

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1113 OF 2017
IN**

**CRIMINAL APPEAL NO.657 OF 2017
WITH**

**CRIMINAL APPLICATION NO.1114 OF 2017
IN**

CRIMINAL APPEAL NO.657 OF 2017

Rushikesh Tukaram Gole ... **Applicant**
V/s.

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

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Mr.A.P.Mundargi, Senior Counsel i/b. Mr.Rahul K. Dhaygude,
Advocate for the Applicant.

Mr.Vaibhav R. Gaikwad, Advocate for the Intervenor.

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

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CORAM : A.M.BADAR J.

DATED : 9th APRIL 2018.

P.C. :

1 The learned Senior Counsel appearing for the
applicant/accused seeks leave to amend. Leave, as prayed, is
granted. Amendment be effected forthwith.

2 These are applications for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him, which is already admitted for final hearing by this Court.

3 Heard the learned Senior Counsel appearing for the applicant/accused. He drew my attention to the evidence of the prosecutrix/P.W.No.1 and submitted that her evidence shows that she stayed since her birth up to 17 years of her age at Mumbai. Thereafter, she migrated to her village Golewadi, where the incident in question allegedly took place. The learned Senior Counsel by drawing my attention to the cross-examination of the prosecutrix submitted that the prosecutrix then joined 10th Standard and failed in first attempt. This implies that she may be more than 18 years of age at the time of the incident. The learned Senior Counsel further argued that even if the stated date of birth of the prosecutrix is accepted then also the prosecutrix was about 16 years and nine months old. The applicant was on bail throughout and he is also a unmarried young person and therefore, considering the finding of the learned trial Court that the sexual intercourse was consensual in nature, the applicant deserves to be released on bail.

4 The learned Additional Public Prosecutor, assisted by the learned Advocate for the First Informant, opposed the

application by contending that the prosecution has placed on record certificate of date of birth of the prosecutrix/P.W.No.1, which is issued by the Registrar under the Registration of Births and Deaths Act, 1969, which carries presumptive value and therefore, oral evidence of the prosecutrix cannot be relied upon to jettison this recorded date of birth of the prosecutrix i.e. “20/08/1997”. The learned Additional Public Prosecutor further argued that the prosecutrix has also stated her date of birth as “20/08/1997”.

5 I have carefully considered the rival submissions and also perused the Record and Proceedings made available.

6 The First Informant/prosecutrix while in the witness box has stated her age as nineteen years. She appeared to depose in July 2016. Her recorded date of birth is 20/08/1997. The incident allegedly took place in the month of May 2014 as well as in the month of October-November 2014 (on second day of Navratri festival). The prosecutrix averred that she was well acquainted with the present applicant and the applicant was visiting her house, so also she was visiting his house. The FIR lodged by the prosecutrix is clear on this aspect. The prosecutrix has stated that in the village fair of May 2014, the applicant/accused requested her to meet him and she refused. Then, the applicant and his cousin Nitin came to her house. Nitin

left and then the applicant committed forcible sexual intercourse with her in her own house. Thereafter, the prosecutrix claimed that because of fear of the applicant/accused she met him in an isolated house near the temple of Bhairavnath of the village where also the applicant has committed sexual intercourse on her.

7 Assessing and appreciating the evidence of the prosecutrix, the learned trial Court gave a finding in paragraph 55 of its Judgment that the sexual intercourse committed by the present applicant/accused with the prosecutrix was consensual in nature, but as the prosecutrix was below eighteen years of age, the offence of penetrative sexual assault is held to be proved.

8 The applicant/accused is a young person. *Prima facie*, even considering the findings given by the learned trial Court on appreciation of evidence, there does not seem to be application of force on the prosecutrix at the time of the sexual intercourse. At this juncture, it is apposite to quote observation of this Court in paragraph 12 of the Judgment in the matter of **Sunil Patil vs. State of Maharashtra**.¹ In paragraph 12 of this Judgment, this Court has given guidelines while considering the case of a boy and a minor girl in love. Considering the fact no force or violence was applied to the alleged victim of the crime in question and the present applicant/accused as well as the victim of the crime in question were deeply in love with each other, I do not see any

¹ 2016 ALL MR (Cri) 1710

reason to deny bail to the present applicant/accused. In the matter of Satyam Ramchandra Fulore vs. The State of Maharashtra¹ (Coram : Sadhana S. Jadhav, J.), the alleged victim of the crime was 16 years old female child who was intending to marry the applicant/accused therein. With a reason that the girl was in love with the applicant/accused therein, this court, vide order dated 30th September 2014, was pleased to release the applicant/accused therein, on bail.

9 Considering facts of the instant case where the sexual intercourse with the prosecutrix, who was aged about 16 years and 9 months, as observed by the learned trial Court, was consensual in nature and the fact that during pendency of the trial the applicant/accused was on bail and that there is no material to show that he has misused his liberty, the applicant needs to be released on bail as hearing of the appeal will take its own time. Therefore, the Order :

ORDER

- (i) The Applications are allowed.
- (ii) The substantive sentence of imprisonment is suspended and the applicant/accused is directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/- and on furnishing surety in the like amount.

1 Criminal Bail Application No.1953 of 2014

(iii) As a condition of bail, the applicant/accused should not contact either the prosecutrix or her relatives and prosecution witnesses in any manner during pendency of appeal filed by him.

(iv) The Applications are disposed of accordingly.

(A.M.BADAR J.)