

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.1084 OF 2020
IN
CRIMINAL APPEAL NO.1182 OF 2019**

Shaikh Sheru s/o shaikh Turab,
Age 35 years, Occupation Labour,
R/o Jogeshwari Jhopadpatti,
Gangapur Tq Gangapur Dist.
Aurangabad.

...Applicant

VERSUS

- 1) The State of Maharashtra,
Through Waluj Police Station,
Tq. Vaijapur Dist. Aurangabad.
- 2) Arti d/o Badrinath Ambekar,
Age Minor, Occ. Nil,
Mother Natural Guardian
Ranjana Badrinath Ambekar,
Age Major, Occ. Nil
R/o Jogeshwari Zopadpati
Tq. Gangapur Dist. Aurangabad.

...Respondent

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Advocate for Applicant : Mr. V. S. Salve
APP for Respondent-State : Mr. S. R. Yadav
Advocate for Respondent No.2: Ms. S.E.Waghmare
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**CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 17-12-2020.**

ORDER :

1. Present application has been filed for suspension of sentence.
The applicant who is original accused has been convicted in Sessions

Case No.30 of 2014, by learned Additional Sessions Judge, Vaijapur Dist. Aurangabad, on 17-07-2019 for committing offence punishable under Section 376 (2) (i) of Indian Penal Code. He has been sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.2000/-, in default to suffer rigorous imprisonment for six months.

2. Heard learned Advocate Mr. V. S. Salve for applicant and learned APP Mr. S. R. Yadav for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that the learned Trial Judge has not appreciated the evidence properly. The testimony of the informant would show that the incident had taken place on 13-12-2013. On that day the prosecutrix was not even knowing the accused. In her cross-examination she has given the routine which is in respect when she usually used to go to school. It also appears that on the day of the incident she had bunked the second session. She would have been normally present and accordingly on the day of incident also she would have remained present. If she would have been wait during the period of recess, she would not have joined the school, but then

she says that she had attended the school as normal after the recess also. The present applicant appears to be falsely implicated. The act might have been done by her boyfriend. The medical evidence especially the alleged injuries on the person of the victim are possible by fall on rough surface or by use of a blunt or hard object. This opinion has also been given by PWs. 6 and 10. There are other points which can be canvassed by the appellant at the time of final hearing, however now the appellant is in jail since 2013 i.e. from the date of his arrest, he has every hope in the appeal, and therefore, the sentence awarded needs to be suspended.

4. Learned APP strongly opposed the application and submitted that though the accused was unknown to the victim on the day of incident, yet she has identified him on the same day when she was going along with her maternal uncle back home from school. The cross-examination of the victim does not negative the incident and the testimony of the victim is well supported by the medical evidence. Mere possibilities expressed by the Medical Officers will not discard the prosecution story when the said possibility can be ruled out by the other evidence.

5. At the outset, it is to be noted that the victim has given all the

details as to how the incident took place. Though she has stated that her friend Akshay had kissed her on her cheek and it was seen by his other two friends, yet she was firm enough in saying that one person came there and assaulted her friend and his two friends by belt. Because of which those boys ran away, and thereafter, the said person raped her. She was specific in saying that though she was raped she went to school, and when she was returning back to home from school at about 02.30 p.m. with her maternal uncle, at that time she saw that person once again on the road, and thereafter, she had disclosed the incident to her maternal uncle for the first time. Maternal uncle went near that person, made inquiry and told that the name of that person is Sheru, and accordingly she lodged the FIR (Exhibit 37). Her clothes were seized by police immediately on the same day. The important piece of evidence which needs attention here is the DNA report (Exhibit 40) and the opinion has been given that, *"The DNA extracted from semen detected on ex.1 underwear, ex.2 Salwar, ex.3 Kurta of the victim and ex.5 full pant of accused as well as ex.9 blood sample of accused are from the same paternal progeny."* That means, the semen of the accused was detected on the clothes of the victim. The testimony of victim is then supported by PW 2 the maternal

uncle of the victim. The medical examination also supports the testimony of the victim. Thus, there was *prima facie* evidence which would have been considered by the learned Trial Judge as beyond reasonable doubt, and therefore, case is not made out to suspend the sentence imposed on the applicant. He was under trial till the Judgment was pronounced and further though the sentence that has been imposed can be said to be a short term sentence in view of *Kiran Kumar v. State of M.P., reported in (2001) 9 SCC 211*. The facts of the case and the evidence that was adduced does not prompt this Court to release the applicant on bail by suspending the sentence. At the most as laid down in *Kiran Kumar's case (Supra)* the appeal can be expedited and even the paper book is ready. Accordingly the application stands rejected and appeal stands expedited.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-