

Anand

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

**CRIMINAL APPLICATION NO. 1377 OF 2018
IN
CRIMINAL APPEAL NO. 1310 OF 2018**

Shubham Vitthal Pawar .Applicant

Vs.

The State of Maharashtra .Respondent

Ms Nasreen S. K. Ayubi appointed Advocate, for the Applicant
Mr. S. V. Gavand, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 12.03.2019

P.C.

. Heard learned counsel for the parties.

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

3. Ms Ayubi, learned Counsel, appointed to espouse the cause of the Applicant submits, that this is a case of a love affair, between the prosecutrix – P. W. 2 and the Applicant. She submits that the Applicant was about 19 years of age, at the relevant time and the prosecutrix, about 16 years 8 months and 23 days. She

further submits that a perusal of the missing complaint report (Exh. 48) shows that the prosecutrix had left her house on her own accord with her purse and bag. She submitted that the evidence of the landlady i. e. P. W. 5 – Suhasini Kamathe would also show, that the Applicant and the prosecutrix were residing in the same house, as husband and wife and the Applicant had introduced the prosecutrix as his wife. She submits that the evidence on record shows that the Applicant and the prosecutrix stayed together for more than a month and that she had not disclosed to anyone, that she was forcefully brought there by the Applicant. She further submits that the Applicant was on bail pending trial.

4. Learned APP opposes the Application. He submits that admittedly, the prosecutrix was a minor at the relevant time and hence, it is a case of statutory rape. Learned APP has not brought on record any material to show that the Applicant whilst on bail had abused and / or misused the liberty granted to him.

5. Perused the papers. The missing complaint report shows that the victim girl had left the house alongwith her purse

and bag, on 30.04.2014. The evidence of the witnesses also shows that the prosecutrix and the Applicant had stayed together in a rented premises, for about a month or two. The evidence of P. W. 5 – Suhasini Kamathe shows that the Applicant and the prosecutrix were living there as husband and wife. Although, The prosecutrix has alleged that on 30.04.2014, she was taken by the Applicant to Kondhwa, Pune, where she was sexually assaulted by the Applicant till 01.06.2014 under the pretext of marriage. The evidence of P. W. 6 – Dr. Umesh Hendre, Medical Officer shows, that he did not notice any external injury on the person of the victim girl, though the victim was examined within 24 hours of the incident. According to P. W. 6 – Dr. Umesh Hendre, there was no evidence of injuries to the genital part nor any evidence of penetrative assault, nor any evidence of force. No doubt consent is immaterial, however, having regard to the fact that the Applicant was on bail pending the trial and the evidence on record, the Applicant's sentence is suspended pending the hearing and final disposal of his Appeal on the following terms & conditions :-

O R D E R

(I) Applicant be released on bail on his furnishing P. R. Bond in the sum of Rs. 10,000/- with one or more local sureties in

the like amount;

(ii) The Applicant shall mark his attendance to the learned Special Judge, Additional Sessions Judge, Satara once in two months i. e. on the first Saturday at 11.00 a. m. till his Appeal is finally decided;

(iii) The Applicant shall inform his latest address and mobile contact number, if any, and/or change of residence or mobile details, if any, from time to time to the Court, where he will be reporting;

(iv) The Applicant shall not contact the prosecutrix;

(v) Registry to forthwith communicate the said order to the Applicant, who is lodged in Kolhapur Central Jail.

6. The Application is allowed & disposed of accordingly.

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

(REVATI MOHITE DERE, J.)