

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1412 OF 2020

IN

CRIMINAL APPEAL (ST.) NO. 5360 OF 2020

Kiran Masa Bhosale

...Applicant/
Appellant

Vs.

State of Maharashtra and Anr.

... Respondents.

Mr. Sujeet Bugade for the Applicant/Appellant.

Mr. S. S. Hulke, A.P.P. for Respondent No.1-State.

CORAM : A.S. GADKARI, J.

DATE : 21st December 2020.

PC. :

This is an application for suspension of sentence and releasing the applicant on bail.

2. Heard Mr. Bugade, learned counsel for the applicant and Mr. Hulke, learned A.P.P. for the respondent-State.

3. The prosecutrix was aged about 15 years on the date of commission of alleged offence i.e. on 16th July 2017 and with a view to protect her identity and in consonance with the provisions of Section 228(A) of the IPC and Section 33(7) of the Protection of Children from

Sexual Offences Act, 2012, the names of material witnesses and detailed narration of facts mentioned in the evidence of the prosecutrix and relevant witnesses is hereby avoided.

The alleged offence committed on 16th July 2017 between 4.00 to 4.30 p.m.. After the alleged sexual assault by the applicant, the prosecutrix narrated the said fact to her mother immediately, on the same day, after she returned home at about 7.30 p.m.. As the applicant was the cousin brother of the father of the prosecutrix, the family of prosecutrix initially decided to keep quite. However, after discussing the matter with the other family members, the mother of the prosecutrix (PW-1) has lodged the present crime on 1st August 2017.

4. Perusal of evidence of prosecutrix (PW-2) clearly indicates that, the applicant was the sole perpetrator of the present crime. Prosecutrix has in detail narrated the ordeal faced by her at the hands of the applicant. The statement of the prosecutrix recorded under Section 164 of Cr.P.C. is in consonance with her testimony before the trial court.

5. Learned counsel for the applicant submitted that, there is considerable delay in lodging the crime and therefore the version of the prosecutrix and/or her mother (PW-1) creates shadow of doubt on the version of the prosecution case.

It is to be noted here that, the Hon'ble Supreme Court in the case of *Bharwada B. Hirjibhai Vs. State of Gujrat*, reported in *AIR 1983 SC 753*, has held that a girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. Why should evidence of the girl or a woman who complaints of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspension? To do so is to justify the charge of male chauvinism in a male dominated society. At this stage a further useful reference can be made to two decisions of the Hon'ble Supreme Court in the case of (i) *State of Himachal Pradesh Vs. Shree Kant Shekari*, reported in *AIR 2004 SC 4404* and (ii) *Aman Kumar & Ors. Vs. State of Haryana*, reported in *AIR 2004 SC 1497*. The Hon'ble Supreme Court has held that, the prosecutrix is not an accomplice in the crime. Mere delay in lodging the FIR does not render prosecution version brittle. It is held that, the evidence of prosecutrix stands at higher pedestal than an injured witness and it needs no corroboration.

Thus, it is clear that, the prosecutrix is not accomplice in crime of sexual assault and her testimony stands on higher pedestal than an ordinary witness.

6. Perusal of evidence on record *prima-facie* indicates that, the prosecution has succeeded to substantiate the charges levelled against the applicant. I find no merits in the Application.

Application is accordingly rejected.

(A.S. GADKARI, J.)