

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 1706 OF 2017
IN
CRIMINAL APPEAL NO.1003 OF 2017**

Pralhad Ramdaras Sharma ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Advait Tamhankar a/w Adv.Lochan Chandka h/f Taraq
Sayed for the applicant.

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

**CORAM: A.M. BADAR, J.
DATED: 11th JANUARY 2018**

PC:-

1. This is an application for suspension of conviction and resultant sentence of the applicant/accused on bail during the pendency of the appeal filed by him.

2. The applicant/accused is convicted of the offence punishable under Section 376(2)(f) and 506 of the India Penal Code read with Section 6 of Prevention of Children from Sexual Offences Act. He has been sentenced to suffer Rigorous Imprisonment for 10 years apart from directions to pay fine and to undergo imprisonment in default thereof.

3. Heard the learned advocate appearing for the applicant/accused at sufficient length of time. He drew my attention to the FIR as well as version of PW-1 Dinesh Sharma- father of the minor victim child who is alleged victim of the crime in question. The learned advocate argued that father of the victim child has added embellishment to his testimony as well as his version in the FIR which ultimately the victim female child did not support. The father has stated that the victim child informed him that she was threatened by the applicant/accused. However, cross-examination of the victim female child does not show this fact. The learned advocate further argued that there are so many omissions in

respect of version of the victim female child. She has not stated to the police that her mouth was pressed and she tried to raise her voice but the loud speaker was going on and hence no body heard this fact.

4. The learned advocate appearing for the applicant further argued that timing of the minor female victim reaching the terrace so also the timing of the applicant/accused reaching the terrace is not disclosed in the evidence of the prosecution. Further the prosecution case is totally improbable. It is not clarified that as to why the minor female victim child went to the terrace. She is pressurised by her father as well as police to depose against the present applicant. There is delay in lodging the FIR by four months. The applicant was on bail during the pendency of the trial and therefore, he deserves to be released on bail.

5. The learned APP opposed the application by referring to the history disclosed by the victim to the Medical Officer.

The learned APP also drew my attention to the evidence of the victim of the crime in question.

6. I have carefully considered the submissions so advanced and also perused the copies of the deposition. The minor female child is proved to be minor by adducing cogent evidence in respect of her age. Her date of birth is 2.5.2002. The incident in question took place in the year 2015. As such she was proved to be below 18 years of age at the time of the incident in question.

7. Substantive evidence of the minor female child is to the effect that she had been to the house of her father alongwith her mother and other relatives for attending the marriage ceremony. The minor female child has categorically stated that when she had been to the terrace, the present applicant reached the terrace, shut her mouth by putting his hand and when she raised noise, she was inaudible to anybody as loud speaker was being played because of function

at down stairs. The minor female victim has stated that the present applicant had committed rape on her. In para No.8 of cross-examination of the minor female victim her version is cemented by eliciting from her mouth that the applicant had directly come to the terrace and pressed his hand on her mouth. It is further brought on record that the applicant had forcibly undressed her. It is further brought on record from cross-examination that at the time of the incident there was no body on the terrace. This material brought on record from cross-examination of the victim demonstrated that whatever is stated by her in chief examination is true and correct. It is worth while to mention here that this has taken in cross-examination as substantive evidence and not in the form of denial to the suggestions.

8. The minor in consequential discrepancies in the prosecution case in respect of sexual offences are required to be ignored as per settled law on the subject. The Court is required to take into consideration broader probabilities of

the prosecution case. The delay in lodging the FIR in case of rape of minor female child is not fatal to the prosecution. Evidence on record indicates that the case in hand is a case of rape on minor female child by a relative and as such, at this stage, it cannot be said that the prosecution case is required to be jettisoned because of the resultant delay in lodging the FIR.

9. Considering the nature of evidence adduced by the prosecution, no case for grant of bail is made out.

10. The learned advocate for the applicant has relied on the judgment of this Court in the matter of Vishal @ Sagar Vasant Waghmare and others Vs. State of Maharashtra reported in 2014 DGLS(Bom.) 79 and particularly in para 10 and 11 thereof. The observations made in the said judgment cannot be stated to be the ratio applicable to the present case, because in that case, the substantive evidence reflected that the prosecutrix did not name the accused as

offender. In the case in hand, the prosecutrix has categorically named the present applicant as the person who has committed penetrative sexual assault on her.

11. The father of the minor female child was not the witness to the incident nor he was present in the house when the incident took place. So adding embellishment by him in the FIR as well as testimony is of no consequence. In the result, the following order.

ORDER

The application is rejected.

(A.M. BADAR, J)