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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1006 OF 2019
IN
CRIMINAL APPEAL NO.539 OF 2019

Santosh Tanik Sharma ...Applicant
vs.
The State of Maharashtra and Anr. ...Respondents

Ms Anjali Patil for the Applicant
Mr.V.V.Gangurde, APP for State

CORAM : P.N.DESHMUKH,J.
DATE : SEPTEMBER 18, 2019

P.C.:

1 This application is filed by the applicant for suspension of sentence and for bail.

2 Heard the learned counsel for the applicant and the learned APP for State. Perused the evidence on record. Learned counsel for the applicant submitted that it is apparent from the evidence of prosecutrix, that she is consenting party to the act of rape allegedly committed by the applicant. It is contended that though the prosecution has relied upon birth certificate establishing prosecutrix to be minor, the witness examined at this point has no personal knowledge of date of birth of prosecutrix and his evidence is based on record in respect of the entries taken by some other Officer of the school and thus, contended that this document needs consideration which however can duly be ascertained at the time of final hearing and contended that since the prosecutrix is a consenting party and as no sufficient proof is available on

record of she being minor, Application deserves to be allowed.

3 Learned APP opposed the application submitting that there is prima facie evidence against the applicant.

4 Perusal of the evidence of P.W.No.1, prosecutrix would reveal that she was residing in the neighbourhood of the applicant since long time and as such were known to each other at the time of incident. She was studying in 10th standard. When she developed physical relations with the applicant in the house of applicant. As per her evidence, on each such occasion of their indulging in physical relation, the applicant paid her Rs.200/- to Rs.300/- which she accepted and told her not to share this incident to anyone. From her further evidence it has come on record that after span of seven months when she was required to be taken to the hospital on conducting sonography, it revealed that she was carrying pregnancy. It is after such disclosure, report came to be lodged and the offence is registered.

5 From the evidence of the prosecutrix as above, she appears to be the consenting party to the act of rape. With regard to the date of birth of the prosecutrix, evidence of P.W.NO.6 substantiates the submissions advanced on behalf of the applicant. The date of birth of the prosecutrix stated by the said witness in her capacity as Principal of the school is on the basis of the school record of which admittedly no entries are made by her in the register but the same are in the handwriting of her predecessor. In that view of the matter, there is no conclusive evidence establishing age of prosecutrix.

6 In the background of above facts and as the applicant was on bail pending trial and since the prosecutrix as well as accused after this incident are married though not with each other, application is liable to be allowed subject to following conditions:

I) Applicant Santosh Tanik Sharma is directed to be released on bail on his furnishing P.R Bond in the sum of Rs.20,000/- (Rupees Twenty thousand) with one or two sureties in the like amount;

II) Applicant shall mark his presence with Dharavi Police Station quarterly, on the first date of each such month pending Appeal.

(P.N.DESHMUKH,J.)