

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL BAIL APPLICATION NO.1052 OF 2019
IN
CRIMINAL APPEAL NO.1159 OF 2019**

Kamal Kumar Mohanlal Motwani	..Applicant
Vs.	
The State of Maharashtra	..Respondent

.....

Mr. Prashant Pandey a/w. Bilal Siddique, Advocate for Applicant.
Ms. S. V. Sonawane, APP for Respondent/State.

CORAM : C. V. BHADANG, J.

DATE: 11th AUGUST, 2020

P.C. :

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

2. The applicant was prosecuted for the offence punishable under Section 366(A), 365 and 376 of the IPC and Section 4 of the Protection of Children from the Sexual Offences Act, 2012 (POCSO Act).

3. According to the prosecution, the prosecutrix (then aged about 17 years and 4 months) who is a resident of Telengana, had a quarrel with her father in the morning of 20/11/2015. The prosecutrix out of annoyance left the house saying that she is going to her college and instead boarded a train to Mumbai. The prosecutrix met the applicant

in the train and it is alleged that the applicant assured the prosecutrix that he will arrange for a job for her in Mumbai. He also said that his sister is staying in Mumbai and she is issueless and that his sister would adopt her. On such representation, the applicant and the prosecutrix came and alighted at Pune where they waited in a waiting room for about two hours and thereafter they boarded a train to Mumbai. According to the prosecution, both of them alighted at Ulhasnagar where the applicant took her in one Dharamshala and there the applicant is alleged to have consumed liquor and had sexual intercourse with the prosecutrix in the night. The following morning the applicant took the prosecutrix to Malad to the house of one Nirmala Pathak who the applicant claimed to be his sister. However, during the course of investigation it transpired that Nirmala was not sister of the applicant. She was sister of the employer of the applicant. Be that as it may, it was Nirmala who took the applicant to the police whereupon the prosecutrix narrated the incident eventually leading to the prosecution of the applicant as aforesaid.

4. The learned Sessions Judge while acquitting the applicant from the offence punishable under Section 365 of IPC, has convicted the applicant for the offence punishable under Section 366(A) and 376 of IPC r/w. Section 4 of the POCSO Act. The applicant has been sentenced to suffer R.I. for 10 years and to pay fine of Rs.5,000/- and in default, to suffer S.I. for six months on either counts.

5. I have heard the learned counsel for the applicant and the learned APP.

6. Prima facie, it appears that the applicant has served more than half of the sentence awarded. Further having regard to the age of the victim who had attained the age of consent and the circumstances in which the incident is alleged to have taken place, I find that the sentence can be suspended subject to conditions.

7. The learned APP pointed out that the applicant is a resident of Uttar Pradesh and therefore, appropriate conditions may be imposed in order to ensure the presence of the applicant in the appeal. The learned counsel for the applicant submitted that the applicant is a permanent resident of Agra (Uttar Pradesh). He submitted that the applicant has a Aadhar Card and Election Card in support of his residential address which the applicant would produce before the learned Sessions Judge.

8. Needless to mention that the observations made herein are only for the limited purpose of deciding the application for suspension of sentence.

ORDER

1. The substantive sentence of imprisonment awarded to the applicant is hereby suspended subject to the applicant executing a PR. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount and on payment of fine if not already paid.

2. The applicant is permitted to deposit provisional cash surety of Rs.25,000/- for a period of eight weeks after which the applicant shall furnish the P.R./S.B. as aforesaid.

3. The applicant shall intimate his permanent / native address in Uttar Pradesh alongwith proof to the satisfaction of the learned Sessions Judge.

4. The applicant shall undertake to remain present before this Court as and when directed.

5. The application is disposed of in the aforesaid terms.

C.V. BHADANG, J.