

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1021 OF 2018
IN
CRIMINAL APPEAL NO.825 OF 2018a**

Jaypal Govind Pardeshi ... **Applicant**

V/s.

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

Ms.Pracheta Rathod for the applicant.

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

CORAM : A.M.BADAR J.

DATED : 2nd AUGUST 2018.

P.C. :

1. This is an application for suspension of sentence and for releasing the applicant on bail during pendency of the appeal filed by him. The applicant/accused is convicted of offence punishable under Section 4 of the Protection of Children from Sexual Offences Act and he is sentenced to suffer rigorous imprisonment for seven years apart from imposition of fine of Rs.1000/- and default sentence for three months.

2. Heard the learned Advocate appearing for the applicant/accused. She argued that the applicant has already undergone three years of rigorous imprisonment and as substantial part of the sentence has already been undergone by the applicant, he needs to be released on bail. It is further argued that evidence of victim of crime in question suffers from several infirmities. What has not been alleged by her in her First Information Report as well as her evidence is seen from the medical evidence, but what has been stated by her is not reflected from the medical evidence adduced by the prosecution. It is further argued that there is no evidence regarding age of the victim of the crime in question. The learned Advocate further argued that cross-examination of the victim goes to show that she was not ready to work in the house of the accused. This according to the learned Advocate prompted the alleged victim to file false First Information Report. My attention is also drawn to the admission of the victim to the effect that she had sexual relationship with another person name Yogesh Matghare.

3. The learned Additional Public Prosecutor opposed the application by contending that evidence of the victim/PW2 is clear to the effect that the appellant/accused had committed anal intercourse with the victim on 24th October, 2015. The learned Additional Public Prosecutor relied on evidence of PW10 Dr. Sukeshkumar Thakur and contended that medical evidence is corroborating the version of the victim.

4. I have carefully considered the rival submissions and also perused the copies of deposition of prosecution witnesses. Undisputedly the prosecution has failed to prove the documents regarding age of the victim. The victim/PW2 in her examination-in-chief itself has stated that she did not know date of her birth. Her grand mother PW1 Durga is also not knowing date of birth of the victim/PW2. Though *bona-fide* certificate of the PW2 was filed with the chargesheet, it was not proved by the prosecution.

5. The First Information Report lodged by PW2 on 26th October, 2015, categorically mentions that the applicant/accused had committed anal intercourse with her on 24th October, 2015

and 26th October 2015. It is stated in the First Information Report that because of discharged of semen by the appellant/accused, the bed became wet. As against this allegation in the First Information Report, the PW2 who happens to be the victim of the crime in question has deposed about only one incident of anal intercourse with her by the applicant/accused on 24th October, 2015. Except this she has not stated anything else indicating her sexual molestation. When this version of the PW2/victim is compared with the medical evidence then it is seen that the PW2 was immediately examined by PW9 Dr.Rohan Kulur. This medical officer has deposed that the victim/PW2 had disclosed history of commission of rape on her. Upon her examination, this medical officer (PW9) found her hymen ruptured. It was noticed that the tears and congestion were fresh. There is no explanation as to how this happened with the prosecutrix as she has not alleged commission of rape on her. She is very specific in stating that the applicant / accused had only committed anal intercourse with her. She has not stated about vaginal intercourse with her by the applicant/accused. Cross-examination of the victim/PW2 indicates

that she was having boy friend and she had eloped with him. The victim/PW2 candidly accepted the fact that she had physical relation with her boy friend.

6. Cross-examination of the victim/PW2 further reveals that she was fed up with the work at the house of the applicant/accused where she was working as maid servant. She stated that she was compelled to do the said work at the instance of her grand mother.

7. The victim/PW2 was also medically examined by another Doctor i.e. PW10 Dr. Thakur. Cross-examination of this medical officer shows that he found no injuries on the anus of the victim/PW2.

According to the prosecution case, after anal intercourse by the applicant with the victim/PW2, the bed sheet became wet due to discharge of semen. During investigation that bed sheet was seized. However, the report of chemical examination of that bed sheet is not produced on record by the prosecution.

8. In the light of this position of evidence against the applicant/accused, I am of the considered opinion that his liberty needs to be restored to him in the background that he has already undergone sentence of three years out of sentence of seven years. Therefore, the order;

:: ORDER ::

- (i) The application is allowed.
- (ii) Substantive sentence of imprisonment imposed on the applicant/accused is suspended and the applicant is directed to be released on bail on his executing P.R. Bond in the sum of Rs.15,000/- and on his furnishing surety in the like amount.
- (iii) As a condition of this order, the applicant should not contact the victim/PW2 or her relatives in any manner and he should not repeat commission of similar offence in future.
- (iv) The application is, accordingly, disposed of.

Vina
Arvind
Khadpe

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signed by Vina
Arvind Khadpe
Date:
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(A.M.BADAR J.)