

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1004 OF 2018
IN
CRIMINAL APPEAL NO.816 OF 2018

Pankaj Suresh Kate	...	Applicant
V/s.		
The State of Maharashtra & Anr.	...	Respondents

.....

Mr.Satyavrat Joshi, Advocate for the Applicant.

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

Mr.Ganesh Bhuibal, Appointed Advocate for the Respondent No.2.

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CORAM : A.M.BADAR J.

DATED : 3rd AUGUST 2018.

P.C. :

1 This is an application for suspension of sentence and
releasing the applicant/accused on bail during pendency of the
trial.

2 The applicant/accused is convicted for the offences punishable under Sections 376 of the Indian Penal Code and under Sections (3)(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as

'Atrocities Act' for the sake of brevity) as well as under Section 7(1)(d) of the Protection of Civil Rights Act. Different sentences are awarded on each count and substantive sentences are directed to run concurrently by the learned trial Court. The highest sentence imposed on the applicant/accused is one for the offence punishable under Section 376 of the Indian Penal Code. On this count, he is sentenced to suffer R.I. for seven years apart from directing him to pay fine of Rs.20,000/- and in default to undergo simple imprisonment for one year. For the offence punishable under the Atrocities Act, the applicant/accused is awarded rigorous imprisonment for five years and for the offence under the Protection of Civil Rights, he is sentenced to suffer rigorous imprisonment for six months. The applicant/accused has deposited the entire amount of fine imposed on him.

3 Heard the learned Advocate appearing for the applicant/accused. He argued that the applicant was on anticipatory bail throughout the trial. He has not misused his liberty. My attention is drawn to the evidence of the alleged victim of the crime in question viz. P.W.No.1 and it is argued that even if the entire evidence of the P.W.No.1 coming on record from chief-examination is accepted as it is, then also the alleged offences are not established. By drawing my attention to the cross-examination of the prosecutrix, it is argued that the case was that of consensual sex and there was no misconception of act.

4 The learned Additional Public Prosecutor opposed the application by contending that the applicant/accused allured the prosecutrix with promise to marry her and that is how she was enticed to have sexual relations with him. Therefore, the consent, if any, of the prosecutrix cannot be termed as consent as envisaged by the Indian Penal Code.

5 Shri.Bhujbal, the learned Advocate appearing for the respondent No.2 argued that the consent which is suffering from misconception of fact is not a consent as per the provisions of Section 19 of the Evidence Act and, therefore, it cannot be said that the victim of the crime in question had consented for sexual intercourse with the applicant/accused.

6 I have carefully considered the rival submissions and also perused the copies of depositions of prosecution witnesses including that of the victim of the crime in question.

7 The alleged victim of the crime in question, as seen from her cross-examination, was 25 years of age at the time of the incident. She was working in the hospital as a staff nurse. She is educated up to 12th Std. apart from having undergone the nursing course. On this backdrop, it is in her evidence that when the applicant/accused was admitted to the hospital where she was

serving as staff nurse, she became acquainted with him and then as the applicant/accused promised to marry her, she indulged in sexual relations with him. If cross-examination of the prosecutrix is seen then it is revealed that the physical relations between them were out of love towards each other. Such relations continued right from 2007 up to 2011 with a break for two or three years. Cross-examination of the prosecutrix further reveals that the applicant never refused to marry her. She has accepted the fact that after registration of the crime, she had informed the applicant that she is ready to withdraw the matter.

8 Consent is an act of reason mind weighing as in balance what is good and what is bad for a person. Case in hand is a case of adult lady indulging in physical relations out of love with the applicant/accused. Even for making out the offence punishable under Section 417 of the Indian Penal Code, breach of promise is not material. What is material is intention to cheat right since the inception. Such does not appear to be the case in hand.

9 In the result, *prima facie* it appears to be the case of consensual sexual relations between two adult persons. The applicant/accused was on anticipatory bail. The appeal filed by him may not be heard within short period and fixed sentence of imprisonment is imposed on the applicant/accused. Therefore,

the Order :

ORDER

- (i) The Application is allowed.
- (ii) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail on his executing P. R. Bond of Rs.15000/- and on furnishing surety in the like amount.
- (iii) As a condition of this Order, the applicant/accused should not contact the prosecutrix in any manner.
- (iv) The application is accordingly disposed of.
- (v) Parties to act on authenticated copy of this Order.

(A.M.BADAR J.)

**Raju
Dattatraya
Gaikwad**

Digitally signed by
Raju Dattatraya
Gaikwad

Date: 2018.08.03
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