

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.628/2019

Mangesh s/o Shankarrao Dagde .vs. State of Maharashtra through Office
Incharge P.S. Babhulgaon, Dist. Yavatmal.

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

Court's or Judge's orders.

Mr. S.Deshpande with Mr. A. C. Jaltare, Advocates for
appellant.

Mr. V. A. Thakare, A.P.P. for respondent-State.

CORAM : V. M. DESHPANDE, J.

DATED : NOVEMBER 21, 2019

Criminal Application No. 825/2019

This is an application under Section 389 of the
Code of Criminal Procedure for suspension of substantive jail
sentence and for grant of bail.

Heard Mr. Deshpande, learned counsel for
applicant and Mr. Thakare, learned A.P.P. for non applicant-
State.

This appeal was admitted on 20.09.2019 and the
consideration of the present application was deferred till the
receipt of record and proceedings. Record and proceedings
are received.

The applicant was convicted by Additional
Session Judge, Yavatmal in Sessions Trial No.76/2015 on
17.08.2019 for an offence punishable under Section 376 (1)
of the Indian Penal Code. He is directed to suffer rigorous
imprisonment for ten years and to pay a fine amount of

Rs.5000/-. He is also convicted for an offence punishable under Section 366 of the IPC and is directed to suffer rigorous imprisonment for seven years and to pay a fine amount of Rs.2,000/-. The applicant is further convicted for an offence punishable under Section 506 of the IPC is directed to suffer rigorous imprisonment for two years and to pay a fine amount of Rs.2,000/-.

All sentences are directed to run concurrently.

The prosecuting agency examined in all four witnesses to bring home guilt of the applicant. Victim (PW1), is the star witness for the prosecution. Tukaram (PW2) is pancha in whose presence panchanama of spot of occurrence was drawn. Dr. Raviprakash Meshram (PW3) has examined the victim and Mahipalsingh Chanda (PW4), was the investigating officer.

The incident has occurred on 04.04.2015. The report (Exh.-34) was lodged by the victim herself. For the incident dated 04.04.2015, the report was lodged on 06.04.2015. During her evidence, the victim did state that at the time of lodging report, her medical examination was not conducted. Even Dr. Raviprakash (PW3) did state that on the said day, she could not be examined due to her menstrual periods and on 13.04.2015, she was medically examined and after examination on 13.04.2015, the Doctor expressed an opinion that the possibility of sexual intercourse is not ruled out. Here, it is important to note that at the time of incident, the victim not only was a married woman but was having one child. Therefore, prima

facie, in my view, opinion expressed by Doctor on examination on 13.04.2015 loses its importance.

From the report (Exh.-34) as well as from the substantive evidence, it is clear that prior to her marriage, she was in love with the present applicant. According to the evidence, the applicant disclosed that he is having her VDO clips and he will make it public and thereafter he committed sexual intercourse. In the cross-examination this lady has admitted that she has not seen the said VDO clip at all.

Looking to the nature of evidence as brought on record, prima facie, participation of the victim on her own cannot be ruled out. The CA reports are negative. The applicant was on bail during trial and at no point of time, he has misused the liberty granted to him. Further, the applicant has already deposited the fine amount.

Looking to the pendency of criminal appeals before this Court, it will not be possible for this Court to take up this matter for final hearing in near future. Further, with such a nature of evidence brought on record, I am of the opinion that this is a fit case wherein substantive jail sentence of the applicant can be suspended and he can be released on bail.

In that view of the matter, I pass following order.

ORDER

- (i) The application is allowed.
- (ii) Substantive jail sentence imposed upon applicant-Mangesh Shankarrao Dagde in Sessions Trial No.76/2015 by learned Additional Sessions Judge, Yavatmal, shall remain

suspended during the pendency of the present appeal.

(iii) Applicant be released on bail on he executing P.R. Bond in the sum of Rs.15,000/- with one solvent surety in the like amount.

(iv) The learned Judge, before whom bail bonds will be executed, should ensure that entire fine amount is paid, if not already paid.

(v) Applicant shall attend Police Station, Babhulgaon, Dist. Yavatmal once in every six months during the pendency of the present appeal.

(vi) Applicant shall personally remain present before this Court at the time of final hearing of this appeal.

The application is disposed of.

JUDGE