

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.198 OF 2019

IN

CRIMINAL APPEAL NO.410 OF 2017

Paul Joseph Shirole

...Applicant

V/s.

The State of Maharashtra

...Respondent

Mr. Dinesh Tiwari a/w. Mr. Swapnil Ambure i/b. Mr. Dinesh Tiwari & Associates, Advocate for the Applicant.

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

CORAM : A.M.BADAR J.

DATED : 15th FEBRUARY 2019

P.C. :

1. This is an application for suspension of sentence and releasing the applicant/accused No.1 on bail during pendency of the appeal filed by him. The applicant/accused No.1 is convicted of the offences punishable under Sections 376 and 504 of the Indian Penal Code. On the first count, he is sentenced to suffer rigorous imprisonment for ten years and on the another count, he

is sentenced to suffer rigorous imprisonment for one year. Some fine is imposed on him, so also the default sentence.

2. At the commencement of hearing of this bail application, option was given to the learned Counsel for the applicant/accused No.1 to work out the matter finally as paper-book is received and the appeal is ripe for final hearing. However, the learned Counsel for the applicant/accused No.1, on instructions, refused to accept that option of final hearing of the appeal.

3. Heard the learned Counsel appearing for the applicant/accused No.1. He drew my attention to the complaint lodged by Pallavi Shimpi (PW-3) as well as Manisha Shimpi to the Principal District and Sessions Judge, Nashik and argued that these relatives of the alleged victim of the crime in question did not make complaint that the victim was pressurized. The learned Counsel argued that, however, still the learned trial Judge recall the alleged victim of the crime in question (PW-1) and her evidence was again recorded. According to the learned Counsel for the applicant/accused No.1, evidence of the alleged victim

suffers from several infirmities and the same cannot be accepted to base conviction. The learned Counsel further argued that the applicant/accused No.1 has already undergone about half of the sentence imposed on him, and therefore, he is entitled to be released on bail. For this purpose, reliance is placed on the certificate issued by the jail authority and annexed to the paper-book.

4. The learned Additional Public Prosecutor opposed the application by contending that in Para 6 of her deposition, the alleged victim of the crime in question has stated about the circumstances in which she could not support the prosecution case.

5. I have considered the submissions so advanced and perused the record made available.

6. It is seen that on earlier occasion, the applicant/accused No.1 had preferred bail application and on 07.12.2017 the Coordinate Bench of this Court (Smt. Anuja Prabhudesai, J) has passed the following order:

After hearing the arguments for some while and when it was expressed that this is not a fit case for bail, the learned counsel for the Applicant seeks leave to withdraw the application. Leave is granted.

2. The application is dismissed as withdrawn.

7. In the light of this order dated 07.12.2017, now this Court can entertain the bail application only on account of change in circumstances. True it is that the applicant/accused No.1 has undergone sentence of about four years and ten months as of now, but the offence alleged against him as that of rape on a female victim.

8. In this view of the matter, though the applicant/accused No.1 might have undergone half of the sentence imposed on him, this Court is of the considered opinion that by that itself, the applicant/accused No.1 is not entitled to be released on bail.

9. The application, is therefore, rejected.

(A.M.BADAR J.)