

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 324 OF 2018
WITH
CRIMINAL APPLICATION NO. 561 OF 2016
IN
CRIMINAL APPEAL NO. 816 OF 2017

Anil Ramesh Kolhe. ... Applicant.
V/s.
State of Maharashtra. ... Respondent.

Mr.K.M.Sangani for the applicant.
Ms.M.H.Mhatre, APP for the respondent-

CORAM : A.S.OKA AND A.S.GADKARI, JJ.

DATE : 6th March 2019.

P.C. :

Heard the learned counsel appearing for the applicant and the learned APP for the respondent- State. These applications are for bail. The applicant/ appellant has been convicted for the offence of committing rape on victim of the offence who suffers from mild mental retardation. We find from the evidence of PW4- Dr.Priyanka Mahajan and PW5- Dr.Sanika Dakshikar that both of them have come to the conclusion that the victim of the offence suffers from mild/moderate mental retardation. Perusal of evidence of PW4 shows that there is hardly any cross-examination challenging the finding regarding victim suffering from mental retardation. Same is the case with regard to the cross-examination of PW5.

2. The evidence of the victim has been recorded by the learned trial Judge after putting some preliminary questions to her and

after recording a satisfaction that she was competent to depose before the Court.

3. It has come on record in the evidence of PW6- the investigating officer that the victim gave birth to a child on 1st July 2014.

4. After having heard the learned counsel appearing for the applicant and after going through the evidence on record, we find that, *prima facie*, there is more than sufficient evidence to show complicity of the applicant. The applicant has been sentenced to suffer life imprisonment by invoking clause (1) of sub-section (2) of section 376 of the Indian Penal Code. Considering the *prima facie* finding and the gravity of offence committed by the applicant, no case is made out for enlarging the applicant on bail.

5. The learned counsel appearing for the applicant, on instructions from the mother of the applicant, states that the applicant is willing to get married to the victim. We may note here that the same prayer was made before the trial Court and, in paragraph-29 of the judgment and order, the learned trial Judge has held that such a contention is raised only with a view to save the applicant from the clutches of law. Moreover, there is a finding that the victim suffers from mild mental retardation. Considering the conduct of the applicant, apart from the fact that the Court cannot be a party to such an arrangement, the offer given to the Court is not all bonafide.

The application is, therefore, rejected.

(A.S.GADKARI, J.)

(A.S.OKA, J.)