

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1265 OF 2019
IN
CRIMINAL APPEAL NO. 984 OF 2019

Rohit @ Gomya Ramchandra Mahadik .. Applicant

Versus

The State of Maharashtra and Anr. .. Respondents

...

Mr. Nitin Sejpai for the Applicant.

Mr. V.V. Gangurde, APP for Respondent No.1/State.

CORAM: P. N. DESHMUKH, J.

DATED : 15th OCTOBER, 2019.

P.C:-

This application is by accused who is convicted for the offence punishable under Section 376, 506 of Indian Penal code for suspension of sentence and for bail. Accused is convicted under Section 376 of Indian Penal Code and is sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.50,000/-, in default, to suffer rigorous imprisonment for two years. On the count of Section 506, he is sentenced to suffer rigorous

Wakodikar

imprisonment for five years and to pay fine of Rs.30,000/-, in default, to suffer rigorous imprisonment for two years.

2. Heard Learned Counsel for applicant and Learned APP. It is submitted on behalf of appellnat that prosecutrix is major and was residing as neighbour and had indulged in physical relations with appellant on her wish. It is submitted that since May, 2016, till lodging of report, till November, 2016, they repeatedly indulged into sexual act and as such no offence of rape can said to be attracted in the present crime. Learned counsel on instructions, make statement that according to DNA test reports, appellant and the prosecutrix are the biological parents of the child born to prosecutrix and that, appellant is willing to marry the prosecutrix who is unmarried. However, it is stated that prosecutrix is not willing to marry the appellnat. In the circumstances, It is prayed that application be allowed in the interest of justice.

3. Learned APP opposed the application on the ground that appellants involvement is established from the DNA report and has thus, prayed that application be rejected.

4. Perusal of FIR would reveal that appellants and complainant were knowing each other since were residing in the neighbourhood and some time in May, 2016, when prosecutrix was alone in the house of one Deepak Sutar, appellant entered said house from rear side door and is alleged to have sexually assault her on his extending threats. So far as the said part of report is perused, thus establish that prosecutrix was sexually assaulted on the point of threats against her wish. However, further contents of report in clear term establish that she was consensual party to the act of physical relations with the appellant as from the later part of report, it would reveal that one month thereafter, they indulged into such act of indulging in sexual intercourse in the house of appellant and again 15 days thereafter, in the house of prosecutrix. According to report, thereafter, on 5-6 occasions, with gap of 15 days, both had indulged into physical relations. From the perusal of documents as aforesaid, there is nothing to hold that prosecutrix who admittedly is major, was at any point of time, forcibly indulged into such act against her wish though in the report it is alleged that on all these occasions, which are not less than 10 in number, she was extended threats to submit to appellant, else to face consequences.

From the report, it is material to note that after about 5 months, on undergoing medical examination, when it reveal that prosecutrix was pregnant, report is lodged.

5. DNA report on record established that appellant and prosecutrix are biological parents of new born child. In view of above facts and since it is noted that it is only due to prosecutrix conceived, report came to be lodged, and as appellant is willing to marry her, who is unmarried and ready to accept the child, application is liable to be allowed. However, since it is noted that, though, appellant is willing to marry the prosecutrix as she is not willing to marry the appellant and as both are resident of Village Khardi, Taluka Mahad, District Raigad, Sarpanch of Grampanchayat of Village Khardi alongwith Senior Inspector of Police, Mahad Police Station are directed to bring appellant and prosecutrix together and to work out if they could enter into the wedlock. Hence, the following order.

ORDER

(a) Applicant shall be released on bail on his executing PR Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand only) with one surety in the like amount.

Wakodikar

(b) While on bail, applicant shall mark his presence with Mahad Police Station from 1st November, 2019 for a period of one week and thereafter, quarterly, on the first day of such month, pending appeal.

(c) Learned APP to inform above order to the concerned Surpanch of Mahad Gram Panchayat and Senior Police Inspector, Mahad Police Station, who are further directed to submit their report with regard to their efforts, put in by them by bringing appellant and prosecutrix together.

(d) Report shall be submitted in sealed envelope, on record in present appeal, through Registrar (J) within six weeks from date of receipt of this order.

(P. N. DESHMUKH, J.)