

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1617 OF 2017
IN
CRIMINAL APPEAL NO.982 OF 2017**

Ramchandra Shrimant Bhandare ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

.....

Mr.Vinod Kashid, Advocate for the Applicant.

Mr.A.R.Kapadnis, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 5th FEBRUARY 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 the offence punishable under Section 354 of the Indian Penal Code read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 and is sentenced to suffer rigorous imprisonment for five years apart from imposition of fine.

3 Heard the learned Advocate appearing for the applicant/accused. He argued that the FIR was lodged on 13/12/2013 i.e. after two days after the incident. Statement of the alleged victim of the crime in question came to be recorded by police after recording of her evidence before the trial Court. The learned Advocate further submitted that the Investigating Officer has filed an affidavit, copy of which is now served on him, which shows that the statement under Section 161 of the Code of Criminal Procedure of the alleged minor victim was recorded after recording of her substantive evidence before the trial Court and that too at the instance and direction of the learned trial Court. The learned Additional Public Prosecutor also accepts this fact. However, the copy of the said affidavit, though available with the learned Advocate for the applicant/accused is not found on the record of this Court.

4 The learned Advocate further argued that the applicant/accused was on bail during pendency of the trial and considering the short sentence imposed on the applicant/accused, he be released on bail.

5 The learned Additional Public Prosecutor drew my attention to paragraph 25 of the Judgment of the learned trial Court and argued that the applicant/accused have given different story in his statement under Section 313 of the Code of Criminal Procedure.

6 I have carefully considered the rival submissions and also perused the copies of depositions of prosecution witnesses and the impugned Judgment and Order of the learned trial Court.

7 Copy of the statement of the victim of the crime in question under Section 161 of the Code of Criminal Procedure recorded by the Investigating Officer and placed with the instant application by the applicant shows that the same is recorded on 11/08/2017 and in fact, substantive evidence of the alleged victim of the crime in question was also recorded on the very same day by the learned trial Court. Investigating officer Santosh Shankar Rasam, API, as stated by the learned Additional Public Prosecutor, has filed an affidavit before this Court stating that the statement of the alleged victim of the crime in question is recorded on 11/08/2017 at the residence of the alleged victim as per the directions of the learned trial Court. The FIR lodged by mother of the victim shows that the incident in question took place in presence of one Sanjana, but neither she is examined as witness nor her statement under Section 161 of the Code of Criminal Procedure is recorded, as stated by the learned Advocate for the applicant/accused.

8 The applicant/accused was on bail during pendency of the trial and there is nothing on record to show that he has misused his liberty while on bail. The learned Advocate submitted

that because of absence of the applicant, he was then arrested under the non-bailable warrant on 22nd July 2017.

9 Short sentence of imprisonment is imposed on the applicant/accused and evidence of P.W.No.4 Dr.Nitya Ayyer shows that the alleged victim of the crime in question was not sexually assaulted or physically assaulted. This witness has not found any injury on the private part of the victim. The appeal will take its own time for hearing. In this view of the matter, the following 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 in the sum 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 alleged victim of the crime in question as well as her relatives in any manner.
- (iv) The application is disposed of accordingly.

(A.M.BADAR J.)