

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.218 OF 2019

IN

CRIMINAL APPEAL NO.215 OF 2019

Bablu Lakhan Shaha ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.M.S.Mohite with Mr.Shantanu R. Phanse, Advocate for the Applicant.

Ms.P.N.Dabholkar, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 28th FEBRUARY 2019.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him. The applicant/accused is convicted for the offences punishable under Sections 376, 385 and 506 of the Indian Penal Code. Different sentences are imposed on different counts, the highest amongst them is being rigorous imprisonment for seven years apart from imposition of fine of Rs.3,000/- and default sentence of rigorous imprisonment for fifteen days. The

learned trial Court has directed that substantive sentences shall run concurrently.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that evidence of the alleged victim of the crime in question is not in tune with probability and there is delay in lodging the FIR. The applicant was on bail during pendency of the trial.

3 The learned Additional Public Prosecutor opposed the application by contending that evidence of the victim of the crime in question is not controverted in the cross-examination and there is no reason to disbelieve the same. She drew my attention to evidence of P.W.No.5 Dr.Trupti to show that there was injury on left groin region of the victim of the crime in question which was in-defined.

4 I have considered the submissions so advanced and perused the material placed on record.

5 Cross-examination of the alleged victim of the crime in question shows that there was cordial relations between her family and family of the accused. They were neighbourers. The applicant/accused was residing along with his wife, mother, sisters as well as one child. Evidence on record further suggests that the

alleged victim of the crime in question, who is 36 years old married woman having children was residing along with her husband as well as sister-in-law apart from her brother-in-law, who is examined as P.W.No.2.

6 The alleged victim of the crime in question has deposed that responding to call from wife of the applicant/accused, she visited the house of the applicant/accused and the applicant/accused then committed rape on her after assaulting her and after making her unconscious because of forceful assault. On this backdrop, it is noteworthy to mention that the victim, who has surrounded by all her near and dear ones, has chosen not to lodge report against the applicant/accused either on that day or in that month. She approached police after forty days of the incident. When she had been to the Medical officer on the next day of lodging report, there was one injury in the nature of contusion on left groin region and the age of that injury was one or two days prior to examination by the Medical Officer.

7 The alleged victim of the crime in question has categorically deposed that she was not having any injury after the incident. She stated that therefore, she did not take any treatment from the Doctor, whereas her brother-in-law had claimed to have noticed injury on middle portion of her forehead after about 17 to

18 days of the incident. The husband of the alleged victim has deposed that upon being asked on the day of the incident, the alleged victim has stated that she suffered injury because of fall from the water tank.

8 Considering evidence of this nature against the applicant/accused as well as the fact that he was on bail during pendency of the trial, the following Order

ORDER

- (i) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail on his executing P. R. Bond of Rs.15,000/- and on furnishing surety in the like amount.
- (ii) As a condition of this Order, the applicant/accused should not contact the alleged victim of the crime in question or her relatives in any manner
- (iii) The application is disposed of accordingly.

(A.MBADAR J.)