

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1154 OF 2017
IN
CRIMINAL APPEAL NO.999 OF 2017**

Manoj Jaibhim Chahande ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Vinayak V. Katti, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 10th JANUARY 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.

2 The applicant/accused is convicted of offence punishable under Section 511 read with Section 376(2)(ii) of the Indian Penal Code as well as under Section 8 of the Protection of Children from Sexual Offences Act, 2012 and he has been sentenced to suffer rigorous imprisonment for five years and three years respectively on each count apart from imposition of fine of

Rs.1,000/- each on both count apart from directing him to undergo simple imprisonment for one month in the event of failure to pay the fine.

3 Heard the learned Advocate appearing for the applicant/accused. By drawing my attention to the FIR as well as evidence of First Informant Laxmibai, the learned Advocate for the applicant argued that the evidence is unworthy of credit. The learned Advocate drew my attention to the seizure panchanama of clothes of the victim female child and argued that the report of forensic examination of the clothes is inconclusive. By drawing my attention to the medical evidence adduced by the prosecution, it is argued that even no case for the offence punishable under Section 511 read with Section 376 (2)(ii) of the Indian Penal Code is made out by the prosecution as there was no injury whatsoever on the person of minor female child. The learned Advocate, therefore, prayed for suspension of sentence and releasing the applicant on bail.

4 The learned Additional Public Prosecutor opposed the application.

5 It is case of the prosecution that minor female child aged about 6 years was taking education in 1st Std. at Zillha Parishad Primary School of village Sankha in Nashik District. The

applicant/appellant/accused was a teacher in the said school. P.W.No.1 Laxmibai – mother of the minor female child lodged report on 21/08/2015 informing the police that at about 1.00 p.m. of that day, her minor female child returned from the school and informed her that the applicant/accused had committed forcible sexual intercourse with her causing pain in her abdomen.

6 P.W.No.1 Laxmibai has deposed in tune with the FIR lodged by her and disclosed formal statement of her minor female child which is admissible under Section 157 of the Indian Evidence Act. Evidence of P.W.No.1 Laxmibai further reflects conduct of the present applicant/accused. She deposed that on the day of the incident, after return of her daughter to the house, within five minutes, the applicant/accused came to her house and requested for pardoning him. This is the evidence regarding the subsequent conduct of the applicant and the same is admissible under Section 8 of the Indian Evidence Act.

7 The minor female child, who is alleged victim of the crime in question is examined as P.W.No.2 and she has also deposed that the present applicant/accused, who was her teacher had committed rape on her.

8 The incident in question allegedly took place on 21/08/2015. On 22/08/2015, the minor female victim was

examined by P.W.No.5 Dr.Ujjawala Tejale, Medical Officer of Civil Hospital, Nashik. This Medical Officer did not find any injury on private parts of the minor female child. The hymen of the minor female child was also found intact. Therefore, the Medical Officer opined that the findings are not consistent with the sexual assault on the minor female child.

9 During course of the investigation, clothes of the minor female child so also that of the applicant came to be seized and those were subjected to the chemical analysis by the Investigator. In the chemical analysis of clothes of the minor female child, stains of semen were found. However, blood group of the semen stains found on the clothes of the minor female child could not be concluded.

10 On the basis of evidence available on record, the learned trial Court concluded that as there was no injuries on private parts of the victim female child, the case is not of a rape, but attempted rape and therefore, the applicant/accused was convicted as indicated in opening paragraph of this Order.

11 It is well settled that when the medical evidence is inconsistent with the ocular evidence, the ocular evidence prevails. The minor female child, who is six years of age, was not having any enmity with her teacher. She complained about commission

of rape by her teacher i.e. the present applicant. Her former statement made to her mother is duly proved by her mother. Subsequent conduct of the applicant/accused is also brought on record by the prosecution. Though the blood group is inconclusive, semen stains were found on clothes of the minor female child.

12 In the wake of this evidence against the present applicant, though the learned trial Court has convicted him of offence punishable under Section 511 read with Section 376(2)(ii) of the Indian Penal Code, I am of the considered opinion that no case for bail is made out.

13 The application is, therefore, rejected.

14 However, hearing of the appeal is expedited. The parties are at liberty to mention the matter after filing of the paper book.

(A.M.BADAR J.)