

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1501 OF 2018

IN

CRIMINAL APPEAL NO.1092 OF 2018

Mukesh Vijay Mishra ... **Applicant**

V/s.

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

.....

Mr.Subhash Jha with Mr.Hare Krishna Mishra with Ms.Sanjana Pardeshi with Ms.Ankita Pawar i/b. Law Global Advocates, Advocate for the Applicant.

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

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CORAM : A.M.BADAR J.

DATED : 8th 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 He is convicted for the offences punishable under Sections 376 and 506 of the Indian Penal Code. On first count, he is sentenced to suffer rigorous imprisonment for seven years and

on the second count, he is sentenced to suffer rigorous imprisonment for two years. Some fine is also imposed on the applicant/accused so also the default sentence.

3 Heard the learned Counsel appearing for the applicant/accused. He drew my attention to the evidence of the prosecutrix so also documentary evidence placed on record by the prosecution and argued that the entire case set up against the applicant/accused is inherently improbable. The learned Counsel further argued that there is delay of 52 days in lodging the FIR when the prosecutrix had tons of opportunity to approach the police for redressal of her grievance, if any. In fact, she had availed that opportunity on 6th June 2013 also, however, on that occasion, she has not whispered about the incident allegedly took place on 02/12/2012. The husband of the prosecutrix, as stated by her, is working as the Film Director so also the Journalist and he is in film line for last fifteen years. In this backdrop, it cannot be said that even the prosecution has succeeded in establishing its case beyond all reasonable doubts. The applicant/accused was on bail throughout the trial and he has not misused his liberty.

4 The learned Additional Public Prosecutor opposed the application by contending that in case of sexual offence, version of the prosecutrix even if remains uncorroborated can be accepted to record conviction and the prosecutrix, in the instant case, appears

to be a witness of truth. The delay is attributable to the fact that she was apprehending damage to her career as the applicant was working as the Executive Producer. The learned Additional Public Prosecutor therefore, prayed for rejection of the application.

5 I have carefully considered the rival submissions and also perused the material placed on record including copies of deposition of prosecution witnesses so also the documentary evidence.

6 The incident allegedly took place at Catharses Studio which is situated at Vihar Lake in Mumbai at about 8.30 a.m. of 02/12/2012. The prosecutrix was working as an actor in serial named 'Veera' of which the applicant was the Executive Producer. She claimed that the applicant had called her at Jogeshwari local railway station on the pretext that the bus taking the artist to the studio is coming to the station. However, the applicant came there on the motorcycle and forcibly took her to the studio near Vihar lake, where he committed rape on her in Room No.2. She, however, did not disclose the incident because of fear of defamation, threats extended by the applicant/accused, so also damage to her career.

7 Evidence on record do indicates that the prosecutrix/P.W.No.1 was present at the studio where the incident

allegedly took place up to 6.00 p.m. of 02/12/2012. She has not disclosed the incident to anybody throughout the day. The prosecutrix claimed to have disclosed some facts to her husband on 06/12/2012 and then along with her husband she has disclosed those facts to Producer named Yash Patnaik. The prosecutrix claimed that because of this disclosure, services of the applicant/accused came to be terminated. Thus, virtually, there was nothing which could have prevented the prosecutrix/P.W.No.1 to lodge the FIR after 06/12/2012. This did not happen.

8 Call detail records shows that from 01/12/2012 to 03/12/2012, the prosecutrix made about 42 calls on the cellphone of the applicant/accused.

9 As admitted by the prosecutrix, her husband is working as the Film Director as well as the Journalist and he was in the film line for fifteen years. The prosecutrix is also an educated lady. Her cross-examination shows that her shift used to end at about 12.00 to 12.30 at midnight and by hiring an auto rickshaw, she usually go to her house all alone without even calling her husband to her workplace. All these material is relevant in order to determine whether the prosecutrix was under the spell of threat of the applicant/accused.

10 The prosecutrix did approach the Police Station on

06/01/2013 and her report was considered as the report of non-cognizable case. That report was in respect of the indent allegedly took place on 05/01/2013. The averments in that N.C. Report were to the effect that the applicant/accused used to insist her to make friendship with him and to meet him at the hotel. This report of N.C. Case lodged after one month does not contain a whisper of alleged incident dated 02/12/2012. The FIR was lodged on 23/01/2013 wherein the prosecutrix claimed that the applicant had committed rape on her at about 8.30 a.m. on 02/12/2012. Her cross-examination reveals that at the time of the said incident, by left hand the applicant has closed her mouth, by right hand he had removed clothes and by his knees he had pressed both hands of the prosecutrix. After completing the entire act, the prosecutrix claimed that the applicant/accused had removed his hand from her mouth. The probability of such act will have to be considered at the time of final hearing of the matter.

11 Needless to state that considering this nature of evidence available against the applicant/accused so also the fact that he was on bail during pendency of the trial, the applicant/accused deserves to be released on bail. As such, the Order :

ORDER

- (i) The application is allowed.

- (ii) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail on his executing P. R. Bond of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) As a condition of this order, the applicant/accused should not contact the victim or her relatives in any manner and he should not repeat commission of similar offence.
- (iv) The application is disposed of accordingly.

(A.M.BADAR J.)

Raju
Dattatraya
Gaikwad

Digitally signed by
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