

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

**CRIMINAL APPLICATION NO. 840 OF 2019
WITH
CRIMINAL APPLICATION NO. 841 OF 2019
IN
CRIMINAL APPEAL NO. 769 OF 2019**

Javed Hussain Peer Mohammed Ansari ...Applicant
Vs.
State of Maharashtra ...Respondent

- Mr. Satyaram Gaud, Advocate for the Applicant.
- Ms. Pallavi Dabolkar, APP for the State/Respondent.

**CORAM : P.N.DESHMUKH, J.
DATE : 3rd OCTOBER, 2019**

P.C. :

1. This application is for suspension of sentence and for bail by accused. He is convicted by the learned trial judge for the offences punishable under Sections 367 and 377 of the Indian Penal Code and to he is sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 1,000/-. In default of payment of fine, suffer rigorous imprisonment for further two months for the offence punishable under Section 367 of the IPC. Similar sentence and fine also imposed for section 377 of the IPC.
2. Learned counsel for the applicant points out that

appellant is falsely involved by the complainant, who is father of prosecutrix since he owed money to accused which he had obtained as loan and since could not repay the same, has falsely implicated.

3. Learned counsel for the appellant had also pointed out material omission from the evidence of complainant as well as prosecutrix and pointed out that such omissions establish false implication of the applicant. It has also submitted that there is no DNA report on record nor CA report establishing blood group of accused and had thus, contended that in the background of above evidence, application be allowed.

4. Learned APP opposed the application contending that the omissions are not material and there is nothing to disbelieve the evidence of minor prosecutrix, who has no reason to falsely involved the applicant.

5. Learned counsel for the parties however, admitted that there is no reference of DNA report in the impugned judgment. While learned APP by referring to evidence of medical officers though pointed out that blood sample of accused is collected, she could not point out the CA report determining that the blood group of the accused. However, relying upon the

testimony of the prosecutrix, learned APP opposed the application.

6. In the background of submissions as aforesaid, perusal of evidence of complainant, would reveal that he knows the accused being his friend since 5-6 years prior to the incident of 9th March 2011, which occurred in the night when his minor daughter informed him that when she was returning from Madarsa school, accused took her to a lonely lane, where he caused oral sex and therefore, complainant accompanied prosecutrix to the Nagpada Police Station and lodged report Exh.1.

7. Perusal of his cross-examination however would reveal that there is material omission with regard to contents of report of accused committing oral sex with the prosecutrix. As it has come in the evidence of complainant that inspite of his stating said facts in his report Exh-1, same is not mentioned in the report for which he cannot assigned any reason as to why it is not mentioned. In fact, it is noted that complainant in his further evidence has admitted that the contents of report were read over to him and explained in Hindi. Inspite of that, he has not raised any objection about its contents. As such, it

is found that there is material improvement in his evidence on the point of alleged oral sex by the accused with the prosecutrix.

8. From further evidence of complainant, submissions advanced on behalf of accused of his false implication are found substantiated when complainant has admitted to have obtained hand loan from accused and is further suggested that in order to avoid repayment of said loan to accused, false report is lodged against him though the suggestion is denied, it appears to be material. In that view of the matter, false implication of the accused is further substantiated as even in the evidence of prosecutrix though she claims that on the day of incident accused took her to some lane and had caused oral sex and had exploited and threatened her not to disclose to anyone. Above evidence appears to be by way of omission when prosecutrix claims to have stated said fact in her statement to police, however, is unable to assign any reason as to why it is not mentioned in her statement. Above material omissions are infact found duly proved from PW-6, the investigating officer, when he had admitted that prosecutrix has not stated in her statement that accused took her towards

some factory in a lane and had caused oral sex with her by extending threats, not to disclose to anyone.

9. In view of the above evidence, there appears much substance in the case of applicant of his false implication.

10. Moreover, though as pointed out by the learned APP, blood sample of accused is collected, no CA report is on record establishing blood group of accused. Similarly from the CA report Exh.16 though semen is found on Exh.1,2,3, for want of blood group of accused, same cannot be connected with him. Admittedly, no DNA report is on record. Similarly though CA report refers that analytical report regarding DNA examination of Exh. 1,2 and 3, which are clothes of prosecutrix from DNA division will follow, no DNA report is on record. In the circumstances, inspite of presence of semen on the clothes of prosecutrix, there is nothing to connect the accused with the said fact. All the more, when material evidence of prosecutrix on the point of oral sex, is by way of omission.

11. In that view of the matter, application is liable to be allowed as per order below:-

ORDER

1. Applicant shall be released on bail on his

executing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousands only) with one or two surety in the like amount and shall pay amount of fine withing one week from today, before the trial court.

2. While on bail, Applicant shall mark his presence with Nagpada Police Station, Mumbai quarterly on the 1st day of each such month, pending appeal.

3. Criminal Application is disposed of in above terms.

(P.N.DESHMUKH, J.)