

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1771 OF 2018

IN

CRIMINAL APPEAL NO.1326 OF 2018

NIRMAL RAJBIHARI TRIVEDI

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Ms.Pracheta Rathod, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 1st NOVEMBER 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. The applicant/accused is convicted of offences punishable under Sections 376 and 354 of the Indian Penal Code. He is sentenced to suffer rigorous imprisonment for 7 years and 3 years respectively on each count.

2 Heard the learned counsel appearing for the applicant/accused. According to the prosecution case, the applicant/accused was arrested immediately after the incident on being pointed out by the victim of the crime in question. However, evidence on record shows that the victim did not point out the applicant/accused to police after the incident. She had disclosed about the applicant/accused to her uncle after registration of the First Information Report (FIR). Evidence on record further shows that police had arrested the applicant/accused on the basis of say of father of the victim girl. With this, it is argued that the victim girl for the first time identified the applicant/accused as the perpetrator of the crime while in the dock. The learned counsel relied on judgments of the Honourable Apex Court in the matter of **Kanan and Ors. vs. State of Kerala**¹ and **Robert Peter Kadam And Etc. vs. The State of Maharashtra**² to demonstrate that when the applicant/accused was totally unknown to the victim, identification for the first time in the court is of no consequence to infer the guilt. It is further

1 AIR 1979 SC 1127

2 1998 Cri.L.J. 3879

argued that the applicant/accused is behind bars for more than 3 years and he is sentenced to suffer rigorous imprisonment for 7 years.

3 The learned APP opposed the application by contending that substantial evidence of the victim of the crime in question shows that she has identified the applicant/accused, as a person who had committed rape on her, while in the dock. She has narrated the incident in her evidence.

4 I have considered the rival submissions so advanced and perused the copies of deposition of prosecution witnesses as well as the impugned judgment and order of conviction and the resultant sentence.

5 Peculiar facts of the prosecution case reveals that the victim of the crime in question, who is examined as PW4, is suffering from mental retardation and she is in the habit of forgetting things. The prosecution itself has examined Dr.Vinayak

Kale, Psychiatrist, for proving this fact. According to the prosecution case, after the incident of commission of rape on the victim, her aunt lodged the FIR. Thereafter, the victim had shown the appellant/accused to police, and accordingly, the police arrested him. However, evidence of the victim, who is examined as PW4, shows that she never went to search the accused in presence of police and she had never shown the accused to police. She disclosed that she had subsequently shown the rapist to her uncle. On this backdrop, evidence of the Investigating Officer shows that the appellant/accused was arrested upon being pointed out by the father of the victim. Undoubtedly, the appellant/accused was unknown to the victim. No Test Identification Parade was conducted by the prosecution. Only evidence against him is that of dock identification. Medical evidence is not supporting the case of the prosecution.

6 Considering this nature of evidence and the ratio of the rulings cited by the learned counsel for the appellant/accused, case for bail is made out. As such, the order :

ORDER

- i) The application is allowed.
- ii) Substantive sentence of imprisonment imposed on the applicant/accused is suspended and the applicant/accused is directed to be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.
- iii) The applicant/accused should not repeat commission of similar offence in future.
- iv) The applicant/accused should not contact the victim of the crime in question and her relatives in any manner.
- v) Initially for a period of six weeks, at the request of the learned counsel for the applicant/accused, he be released on bail on depositing cash security of Rs.15,000/- before the learned trial court.
- v) The application is disposed off.

(A. M. BADAR, J.)