

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1441 OF 2018

IN

CRIMINAL APPEAL NO.1218 OF 2018

Mr.Santosh Sahebrao Sabele ... **Applicant**

V/s.

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

.....

Mr.Sagayamary M., Advocate for the Applicant.

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

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CORAM : A.M.BADAR J.

DATED : 11th OCTOBER 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 for the offences punishable under Sections 376 and 506(II) of the Indian Penal Code as well as under Section 4 of the Protection of Children from Sexual Offences Act, 2012. The learned trial Court sentenced him to suffer rigorous imprisonment for seven years apart from

payment of fine of Rs.25,000/- and in default to undergo further rigorous imprisonment for six months.

3 Heard the learned Counsel appearing for the applicant/accused. She argued that age of the victim child is not proved by the prosecution. The entire charge-sheet shows that her age was 21 years. Her cross-examination shows that she left school in 4th Std. and did not take admission again in any school. However, in answer to the RTI query, it is informed to the applicant/accused that the victim child had taken admission to the school on two occasions. The learned Counsel further argued that evidence of the employer of the victim child is not recorded. She argued that said employer named Namrata Shetty was the complainant in the instant matter. It is further argued that evidence of P.W.No.9 Asha Korke is hearsay. The learned Counsel by relying on *roznama* maintained by the learned trial Court, has stated that say of the prosecution on the bail application of the applicant was not brought to the notice of the learned trial Court. It is further argued that the victim has stated that her employer Namrata Shetty used to lock the house while leaving. Watchman Tukaram was not examined by the prosecution to establish this fact. It is further argued that there was no injuries on body of the victim child and, therefore, the prosecution has not proved the offence. The applicant/accused is undergoing jail sentence since last five years and therefore, he is entitled for bail.

4 The learned Additional Public Prosecutor opposed the applicant by pointing out paragraph 40 from the Judgment and Order of the learned trial Court and submitted that the report of DNA examination is very specific and conclusive.

5 According to the prosecution case, victim of the crime in question, who is examined as P.W.No.2 was working as maid servant with Namrata Shetty. The incident took place when no member of Shetty family was present in the house. The applicant/accused was engaged to paint the house and evidence of the victim child/P.W.No.2 is to the effect that when she was cooking food while she was all alone in the house of Shetty Family, the applicant/accused committed rape on her in the bedroom of that house. She then rushed outside the bedroom, locked that bedroom from outside and remained there while crying. Subsequently, her employer Namrata Shetty came. She narrated the incident to her. Husband of Namrata was summoned and that is how she went to the Police Station to lodge report (Exhibit 20). This implies that the victim child/P.W.No.2 herself was the First Informant.

6 Leaving aside age of the victim child, evidence of P.W.No.6 Dr.Ravindra Chavan fully corroborates version of the victim child. This Medical Officer, who examined the victim child, deposed that on local examination of the victim child, he found her hymen torn and the tear was fresh and was bleeding on touch.

7 Evidence of P.W.No.1 panch witness Sahida Shaikh shows that clothes of the victim child were seized during the course of investigation. Those were also subjected to the DNA test. Report of the DNA test shows that semen detected on *salwar* and blood detected on slacks of the victim child was that the applicant/accused.

8 With this evidence, on record even if the applicant/accused has undergone considerable part of the sentence imposed on him, I am not inclined to release him on bail. Therefore, the Order :

ORDER

- (i) The Application is rejected.
- (ii) However, hearing of the appeal is expedited. It be put for final hearing forthwith on receipt of Record and Proceedings.
- (iii) The parties may opt for dispensing the paper book.
- (iv) Needless to mention that observations made in this Order shall not have any bearing on final hearing of the appeal.
- (v) The Application is disposed of accordingly.

(A.M.BADAR J.)