

Anand

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

**CRIMINAL APPLICATION NO. 32 OF 2019
IN
CRIMINAL APPEAL NO. 1437 OF 2018**

Datta Zima Bavdhane .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. L. S. Gaikwad i/b. Mr. D. P. Mhate, Advocate, for the
Applicant

Mr. S. V. Gavand, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 15.03.2019

P.C.

. Heard learned counsel for the parties.

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

3. Perused the evidence with the assistance of the learned counsel for the Applicant and the learned APP. At the relevant time, the prosecutrix was about 17 years of age and the

Applicant 22. According to the prosecutrix (PW.2), the incident took place on 20.03.2017, while she was proceeding with her aunt to Khopoli. She has stated that on the way, she went to drink water at Kumbharshet by which time her aunt proceeded ahead. She has further stated that at that time, the present Applicant and one Dipak Barge came on a motor cycle and asked her where she was going. She has stated that she told them that she was on her way to Khopoli, pursuant to which, he asked her to sit on the motor cycle, stating that he would drop her at the Pali S. T. Stand. Thereafter, the prosecutrix has stated how she was taken to a lodge; that she was in the lodge from 20.03.2017 to 23.03.2017 where she was sexually assaulted by the Applicant. She has further stated that later on, the Applicant came with a powder pouch and asked her to consume the same and that the Applicant left her home after which she consumed the powder given by the Applicant. According to PW.2, she was taken to the Pali Hospital, by her family members and thereafter, to the Civil Hospital, Alibag, where she was admitted for ten days. A perusal of the medical evidence shows that the prosecutrix's evidence is not consistent with the medical evidence. PW. 5 was examined to

prove the medical papers at Exh. 51. It appears that the said witness has neither deposed about the contents of the medical papers nor there is anything to show that he has examined the prosecutrix. He has only identified the signature of the Doctor, who signed the Medical Certificate. A perusal of Exh. 51 also does not show that the prosecutrix was sexually assaulted. In fact, the defence of the Applicant is that she was in love with the Applicant and that as the Applicant had got married to some other girl, she was upset and hence consumed poison. The fact that the prosecutrix knew the Applicant for about two years prior to the incident and was in love with him is not in dispute, inasmuch as, the same has also come in the evidence of the prosecutrix (PW.2). PW.2 has stated in her evidence that although she was in love with the Applicant, he got married to another girl in 2015 and as such, she was not on talking terms with the Applicant. It is also pertinent to note that the prosecutrix's statement dated 23.03.2017 given first in point of time, she has stated that she consumed poison, as the Applicant had told her that he could not marry her. PW.2 has admitted her signature on the said statement dated 23.03.2017 (Exh. 29). As far as Section 328 of the Indian

Penal Code is concerned, the Applicant has been acquitted from the said offence.

4. Considering the material qua the Applicant, the Application is allowed and 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) The Applicant be released on bail on his furnishing P. R. Bond in the sum of **Rs. 15,000/-** with one or more local sureties in the like amount;
- (ii) The Applicant shall not contact the prosecutrix;
- (iii) The Applicant shall report to the trial Court once in three months on a date specified by the learned Judge pending Appeal;
- (iv) The Applicant shall furnish his address and mobile contact number and or change of residence or mobile details, if any, from time to time to the trial Court, where he would be reporting;
- (v) If there are two consecutive defaults in appearing

before the trial Court, the prosecution will be at liberty to apply for cancellation of the Applicant's bail.

5. The Application is, accordingly, disposed of.

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

(REVATI MOHITE DERE, J.)