

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.975 OF 2017

IN

CRIMINAL APPEAL NO.592 OF 2017

MAYUR LALASAHEB MORE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.P.G.Sarda, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 23rd FEBRUARY 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. The applicant/accused is convicted of offences punishable under Sections 417 and 376 of the Indian Penal Code as well as under Sections 5 read with 6 of the Protection of Children from Sexual Offences Act. He has been

sentenced to suffer rigorous imprisonment for 10 years apart from payment of fine of Rs.3,000/- for the offence punishable under Section 376 of the Indian Penal Code and similar sentence has been awarded to him for the offence punishable under Sections 5 read with 6 of the Protection of Children from Sexual Offences Act. Substantive sentences are directed to run concurrently by the learned trial court.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that in absence of substantial evidence, the learned trial court ought not to have used corroborative pieces of evidence to convict the applicant/accused and impose harsh sentence on him. He argued that neither the prosecutrix nor her mother supported the case of the prosecution, and as such, the applicant/accused ought to have been acquitted by the learned trial court.

3 The learned APP opposed the application by contending that the prosecution has established the offence by

forensic evidence as well as by former statement of the prosecutrix made before the learned Judicial Magistrate First Class.

4 I have considered the rival submissions and also perused the copies of deposition of prosecution witnesses.

5 Allegations against the applicant/accused were to the effect that he had committed penetrative sexual assault on the PW1/prosecutrix, who at the relevant time, was below 18 years of age.

6 The prosecutrix/PW1 has not supported the case of the prosecution in any manner. She has refused to identify the applicant/accused as perpetrator of the crime in question. In the similar manner, PW2 Shakuntala – mother of the prosecutrix has turned hostile to the prosecution and has not deposed anything incriminating against the present applicant/accused. The conviction is recorded on the basis of forensic evidence as well previous statement of the prosecutrix. The previous statement can

be used to corroborate the version of the prosecutrix but in the case in hand, the prosecutrix is not supporting the case against the present applicant/accused, and as such, this corroborative piece of evidence may not be of any assistance to the prosecution.

7 The applicant/accused was on bail during trial and he has not misused his liberty in any manner. Considering the nature of evidence available against the present applicant/accused, he deserves to be enlarged on bail, and therefore the order :

ORDER

- i) The application is allowed.
- ii) 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 in the sum of Rs.15,000/- and on furnishing surety in like amount.
- iii) As a condition of this order, the applicant/accused should not contact the prosecutrix as well as her family members in any manner during pendency of the appeal.
- iv) The application is disposed of accordingly.

(A. M. BADAR, J.)