

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.347 OF 2019

IN

CRIMINAL APPEAL NO.380 OF 2019

Gulab Lalma Pathan ... **Applicant**

Versus

The State of Maharashtra & Anr. ... Respondents

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Mr.Uday P. Warunjikar, Advocate for the Applicant.

Mr.A.R.Kapadnis, the Additional Public Prosecutor for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 11th MARCH 2020.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/convicted accused on bail during pendency of appeal filed by him. He is convicted of the offences punishable under Sections 376 and 452 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and three years respectively on both counts. The substantive sentences are directed run concurrently by the learned trial Court.

2 Heard the learned Counsel appearing for the applicant/accused. He drew my attention to evidence of alleged victim of the crime in question and argued that cross-examination of the victim goes to show that she was resident of slum which was a deeply populous area. It is further argued that theory of consent was propounded and it is brought on record that during the entire incident the victim has not raised any hue and cry. The learned Counsel appearing for the applicant/accused also argued that subsequently brothers of the alleged victim had beaten the applicant/accused black and blue which required the applicant/accused to hospitalize for a period of five days. With this, it is argued that the applicant/convicted accused needs to be released on bail.

3 The learned Additional Public Prosecutor opposed the application by pointing out statement of victim and argued that there is no reason to disbelieve the version of the victim of the crime in question in respect of the incident in question and considering the nature of offence, the applicant does not deserve to be released on bail.

4 I have considered the submissions so advanced and also perused the impugned Judgment and Order of conviction and resultant sentence as well as deposition of witnesses examined by the prosecution including the evidence of the alleged victim of the crime in question.

5 The prosecutrix, at the time of the incident in question was an adult grown up female. Her evidence shows that her house was one room house admeasuring 8 feet x 10 feet. Her cross-examination reveals that she was tenant of Mrs.Pathan and was residing with her mother and brothers. Mrs.Pathan also used to reside in the neighbourhood of the prosecutrix. Room of the prosecutrix was adjacent to the road and, there used to be traffic on that road. Her room was surrounded by rooms made up of tin sheets on all three sides. On this backdrop, the fully grown adult prosecutrix admitted in her cross-examination that she never shouted when the applicant/accused entered in her house and latched the door from inside. She further admitted that she never shouted when the applicant/accused caught hold of her and kissed

her. Her cross-examination further revealed that even after denuding her by the applicant/accused, she had not chosen to make any hue and cry. On this backdrop, it is further admitted by the prosecutrix that after the incident, her brothers had beaten the applicant/accused and the applicant/accused was hospitalized for five days. She lodged the FIR after the applicant/accused was beaten by her brothers. *Prima facie*, all these material elicited in cross-examination of the prosecutrix do indicate consent of the prosecutrix.

6 When the victim was medically examined by Dr.Pritam Tambekar, she had narrated history of an attempt. No injuries were found on her person during medical examination by P.W.No.4 Dr.Pritam Tambekar. In the light of this position of evidence coupled with the fact that the applicant/accused was on bail at the time of the trial, he deserves to be released on bail during pendency of the appeal as hearing of the appeal may take takes its own time. Hence, the Order :

ORDER

- (i) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail on his executing P.R.Bond of Rs.15,000/- and on furnishing surety in the like amount.
- (ii) As a condition of this Order, the applicant/accused should not contact the prosecutrix or her relatives in any manner and he should not repeat the commission of similar offence in future.
- (iii) The application is disposed of accordingly.

(A.M.BADAR, J.)

Raju D.
Gaikwad

Digitally signed
by Raju D.
Gaikwad
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