

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO.859/2018
IN CRIMINAL APPEAL NO.522/2018

Vijay s/o Gyaniram Bhonde .vs. State of Maharashtra through PSO P.S.
Goregaon, Gondia

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. R. V. Khaparde, Advocate for applicant.
Mr. S. V. Kolhe, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.
DATED : DECEMBER 7, 2018

This is an application for suspension of jail sentence and for grant of bail.

Heard Mr. Khaparde, learned counsel for the applicant and Mrs. Kolhe, learned A.P.P. for non applicant-State.

The applicant stands convicted for an offence punishable under Section 376 of the Indian Penal Code and is directed to suffer rigorous imprisonment for 10 years. So also he is convicted for the offence under Section 3 (2) (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities), Act, 1989 and on that count also, he is directed to suffer rigorous imprisonment for 10 years and for an offence punishable under Section 3 (1) (xii) of the SC & ST (Prevention of Atrocities), Act and on that count also he is directed to suffer rigorous

imprisonment for 5 years and for the offence punishable under Section 506 of IPC, rigorous imprisonment for 5 years. On each count, he is directed to deposit the fine amount of different quantum.

Record and proceedings were called. Accordingly, record and proceedings are placed before me at the time of consideration of the application. The incident has occurred on 21.11.2009. Therefore, the amendment inserted in Section 375 of IPC vide Act No. 13 of 2013 is not applicable. The FIR is lodged by the prosecutrix herself on 22.11.2009 in respect of the incident that had occurred on 21.11.2009.

Though the applicant stands convicted for the offence punishable under the Atrocities Act, perusal of the evidence of prosecutrix (PW3) is conspicuously silent that since she belongs to a caste which is a Schedule Caste, the present applicant, who belongs to Gowari caste has committed sexual assault on her. The learned A.P.P. also fairly submits that prima facie there is no material to substantiate the conviction under the Atrocities Act.

Insofar as the offence punishable under Section 376 of the IPC is concerned, the Doctor who has examined the victim (PW3) could not be examined because of his ill health and the injury certificate given by the said doctor is proved by Dr. Shreyas Kendre (PW5). The said is at Exh.-44.

Prima facie, the testimony of the girl is not inspiring confidence inasmuch in the FIR (Exh.-28) it is stated by her that when she had been to a place to answer the nature's call and when she was in the process of removal of her clothes that time, one person came there and caught hold of her hand in the darkness and thereafter he started light of his mobile phone and took out a knife and extended threat and committed sexual intercourse. However, while deposing from the witness box, she stated that the present applicant followed her when she was proceeding towards a place to answer the nature's call and thereafter had a sexual intercourse by extending threats.

I am of the view, at least prima facie, this creates doubts in respect of entire incident since there was no occasion for a man who wishes to commit the heinous offence to throw a light from his mobile phone in order to disclose his identity. Further the medical evidence is also not corroborating the version of the prosecutrix. In her FIR, it is specifically stated by her that she received injury while resisting the forceful act on the part of the present applicant on her breast. However, when she was examined immediately by the Doctor, no such injuries were found on her breast. Further, though it is the claim of the prosecutrix that her undergarment was stained with blood and semen, the C.A. report Exh.-10 shows that there was no semen

stains on her panty and though there are blood stains on her Salwar and Panty, the blood stains appear to have been washed out.

In the nature of the aforesaid evidence, I am of the view that when the applicant was on bail during the course of trial and at that point of time, he has misused the liberty granted to him, I am of the view that discretion can be exercised in his favour by imposing certain conditions. Hence, I pass the following order.

ORDER

- (i) Criminal Application is allowed.
- (ii) Substantive jail sentence imposed upon the applicant by judgment and order dated 07.11.2017 passed by Additional Sessions Judge, Gondia in Special (Atro) Case No.3/2010, shall stand suspended during the pendency of the present appeal.
- (iii) Applicant-Vijay s/o Gyaniram Bhonde be released on bail on he executing P.R. Bond in the sum of Rs.50,000/- with two solvent sureties in the like amount.
- (iv) The Court below, before whom the bail bonds will be executed, shall ensure that prior to release of the applicant, the applicant deposits entire amount of fine imposed on him on various counts by the Court below.
- (v) The applicant is directed to attend Police Station Goregaon, District Gondia once in every two months, preferably on second Saturday, till final disposal of the present appeal.

(vi) The applicant shall not, in any manner, cause any types of threats to the prosecutrix or to any of her family members.

(vii) The applicant shall remain personally present before this Court at the time of final hearing of the appeal.

The application is disposed of .

JUDGE

kahale