

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 328 OF 2020
IN
CRIMINAL APPEAL NO. 659 OF 2019

Rameshkumar Rajaram Sharma. ..Applicant.
Versus
State of Maharashtra. ..Respondent.

Mr. Manoj Kumar Tiwari i/b Mr.Jitendra B. Mishra for the Applicant.
Mrs. M. M. Deshmukh, APP for the Respondent-State.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.
Date : **March 11, 2021.**

P. C. :

1. Heard learned counsel for the Applicant and learned APP for the Respondent-State. By present application, the Applicant has prayed for his enlargement on bail pending appeal. Needless to state that the Applicant had preferred an appeal bearing Criminal Appeal No. 659 of 2019, challenging the judgment and order passed by the learned Additional Sessions Judged-1, Vasai in POCSO Special Case No.49 of 2015 whereby the Applicant appellant was convicted and awarded sentence for commission of offence punishable under sections. 376(2) read with section 376(3) of the Indian Penal Code, 1860.

2. Though the Applicant faced trial and was charged for

committing the offence punishable under sections 4 and 6 and section 12 of the POCSO Act was attracted, the learned Trial Judge recorded the conviction and awarded sentence by assigning reasons in paragraph 76 of the judgment.

3. Learned counsel for the Applicant vehemently submitted before this Court that learned trial Judge has failed to appreciate the evidence in its proper perspective and was swayed away by the selective factors in the case of prosecution. Learned counsel by inviting our attention to the evidence, more particularly the testimony of victim, submitted that there are not only many inherent flaws in the version of victim, but even the certain circumstances put forth by prosecution only raise suspicion over the case of prosecution. The learned counsel then submitted that it is the settled position of law that suspicion, however grave it may be, cannot take place of proof.

4. The learned counsel then by inviting our attention to some of the material facts emerged from the version of PW-1, submitted that the case put forth by prosecution through PW-1 is not probable one and the same would not inspire confidence of

the Court to accept the version as trustworthy and reliable.

5. The learned counsel then submitted that insofar as the first incident of alleged ravishment of victim is concerned, it is the case of prosecution itself that when the victim was allegedly subjected to ravishment in kitchen, in room adjacent to the kitchen, two persons were sitting. It is also not case of the prosecution that these rooms were separated by way of a permanent structure like wall.

6. It is then submitted by the learned counsel that the prosecution case reflected in the examination-in-chief of PW1, thus clearly shows that when there was ample opportunity to the victim to raise the shout against the alleged act of appellant-accused, she failed to raise the protest by shouts, leave aside any physical resistance. It is also submission of the learned counsel that the prosecution evidence is unable to establish the age of victim conclusively.

7. Learned counsel then submitted that the prosecution case that even though the victim was subjected to ravishment by

the accused, after some days she herself visited the house of appellant along with one of her friends and she stayed in the house of accused after her friend had left the house of accused, meaning thereby the visit of victim to the house of accused was at her own will and wish. Learned counsel submitted that it is difficult to accept this theory of prosecution in the backdrop of allegation that soon before the second incident, the victim was subjected to ravishment and the natural conduct of victim could have been of avoiding the accused and not visiting the residence of accused within a short period.

8. Learned counsel also raised various other grounds to which we may not refer in detail at this stage, as those are on assessment of other material. Learned counsel then submitted that the appellant was on bail during trial and he had not misused the liberty granted to him nor he committed breach of any condition imposed while he was enlarged on bail during the trial. Learned counsel then submitted that the appellant is the sole bread winner in the family and he was doing a labour job in a private company and was earning Rs.15,000/- per month. Learned counsel then submitted that considering the pendency of

appeals in this Court, it would take long time the appeal filed by the Applicant comes up for hearing finally and for such a long period if the appellant is kept behind bars, the sufferer would not be appellant but his family.

9. Learned appellant opposed the application by submitting before this Court that there was sufficient material before the Court that the prosecutrix was a minor girl. It is also submitted by the learned APP that the scientific evidence brought on record indicates that the appellant is biological father of the fetus carried by victim.

10. Though the learned APP vehemently opposed application, we find considerable merits in the submission of learned counsel for the Applicant - appellant. It is not disputed even by the learned APP that the Applicant, while enlarged on bail during trial, he had not misused his liberty or committed any breach of any condition imposed upon him. The fact that the Applicant - appellant was working as a labourer in private company and was earning an amount of Rs.15,000/- per month and the Applicant is the sole bread winner is reflected in

paragraph 77 of the judgment.

11. Considering the above referred facts, we are of the opinion that the learned counsel has made out a case for grant of bail to the applicant. Accordingly, application is allowed. The Applicant be enlarged on bail on the same terms and conditions as they were imposed while he was enlarged on bail by the trial Court. The Applicant must provide a local surety. The Applicant is also directed to submit the details of his residential address in Mumbai and the residential address in Uttar Pradesh along with names and addresses of two of his nearest relatives. The Applicant shall also provide the cell-phone numbers of those two relatives. The Applicant shall attend Tulinj Police Station on every 15th and 30th day of the month and maintain a diary of his attendance duly countersigned by the police inspector attached to the said Police Station till the hearing and final disposal of appeal by this Court. In case of any breach of condition, the respondent-State is at liberty to move this Court for appropriate orders. The application is accordingly disposed of.

[S. M. Modak, J.]

[Prasanna B. Varale, J.]