

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

**CRIMINAL APPLICATION NO.617 OF 2019
IN
CRIMINAL APPEAL NO.232 OF 2019**

Prashant @ Parshuram Waman Applicant
Lagas

Vs.

The State of Maharashtra & Anr. Respondents

Mr. Kuldeep Patil i/by Mr. Prashant S. Hagare for the Applicant.
Mr. S.R. Agarkar, APP for State.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 20th August 2019

P.C.:

1. Heard the respective counsel.
2. This is an application under Section 389 Code of Criminal Procedure seeking suspension of substantive sentence during pendency of the appeal. The applicant herein is convicted by the Special Judge, Barshi, in Sessions Case No.23 of 2017, for the offences punishable under Section 376(1) and 506 of Indian Penal Code and sentencing him to suffer rigorous imprisonment for seven years and fine of Rs.5,000/- for the offence punishable under Section 376(1) of Indian Penal Code and two years

rigorous imprisonment for the offence punishable under Section 506 of Indian Penal Code vide judgment and order dated 20th December, 2018.

3. Perused the evidence adduced by the prosecution at the trial. PW-1 is the prosecutrix. It appears that she was acquainted with the present applicant. Her husband was serving as a Security Guard at Mumbai and the applicant was running an auto-rickshaw in her village. They used to exchange telephonic calls and were well conversant with each other. She has specifically deposed before the Court that the bathroom is situated just behind her house. However, according to her, on the day of the incident, early in the morning, while she had gone to answer nature's call, the applicant had dragged her upto 750 mtrs. and had sexually assaulted her in an agricultural land. She has also admitted that she used to go to the weekly bazar alongwith the accused. It is also admitted in the cross-examination that on the day of the incident, her daughter, Anushka woke up and could not find her in the bedroom early in the morning and she told the same to her grandmother and grandfather and thereafter they had searched and traced her

alongwith the applicant. Thereafter she was constrained to lodge F.I.R..

4. It is pertinent to note that while he was in custody, P.W. 1 i.e. the prosecutrix had written a letter to the applicant, which is marked at Exhibit 35. She has admitted her signature on the said letter and has also admitted her handwriting on the envelope. Perused the said letter. It appears that she wanted to save the applicant and was under tremendous pressure. She was apprehensive of being summoned in the Court for giving evidence and therefore had requested the applicant to instruct his lawyer not to call her in the Court and that she would help him in whatever way she could.

5. Prima facie, it appears to be a consensual act. The applicant is in custody since 31st December 2016. The present appeal is of the year 2019 and this Court is hearing jail appeals of the years 2013 and 2015. In view of this, it would not be possible to expedite the hearing of this appeal and hence, the applicant deserves to be enlarged on bail during pendency of the appeal. Hence, the order :

ORDER

- i) The application is allowed and disposed of.
- ii) The substantive sentence imposed upon the applicant vide judgment and order dated 20th December, 2018 is hereby suspended.
- iii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.30,000/- with one or more solvent sureties in the like amount.
- iv) Upon being enlarged on bail, the applicant shall mark his presence before the Sessions Court, Barshi, once in six months on the date assigned by the Sessions Judge. Upon failure to attend any two consecutive dates, the Sessions Court shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

(Smt. Sadhana S. Jadhav, J)