

Anand

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

CRIMINAL APPLICATION NO. 151 OF 2019

(For Bail)

IN

CRIMINAL APPEAL NO. 469 OF 2018

Dada S/o. Ganpat Hake

.Applicant

Vs.

The State of Maharashtra

.Respondent

Mr. R. S. Kadam, Advocate, for the Applicant

Mr. P. H. Gaikwad, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 11.04.2019

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his Appeal.

3. Learned counsel for the Applicant states that the Applicant has been falsely implicated in the said case, as the Applicant's father, who was the Chairman of the village had

refused to sanction a loan to the prosecutrix's husband. He submits that the Applicant is in custody since 02.09.2016. He further submits that even the medical evidence that has come on record does not categorically state that the prosecutrix was sexually assaulted.

4. Learned APP opposed the Application.

5. Perused the papers. The Applicant has been convicted for the offence punishable under Section 376 of the Indian Penal Code and is sentenced to suffer R. I. for seven years and to pay fine of Rs. 5,000/-, in default to suffer S. I. for three months. The Applicant has also been convicted for the offences punishable under Sections 354 & 506 of the Indian Penal Code and has been sentenced to suffer R. I. for six months and three months respectively. The Applicant's Appeal was admitted on 26.04.2018. The Applicant is in custody since 09.11.2016. Perused the evidence of the prosecutrix i. e. PW.1 and PW.5 i. e. Dr. Sarangkar. The evidence of the Doctor noted two injuries i. e. abrasion 1.5 cm x 3 mm left ring finger distal phalanx dorsally

distal and radial side of nail bed and contusion 5 x 5 cm left thigh suprabatellar region distal thigh anteromedially. The evidence does not disclose any sexual assault on the prosecutrix. The Applicant's defence is that he has been falsely implicated in the said case, as his father, Chairman of the village had refused to advance loan to the prosecutrix's husband. It is also sought to be suggested that there was some relationship between the Applicant and the prosecutrix and that at the behest of the prosecutrix's husband, the aforesaid complaint was lodged. Be that as it may, the Applicant is in custody for more than two years.

6. Considering the aforesaid, the Application is allowed. The Applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his Appeal, on the following terms and conditions :-

O R D E R

(i) The Applicant be enlarged on bail on furnishing P. R. Bond in the sum of **Rs. 25,000/-** with one or two local sureties in the like amount;

(ii) The Applicant shall report to the trial Court, once in four months on the day / date specified by the trial Court, till his Appeal is finally disposed of;

(iii) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an Application seeking cancellation of bail.

7. The Application is, accordingly, disposed of.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)