

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION No. 407 OF 2019****IN****CRIMINAL APPEAL No. 433 OF 2019**

Dhanaji Navnath Aahire ...Applicant

Vs.

The State of Maharashtra and Anr. ...Respondents

...

Mr. Nitesh Mohite i/b. Mr. Jaydeep D. Mane for Applicant

Mr. V.V. Gangurde, APP for the State

CORAM: P. N. DESHMUKH, J.**DATED : NOVEMBER 22, 2019.****P.C:-**

1. Heard Learned Counsel for the Applicant and Learned Public Prosecutor for the State.

2. This application is filed for suspension of substantive sentence and for bail by accused, who came to be convicted for the offences punishable under section 363 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/-, in default, to suffer simple imprisonment for six months. The accused is also convicted for the offence punishable under section 366 of the Indian Penal Code and sentenced to suffer RI for three years and to pay fine of Rs.1,000/-, in default, to

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suffer SI for six months. The accused is also convicted for the offence punishable under section 376 of the Indian Penal Code and sentenced to suffer RI for 7 years and to pay fine of Rs.2,000/-, in default, to suffer S.I. for six months. The accused is also convicted for the offence punishable under Section 8 of POCSO Act and sentenced to suffer RI for 3 years and to pay fine of Rs.1,000/-, in default to suffer SI for six months.

3. It is submitted that accused is falsely involved as prosecutrix was in love with applicant and in fact, on her own, had accompanied appellant at various places and, as such, was consenting party to the act of sexual intercourse. Learned Counsel, therefore, contended that since there is no evidence on record to fix the date of birth of prosecutrix, she cannot be said to be minor on the day of incident, and, therefore, submitted that on these two counts, application is liable to be allowed.

4. As against this, Learned APP opposed this application on the ground that there is a direct evidence, establishing the involvement of applicant in the present crime and had

contended that from the evidence produced by the investigating officer, it is established that during the course of investigation, bonafide certificate of prosecutrix, stating her date of birth is 10th January, 2003 and according to that, at the time of incident, she was minor. With this, it is submitted that application be dismissed.

5. In the aforesaid submissions, it appears to be the case of the prosecution that on 15th July, 2017, while the minor prosecutrix was residing with her parents, and was in her house situated at village Talebazar in Taluka Deogad, in the midnight, when she came out of the house to answer the nature call, accused forcibly took her on his motorcycle and committed rape on her. After the victim was not found in the house, missing report came to be lodged. Parents of prosecutrix had suspected applicant being kidnapped their daughter as he was residing nearby house of the victim and in the midnight, when they were searching for the prosecutrix, appellant was not in his house nor his two wheeler was in the house. It is also the case of the prosecution that in spite of father of prosecutrix trying to contact appellant on his mobile phone, he did not respond.

6. During the course of investigation in the crime, registered on the basis of complaint lodged by the mother of prosecutrix, the prosecutrix was found in the company of accused in one house situated at village Pimpalner, Taluka Mhada, Pandharpur, where from both were apprehended and, on recording statement of prosecutrix, it reveals that she was subjected to sexual intercourse by appellant.

6. Evidence of prosecutrix when perused, it reveals that when she came out of the house in the midnight, appellant pressed her mouth and after latching the entrance door of her house from outside, on extending threats, forcibly took her on his motor cycle to Kolhapur where they reached at around 3.00 a.m. and on taking her in lodge, developed physical relations with prosecutrix. On the same day, at around 6.00 p.m. to 7.00 p.m., appellant took her to Kavathemahankal, where he rented one room in a lodge, where he had sexual inter course for second time and, thereafter he took her to Pandharpur for marriage and from there, he took her to Pimpalner in one house where from they were apprehended by police.

The defence as put forth for appellant of there being

love affair between appellant and prosecutrix has been specifically denied by the prosecutrix.

Her evidence is fully corroborated from the medical evidence, where Dr. Chands has given his opinion that the girl was subjected to penetrative sexual intercourse. There was no injury on her private part, her hymen was not intact, external vaginal orifice admitted one finger easily and two fingers with slight difficult.

7. In view of above evidence, appellant's involvement in committing a rape is prima facie established and from the evidence of the investigating officer, who has placed on record the bonafide certificate, establishing date of birth of prosecutrix is 10th January, 2003. Since prosecutrix is found minor on the date of incident, no case is made out for grant of bail. Application is accordingly dismissed.

(P. N. DESHMUKH, J.)