was pleased to grant interim relief in favour of the applicant vide order dated 26<sup>th</sup> July 2018. Since this is an application under Section 389 of Code of Criminal Procedure, it would be necessary to suspend the substantive sentence imposed upon the applicant. Upon perusal of the evidence of the complainant, it prima facie appears that there was a love affair between the complainant and the applicant. That they had lived together for eight months. That the criminal process was set into motion, at the behest of the parents of the complainant. In view of this, the applicant deserves to be enlarged on bail, during the pendency of the appeal. Hence, the following order :

**ORDER**

- I )           The application is allowed.
- II )           The substantive sentence imposed upon the applicant is hereby suspended.
- III )           The applicant, Viju Valmik Bhusare @ Viju Eknath Malibe enlarged on bail on furnishing P.R. bond in the sum of Rs.15,000/- and one or more solvent sureties in the like amount.
- IV)           The applicant shall report to the Court of Sessions at Nashik, once in six months, on the date assigned by the Sessions Court.
- V)           Upon failure of the applicant to attend any two consecutive dates, the Sessions Court shall report the same to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail of the applicant.
- VI)           The application stands disposed of in above terms.

**( Smt. Sadhana S. Jadhav, J)**