

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

**INTERIM APPLICATION NO. 987 OF 2020
IN
APPEAL NO. 90 OF 2021**

Ravindra @ Aditya Suresh Lokare ..Appellant/Applicant

v/s.

The State of Maharashtra & Anr. ..Respondent/s

Mr. Harshad Bhadbade for the Applicant.

Mr. N.B.Patil, APP for the Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 23rd NOVEMBER, 2021.

P.C.

1. This is an application under Section 389 of Cr.P.C. for suspension of sentence imposed by judgment dated 12.06.2018 in Sessions Case No. 547 of 2012. By the impugned judgment, the learned Addl. Sessions Judge, Thane has held the Applicant (Accused No.2) guilty of offence under Section 376 IPC and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.10,000/- i.d. to undergo simple imprisonment for one year.

2. Heard the learned Counsel for the applicant and the learned APP for the State. Perused the record and considered the submissions advanced by the learned Counsels for the respective parties.

3. The Applicant and the co-accused Devendra Kolhe were charged for the offences under Section 363, 376 of Indian Penal Code. It was the case of the prosecution that on 17.06.2012 the co-accused Devendra Kolhe had kidnapped the victim who was 15 years of age from the lawful guardianship. It is alleged that on the same day at about 12.30 p.m. he committed rape on the minor victim and left her on her own and asked her to go wherever she likes. The victim thereafter went to Kalwa Railway Station. She claims that one man asked her as to why she was crying and he took her to his hut at Kalwa. The victim has stated that the said man also raped her several times.

4. The victim (PW1) had not named the second person who had raped her at Kalwa. The testimony of the victim does not indicate that the Applicant herein was the person who had raped

her. There is no prima facie material to indicate that she had identified him either in the test identification parade or before the Court. Thus, there is no prima facie material to establish the identity of the Applicant in commission of the crime. It is also to be noted that the Applicant has been sentenced to undergo imprisonment for 7 years. It is on record that he was in custody for 3 years and 5 months as under trial prisoner and has thus almost served half of the sentence.

5. Considering the above facts and circumstances, particularly the nature of evidence against this Applicant, in my considered view, this is a fit case for suspension of substantive sentence. Hence the application is allowed on the following terms and conditions:-

- i) Substantive sentence imposed against the Applicant by judgment dated 12.06.2018 in Sessions Case No. 547 of 2012 is suspended pending hearing of the appeal;
- ii) The Applicant be released on cash bail in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) for a period of eight weeks;

- iii) The Applicant shall within the said period of eight weeks furnish P.R.Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one or two solvent sureties in the like amount, to the satisfaction of the Trial Court;
- iv) The applicant shall report to the Trial Court once in two months on the day/ date specified by the Trial Court, till the Appeal is finally disposed on;
- v) The applicant shall keep the trial Court informed of his current address and mobile/contact numbers and/or change of residence or mobile details, if any, from time to time.
- vi) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file application seeking cancellation of bail.

. Application is accordingly disposed of.

PRASANNA P
SALGAONKAR
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(ANUJA PRABHUDESSAI, J.)