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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4075 OF 2019
IN
CRIMINAL APPEAL NO.914 OF 2020

. Dilip s/o Sureksh Deokare = APPLICANT

VERSUS

. The State of Maharashtra = RESPONDENT/S

Mr. Ganesh A.Gadhe, Advocate for Applicant;
Mrs. VS Choudhari, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 16th December, 2020.

PER COURT:-

1. Heard learned Advocate and learned APP appearing for respective parties.

2. The applicant, by this Criminal Application, pray for suspension of substantive sentence and releasing him on bail during pendency and final hearing of the Criminal Appeal.

3. The applicant is the original accused in Sessions Case No.2/2014 before the Additional Sessions Judge, at Biloli. The applicant has been convicted for the offence punishable under Section 376 of IPC and he is sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.2,000/-, in default, R.I. for fifteen days.

4. It is vehemently submitted on behalf of the applicant that the conviction is based upon

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presumptions, surmises and conjectures. The learned Judge did not consider evidence on record in its proper perspective. The conviction is based on testimony of the victim girl and the learned Judge has ignored the admissions given by the victim in her cross-examination, wherein she admitted that the amount demanded was not paid by the accused. She did not sustain the injury on her writ as she deposed that her bangles were broken. The prosecution case does not support by PW 6 – Shaikh Ahmed who was natural witness to the spot of occurrence. The finding arrived by the learned Judge that the prosecution case is supported by the medical reports is perverse. The chemical analysis reports also do not indicate that semen of the accused is found on the cloths of the victim. There is no supporting medical evidence to suggest that due to sexual assault, the victim sustained the injury or actual sexual assault taken place. The alleged incident has not taken place. The discrepancies in the testimonies erode credibility of the witness when they materially affect the trial. The victim and the eye witness make different version which they fatally impair the prosecution case. Suggestions were given that efforts were taken to settle the matter at village level and it is alleged that the amount that was demanded was not paid by the accused and, therefore, the FIR has been lodged. The learned Judge erred in holding the applicant guilty of the offence, in question, on the basis of assumption and presumption and the prosecution failed to bring the guilt of the accused at home. False implication of the applicants is apparent. The applicant was on bail for some time during trial. The applicant is young boy aged 23 and if he is not enlarged on bail, his life would be badly affected.

The applicant has challenged the judgment and order of conviction passed by the learned Sessions Judge by way of the appeal *inter alia* on numerous grounds as set out in the appeal itself and the applicant is having every hope of success therein. Consequently, the applicant prays for enlarging him on bail by suspending the substantive sentence and he would abide by any terms.

5. Per contra, learned APP strongly opposed the application and supported the reasons given by the learned Sessions Judge while convicting and imposing the sentence against the applicant and submitted that the impugned judgment requires no interference and, therefore, the application lacks merit, it deserves to be dismissed and it be dismissed accordingly.

6. At the outset, it is necessary to mention that the accused-appellant has been convicted for a heinous crime of committing a rape on a married woman having two sons and a daughter and she has specifically named the accused in connection with the alleged crime. She has immediately lodged the report after the occurrence. The alleged incident is stated to have occurred on 19.3.2013 and she was examined on the next day i.e. on 20.3.2013. Though she has admitted the suggestions put to her, as aforesaid, she might not have understood them properly and those suggestions appear to be against the record. The accused had not been enlarged on bail during the pendency of the trial and was in jail throughout the trial and, therefore, at this stage, to allow him to be on bail and suspend the sentence, in case of heinous offence of rape, would have adverse impact on the society, particularly when he has been held guilty by conducting a full-fledged

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trial. Having a glance to the available materials on record i.e. copy of the judgment, testimonies of the prosecution witnesses, Doctor's evidence and the statement of the victim, I find that the applicant does not deserve to be released on bail and suspend the sentence.

7. In the result, no case is made out to suspend the substantive sentence and releasing the applicant on bail, the application deserves to be dismissed and it is accordingly dismissed.

8. Taking into consideration the gravity of the offence, for which the appellant has been convicted, in the given facts and circumstances, hearing of the appeal can be expedited by the Court. Accordingly, the appeal is expedited.

(SMT. VIBHA KANKANWADI, J.)

BDV