

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [APPA] No. 659 of 2018
IN
Criminal Appeal No. 372 of 2018
[Shankar @ Shekhar Devrao Mundhe Vs. State of Mah., Barshitakli
PS, Distt. Akola]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

None for the applicant-appellant.
Mr. Jawade, Addl. Public Prosecutor for respondent.

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**CORAM : S. B. SHUKRE AND
S. M. MODAK, JJ.**

DATE : 15th January, 2019

Nobody is present for the Applicant.

The applicant is in jail and, therefore, we have considered this application by paying our attention to the grounds taken in this application. We have also heard the learned Addl. Public Prosecutor for the respondent-State.

Although it is stated in this application that there were no injuries seen on the back portion of the prosecutrix in spite of her deposition that some force was used by the accused persons in bringing her down to the ground and then committing rape upon her, on going through the evidence brought on record, we find that there is no complete substance in such an

argument. Evidence of Dr. Deshmukh, at this stage, is a sufficient pointer to this fact.

The second contention is that DNA Report is not adverse to the appellant. DNA Report does not show that there is any matching of the DNA of the prosecutrix with the DNA of this appellant. But, it is not in dispute that there were two accused persons involved in commission of rape upon the prosecutrix and the other accused could not be brought to trial, he remaining absconding. This fact is also considered by the trial Court while recording its findings and, at this stage, we are not convinced that non-matching of the DNA Report would directly go against the prosecution. It is necessary that the entire evidence is considered and that would be possible only when this appeal is fully heard. We can also not be oblivious of the fact that the FIR has been filed immediately on the next day and the prosecutrix was a married woman.

All these facts and circumstances, in our opinion, would not justify grant of bail to this appellant by suspending his substantive sentence of imprisonment. The Application is, therefore, rejected.

Hearing of the appeal is expedited.

Judge

Judge

