

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1233 OF 2018

IN

CRIMINAL APPEAL NO.937 OF 2018

Rajkishorsingh Ranvirsingh Tomar... **Applicant**

V/s.

The State of Maharashtra & Anr. ... **Respondents**

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Mr.P. D. Pise, Advocate for the Applicant .

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

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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 and 506 of the Indian Penal Code and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act. For the offences punishable under Section 376 of the Indian Penal Code, the applicant/accused is sentenced

to suffer rigorous imprisonment for ten years apart from payment of fine of Rs.25000/- and default sentence of rigorous imprisonment for one year. For the offence punishable under Section 506 of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for one year apart from payment of fine of Rs.5000/ and default sentence of rigorous imprisonment for three months.

3 Heard the learned Advocate appearing for the applicant/accused. He argued that the applicant was on bail during pendency of the trial and he has not misused his liberty. The learned Advocate further pointed out discrepancy in the evidence of P. W. No.3 Dr.Hemangi Chaudhary noted by the learned trial Court in paragraph 19 of the Judgment. It is argued that this witness had claimed to have aborted pregnancy of the minor female child on 21/04/2014 whereas the record shows that it was on 20th April 2014 by Dr.Mirchandani. The applicant/accused has minor retarded son to maintain and he is the sole bread earner.

4 The learned Additional Public Prosecutor opposed the application by contending that the applicant/accused is step-father of the victim of the crime in question and DNA test confirms that he is biological father of the aborted foetus.

5 I have carefully considered the rival submissions and also perused the copies of depositions placed on record. Mother of the minor female child, who had lodged FIR against her own husband has turned hostile to the prosecution. However, minor female victim, who is examined as P.W.No.2, has supported the prosecution case and has stated that after death of her father, the applicant started leaving with them and he is her step-father. The female child further deposed that when she was studying in 8th Std, the applicant/accused started committing penetrative sexual assault on her frequently. Her evidence explained as to why she has initially stated to police that rickshawala has committed rape on her and thereafter she has disclosed the name of Manish Rathod as the person who has committed penetrative sexual assault on her. The minor female child disclosed that the applicant/accused has threatened that if she disclosed the incident to anybody else, he will go away by abandoning them. Because of fear of this fact, as stated by the minor female victim, she has not disclosed the incident to anybody else.

6 Evidence on record shows that because of frequent penetrative sexual assault, P.W.No.2 minor female victim become pregnant and her pregnancy was required to be aborted. Sample of the DNA was extracted from the aborted foetus so also samples of blood came to be extracted from the applicant/accused as well as the minor female victim of the crime in question. Ultimately

DNA report confirmed the fact that the applicant/accused was the male partner in conception of the victim child.

7 In this view of the matter, considering the nature of crime and the manner in which it was committed no case for bail is made out even though the applicant was on bail during pendency of the trial.

8 The application is, therefore, rejected.

(A.M.BADAR J.)

Raju
Dattatraya
Gaikwad

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