

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1957 OF 2018
IN
CRIMINAL APPEAL NO. 1459 OF 2018

Raghuvirsingh Bhawarsingh Rajput.

..Applicant.

V/s.

The State of Maharashtra & anr.

..Respondents.

Mr. Dattatray Adarkar @ Chinmay Gaonkar I/b. Juris Consultants
Combine, advocate for applicant.

Mr. Y.Y. Dabke, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JANUARY 29, 2019.

P. C. :

1 Heard the learned Counsel for the applicant and the learned
APP for State. Learned Counsel for the applicant submits that in fact, he
had made an attempt to serve upon the victim and it is reported that she
has no more residing at the given address.

2 This is an application under section 389 of the Code of
Criminal Procedure, 1973 seeking suspension of substantive sentence.
The applicant herein is convicted for offence punishable under section
376, 417 of the Indian Penal Code and sentenced to suffer R.I. for 7 years
and fine of Rs. 5,000/- I.d. to suffer S.I. for 15 days for offence punishable
under section 376 of the Indian Penal Code and sentenced to suffer R.I.

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for one year and fine of Rs. 5,000/- I.d. to suffer S.I. for 15 days, by the Additional Sessions Judge, Gr. Mumbai vide Judgment and Order dated 26/11/2018 in Sessions Case No. 145 of 2014.

3 It is the case of the prosecution that the victim herein was working as a L.I.C. Agent. Her husband has filed divorce petition in the Court at Kalyan. In the interregnum, the mother of the victim had met the mother of the applicant. They had decided to get the victim married to the present applicant and therefore, the applicant was introduced to the victim by her mother. They had developed intimacy. She had informed the applicant that her divorce petition is pending and that she would get married after the conclusion of divorce proceedings. It is further alleged that on 9/12/2012, the applicant had taken the victim for a ride. They had checked into Airport Palace Hotel and then she realised that he had booked a room for them. According to the victim, the accused had sexually abused her and ravished her against her wish at the said hotel. According to the victim, he had also performed carnal intercourse with her. On 3/1/2013 the accused/applicant had informed her that since the divorce proceedings were still pending, his mother was looking out for a prospective bride. According to the victim, the accused/applicant had got married with another girl called Kavita in February, 2013. It is stated that the accused/applicant had purchased

five L.I.C. policies from the victim after the incident dated 9/12/2012. Since the accused/applicant got married to another girl, first information report was lodged on 19/2/2013. The learned Counsel for the applicant submits that since the divorce proceeding were pending, the applicant could not have got married to the victim. Moreover, the relations were not strained even after the incident dated 9/12/2012. That only because the accused/applicant had got married to another girl, criminal proceedings are initiated against him. It is submitted that at the most, conviction would be under section 417 of the Indian Penal Code and not under section 376 of the Indian Penal Code. The victim was about 30 years old at the time of incident. That the act was consensual and therefore, section 376 of the Indian Penal Code would not be attracted.

4 The applicant was on bail during the pendency of the trial and has not committed breach of any conditions imposed upon him. In the facts of the case, the applicant deserves to be enlarged on bail during the pendency of the appeal.

5 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) The substantive sentence imposed upon the applicant is

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hereby suspended. He be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more solvent sureties in the like amount.

(iii) The applicant be enlarged on provisional cash bail of Rs. 50,000/-. He shall furnish bail bond within 6 weeks from the date of release to the satisfaction of the Sessions Court, Greater Mumbai.

(iv) The applicant shall report to Court of Session, Greater Mumbai once in 6 months on the date specified by the concerned Court. Upon failure to attend on two consecutive dates, the Sessions Court, Greater Mumbai shall report the same to the High Court and the prosecution is at liberty to file application for cancellation of bail.

6 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]