

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1233 OF 2019

IN

CRIMINAL APPEAL NO.1005 OF 2019

DATTA KISAN BARDE

LALITA ANIL BHANDALKAR

... APPLICANTS.

VERSUS

**THE STATE OF MAHARASHTRA
AND ANOTHER**

... RESPONDENTS.

Mr.Vijay Killedar, Advocate for the applicants.

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

CORAM : A. M. BADAR, J.

DATE : 12TH MARCH 2020.

P.C.:

1. By this application, the applicants/convicted accused are seeking their released on bail during pendency of appeal filed by them.

2. Heard learned counsel for the applicants/convicted accused. He drew my attention to 3 letters which were marked as Exhibit Nos. 30, 31 and 32 during the course of recording of evidence of the victim female child. On the basis of these letters, it is argued that the victim female child was having love affair with the applicant/accused no.1. It is further urged that, there is no evidence against applicant no.2/accused no.2.

3. Learned Additional Public Prosecutor opposed the application by contending that the evidence of the victim female child is corroborated by the evidence of the Medical Officer.

4. I have considered the submissions so advanced and also perused the material made available.

5. Applicants/convicted accused are under going jail

sentence. Applicant no.1 was found guilty for the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act and u/s 376(1) of the Indian Penal Code as well as u/s 506(2) thereof. He is sentenced to suffer rigorous sentence for 7 years apart from imposition of fine and default sentence. Applicant no.2 was found guilty of the offences punishable u/s 109 r/w 376 of the Indian Penal Code and she is sentenced to suffer rigorous imprisonment for 7 years apart from imposition of fine and default sentence.

6. Learned trial court after scrutiny of the evidence led before it by the prosecution, came to the conclusion that the victim/PW 1 was a child at the time of the incident in question. Therefore, evenif, it is assumed that she was the consenting party that is of no avail to the applicant no.1 /accused no.1. Evidence of the victim female child that she was subjected to penetrative sexual assault by the applicant no.1 is duly corroborated by the evidence of PW 5-

Dr.P.C.Parhar who had examined her after the incident. Therefore, no case for grant of bail is made out so far as accused no.1 is concerned.

7. So far as applicant no.2/accused no.2 Lalita Anil Bhandalkar is concerned, it is stated by the victim female child that, she had told her to allow applicant/accused no.1 to do whatever he likes. She further stated that she refused to accept the suggestion of applicant/accused no.2. Prima facie this version of the victim female child may not amount to abatement as no case of intentional aid is reflected from the evidence of the victim female child, Therefore, the applicant/accused no.2 being a lady is entitled to be released on bail. Therefore, the order.

ORDER

- i) Application is partly allowed.
- ii) Substantive sentence of imprisonment imposed on applicant no.2/accused no.2

namely Lalita Anil Bhandalkar is suspended and she is directed to be released on bail on her executing P.R.Bond of Rs.15,000/- and on furnishing surety in the like amount.

iii) As a condition of this order, she should not contact the victim female child or the witnesses examined by the prosecution in any manner.

iv) Application for suspension of sentence and for bail by applicant/accused no.1 Datta Kisan Barde is rejected.

v) Hearing of appeal is expedited.

(A. M. BADAR, J.)