

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1727 OF 2017
IN
CRIMINAL APPEAL NO.1055 OF 2017**

Akash Pundalik Raut ... **Applicant**
V/s.
The State of Maharashtra ... **Respondents**

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Mr.Yashodhan Gavankar, Advocate for the Applicant.

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

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CORAM : A.M.BADAR J.

DATED : 9th APRIL 2018.

P.C. :

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

2 The applicant/accused was convicted of offences punishable under Sections 376(2)(i), 506(II), 354(A)(i) of the Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act and, accordingly, he has been sentenced to suffer imprisonment for ten years for the offence punishable

under Section 376(2)(i) of the IPC. On other count, lessor punishment is imposed on the applicant. Substantive sentences are directed to run concurrently and, therefore, it is not necessary to mention all sentences imposed on the present applicant.

3 Heard the learned Advocate appearing for the applicant/accused. He drew my attention to the evidence of the prosecutrix and stated that possibility of consensual sexual intercourse cannot be ruled out. By relying on medical evidence in the form of Medico Legal Certificate, the learned Advocate submitted that there were no extensive injuries and therefore, the injuries as mentioned in the Certificate can be caused with consensual sexual intercourse. According to the learned Advocate for the applicant, forensic evidence is not supporting the prosecution case and, therefore, the applicant during pendency of the appeal needs to be enlarged on bail.

4 The learned Additional Public Prosecutor opposed the application.

5 Perusal of the evidence of the prosecutrix shows that she was below 18 years of age. Her friend Manasi was in love with a young boy named Akash Raut i.e. the present applicant. However, because of some dispute, they were separated. According to the victim of the crime in question, the present

applicant named Akash used to insist her to convey Manasi that he still loves her and wants to continue the relation. According to the prosecution, on 20/10/2016, the present applicant allured her by stating that she should accompany him to his house for conveying his aunt that he loves Manasi and that is how, the present applicant went to the house of the present applicant. Therefore, according to the prosecution, the applicant committed forcible sexual intercourse with her.

6 Within few hours of the incident, the prosecutrix was examined by P.W.No.3 Dr.Suhas Patil, Medical Officer, Gynecologist in Civil hospital, Sindhudurg-Oros. His evidence shows that the prosecutrix was subjected to forcible sexual intercourse. This medical Officer noticed injury to her hymen with irregular edges. He noticed the presence of bleeding at the hymen which was having tear of 2 O'clock position. The Medical Officer also found laceration on fourchette with active bleeding.

7 Though, it is well settled that version of the prosecutrix needs no corroboration in the case of sexual assault, in the case in hand, medical evidence adduced by the prosecution *prima facie*, corroborates version of the prosecutrix and, therefore, it cannot be stated that the prosecutrix was not subjected to forcible sexual intercourse by the present applicant. Similarly, there is nothing on record to show that the sexual intercourse was consensual in nature.

8 The prosecutrix was held to be below eighteen years of age and sexual intercourse with her seems to be forcible in nature and, therefore, no case for grant of bail is made out, though the applicant was on bail during pendency of the trial.

9 The application is, therefore, rejected.

(A.M.BADAR J.)