

Vat

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

CRIMINAL APPLICATION No. 1945 OF 2018  
IN  
CRIMINAL APPEAL No. 1439 OF 2018

|                                                           |                |
|-----------------------------------------------------------|----------------|
| Jan Mohammed Qureshi                                      | ...Applicant   |
| Vs.                                                       |                |
| The State of Maharashtra and Anr.                         | ...Respondents |
| -----                                                     |                |
| Mr. Rushi Bhuta i/b. Ms. Bhumika Khandelwal for Applicant |                |
| Mr. S.S. Pednekar – APP for the State                     |                |
| -----                                                     |                |

**CORAM : SMT.SADHANA S. JADHAV, J.**

**DATE : DECEMBER 20, 2018**

**P.C.:**

1. Heard. This is an application under section 389 of the Criminal Procedure Code. The Applicant herein is convicted for the offence punishable under section 376 of the Indian Penal Code and sentenced to suffer R.I. for 7 years and fine of Rs. 25,000/-, in default, S.I. for one year. The Applicant is also convicted for the offence punishable under section 506(II) of the Indian Penal Code and sentenced to suffer R.I. for one year and fine of Rs.5,000/-, in default, S.I. for one month by the Additional Sessions Judge, Borivali Division, Dindoshi, Goregaon, Mumbai vide judgment and order dated 22<sup>nd</sup> November, 2018 in Sessions Case No. 190 of 2017. The accused is in custody since 4<sup>th</sup> March, 2017.

2. Perused the evidence adduced by the prosecution, more particularly, the substantive evidence of the prosecutrix. She has deposed before the Court that the Applicant herein was acquainted with her family. She knew the accused since December, 2015. The Applicant had brought proposals of marriage for the prosecutrix. However, the marriage could not be settled and, therefore, he had impressed upon the prosecutrix that she is affected by evil spirit and, therefore, her marriage is not settled. That he had administered some spurious powder to her. It is alleged that on 19<sup>th</sup> August, 2016 he has asked her to eat the said powder and on that day her parents were not at home. He had then denuded her of her clothes and had sexually abused her. According to the prosecution he had continued such activities on number of occasions, especially when her parents went to Madhya Pradesh. That on 1<sup>st</sup> December, 2016, he had taken her for a job and then had ravished her in the car. He had taken her to Khushboo Lodge and had sexually abused her. She had then disclosed the incident to her father and on 3<sup>rd</sup> March, 2017, they had lodged a report at the police station. However, her statement was not recorded on 3<sup>rd</sup> March, 2017, but was recorded on 4<sup>th</sup> March, 2017.

3. According to her she was suffering from the effect of the

powder which was administered to him. According to the victim, she had not taken the powder on 18.8.2016. She had not complained of any side effects of the powder till she lodged the report. According to the victim, she had resisted the sexual relationship, however, the accused helped her for searching a job, she had traveled with the Applicant to Charbunglow. She had admitted in the cross examination that she used to talk with the Applicant-Appellant on the cell phone. She had not disclosed to her mother that she had accompanied the accused -Appellant to several places. She had not disclosed to her parents that she had been to Kalamandir.

4. The prosecutrix has stated that the Applicant herein had forcible sexual intercourse with her on more than 40 occasions.

5. The learned counsel for the Applicant submits that each and every instance is put to her in the cross examination and there are material omissions and contradictions. The prosecutrix, who was about 28 years' old, has contradicted herself in respect of each and every instance narrated by her.

6. The Applicant is a senior citizen inasmuch as he is about 78 years' old. Taking into consideration the age of the Applicant, he deserves to be enlarged on bail.

7. Hence, following order is passed:

**ORDER**

- (i) Criminal application is allowed.
  - (ii) The substantive sentence imposed upon the Applicant by the Additional Sessions Judge, Borivali Division, Dindoshi, Goregaon, Mumbai vide judgment and order dated 22<sup>nd</sup> November, 2018 in Sessions Case No. 190 of 2017 is hereby suspended, he be enlarged on bail on furnishing P.R. Bond in a sum of Rs. 50,000/- and one and more solvent sureties in the like amount.
  - (iii) The Applicant shall mark his presence before the Sessions Court at Dindoshi once in six months on the date assigned by the by the Sessions Court. Upon failure to attend any two consecutive dates, the Sessions Court shall make a report to the High Court and prosecution would be at liberty to file an application seeking cancellation of bail.
8. Criminal Application is disposed of in the aforesaid terms.

**[SMT.SADHANA S. JADHAV, J.]**