

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

**CRIMINAL APPLICATION NO.1994 OF 2018
WITH
CRIMINAL APPLICATION NO.1995 OF 2018
IN
CRIMINAL APPEAL NO.1481 OF 2018**

Shailesh Ashok Mane ..Applicant
V/s.
The State of Maharashtra & Anr. .. Respondents

Mr.S.G. Rajput for the Applicant.

Mr.Vinod Chate, APP for the Respondent-State.

CORAM : A.M. BADAR, J.

DATE : 27th AUGUST 2019

P.C.

1. These are applications for suspension of sentence and releasing the applicant on bail during the pendency of appeal filed by him. The applicant is convicted of offences punishable under Section 376D of the Indian Penal Code as well as under Section 4 of the Protection of Children from Sexual Offences Act, 2012. On the first count he is sentenced to suffer rigorous imprisonment for 20 years apart from direction to pay fine of Rs.10,000/- and undergo default sentence of rigorous imprisonment for two years. On other

count he is sentenced to suffer rigorous imprisonment for 7 years apart from direction to pay fine of Rs.1,000/- and to undergo default sentence of rigorous imprisonment for three months.

2. Heard the learned counsel appearing for the applicant. He argued that the FIR was against unknown persons though matter of prosecutrix had disclosed the incident to her mother, her mother is not examined by the prosecution. It is further argued that the prosecutrix has not deposed about her date of birth and in charge Headmaster has only deposed recorded Date of Birth of the prosecutrix, in the record of the school. In submission of the learned counsel for the applicant, there is delay in sending the prosecutrix for medical examination. He further argued that the appeal may not be heard in the near future and therefore the applicant who is of young age needs to be released on bail.

3. The learned APP opposed the application.

4. I have considered the submissions so made and also perused material placed on record including deposition of the prosecutrix/P.W.-4 on medical evidence.

5. The FIR was against unknown persons as the prosecutrix was not knowing the accused. She was called by a person name Vikas Mane for working as labourer for the Caterer. No doubt she had talks with other persons in respect of this assignment, there is no evidence to show that prosecutrix was knowing the accused persons. Her evidence reveals that when she agreed for the work offered to her and accused persons had taken her by motorcycle to a secluded place at the bank of the river where they had committed rape on her.

6. Version of the prosecutrix is gaining corroboration from medical evidence which indicates that there were multiple acts of penetration on the prosecutrix.

7. Theory of consent is not propounded by way of defence and as such at this stage, evidence regarding age of the prosecutrix is not relevant or material.

8. There is *prima facie* evidence disclosing commission on the gang rape on the prosecutrix. Nature of crime as well as sentenced imposed are relevant consideration. Considering the overall evidence and nature of the crime, no case for suspension of

sentence is made out.

9. The applications are therefore rejected.
10. However, hearing of the appeal is expedited.

(A.M. BADAR, J.)