

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1446 OF 2018

IN

CRIMINAL APPEAL NO.1051 OF 2018

AYUB KASIM PATEL

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.V.B.Shivarkar, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 15th OCTOBER 2018

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the application filed by him. He is convicted of offences punishable under Sections 376(2)(h), 342, 323, 384, 504 and 506 of the Indian Penal Code. Different sentences are imposed on him on each count. High sentence amongst them is the one under Section 376(2)(h) of the Indian Penal Code. On this count, the

applicant/accused is sentenced to suffer rigorous imprisonment for 10 years apart from imposition of fine of Rs.10,000/-. The learned trial court had directed that substantive sentences shall run concurrently. Hence, it is not necessary to mention all the sentences imposed on the applicant/accused on each count.

2 Heard the learned counsel appearing for the applicant/accused. He drew my attention to the history given by the prosecutrix/PW4 to the Medical Officer PW15 Dr.Shruti Gadekar. On the basis of this medical history, it is argued that it was alleged by the prosecutrix/PW4 that there was an attempt to commit sexual intercourse with her, and therefore, it cannot be said that the applicant/accused is guilty of the offence punishable under Section 376(2)(h) of the Indian Penal Code. My attention is drawn to evidence of PW1 Laxmi to demonstrate that she alleged commission of rape on the prosecutrix in her presence, but evidence of the prosecutrix does not show that PW1 Laxmi was the witness to that incident. It is further averred that the prosecutrix was habitual to sexual intercourse, and therefore, it

cannot be said that she was not aware about the exact act, and therefore, the applicant/accused is entitled for bail. It is further argued that wife of the applicant/accused is already acquitted of the offence.

3 The learned APP opposed the application by contending that nature and seriousness of the crime does not entitle the applicant/accused to claim bail.

4 I have considered the submissions so advanced. Prosecution case, which is substantiated not only by evidence of the victim of the crime in question but even by neighbour, unerringly points out that the applicant/accused apprehended four young girls on the pretext that they were selling iron plates. He detained them for more than one day. One of those girls viz. PW4 alleged that she was raped by the applicant/accused during her confinement by the applicant/accused. No doubt, in narrating the history to the Medical Officer, this victim of the crime in question stated that there was an attempt of sexual intercourse

with her, but report of DNA examination of vaginal swap of the victim shows presence on male DNA. This virtually corroborates version of the prosecutrix before the court. Hence, even if the corroborative evidence is otherwise, I am not in a position to accept the contention of the learned counsel for the applicant/accused that there was no forcible sexual intercourse with the victim.

5 Considering the nature of crime and the manner in which it was committed, no case for bail is made out.

6 The application is, therefore, rejected. However, hearing of the appeal is expedited.

7 Needless to say that the observations made in this order are confined to the decision of the instant application only.

(A. M. BADAR, J.)