

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

***CRIMINAL APPLICATION NO.823 OF 2019
IN
CRIMINAL APPEAL NO.599 OF 2019***

Dilawar Hafiz Khan	...Applicant
Versus	
The State of Maharashtra & Anr.	...Respondents

Mr. Nitin Sejpai for the Applicant

Mr. S. V. Gavand, A.P.P for the Respondent No.1– State

Ms. Devyani Hemant Kulkarni, Appointed Advocate for the Respondent No.2

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 1st APRIL 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the appeal.

3 The applicant along with other accused, vide judgment and order dated 27th February 2019, passed by learned Additional Sessions Judge, Pune, in Sessions Case No.609 of 2014, has been convicted and sentenced as under:

- for the offence punishable under Section 366 of the Indian Penal Code to suffer rigorous imprisonment for 5 years and to pay fine of Rs.5,000/- each, in default of payment of fine, to undergo simple imprisonment for 6 months;
- for the offence punishable under Section 376(2)(l) of the Indian Penal Code to suffer rigorous imprisonment for 10 years and to pay fine of Rs.10,000/- each, in default of payment of fine, to undergo simple imprisonment for one year;
- for the offence punishable under Section 376D of the Indian Penal Code to suffer rigorous imprisonment for 20 years and to pay fine of Rs.10,000/- each, in default of payment of fine, to undergo simple imprisonment for 1 year;

All the aforesaid sentences were directed to run concurrently.

4 Learned counsel for the applicant submits that the evidence adduced by the prosecution is not sufficient to convict the applicant. He submits that a perusal of the evidence of the prosecutrix would show that she has disclosed about misdeeds by accused and has not spelt out the misdeeds. He submits that even the identification parade is flawed, inasmuch as, the prosecutrix, in her cross-examination has admitted that the accused were shown to her in the police station before identification and that the police had told her to identify the accused. He submits that there is no corroborative evidence to the said evidence of the prosecutrix. He submits that there is no DNA report showing applicant's complicity, as is available as against co-accused Nos. 1 and 3. He further submits that the applicant is in custody for more than 7 years and that on merits, the applicant is sanguine of succeeding in the appeal. He submits that the applicant has no antecedents.

5 Neither the learned A.P.P nor the learned counsel for the respondent No. 2 are able to show any corroboration to the evidence of the prosecutrix, more particularly, since the prosecutrix was intellectually challenged and having regard to the nature of evidence that has come on record.

6 Perused the papers. It appears that the prosecutrix, after a quarrel with her mother and brother, and assault by her brother, left her house and went to Pune Railway Station. She has stated that one boy (accused No. 1) and she boarded the train, went to a lodge, where the said accused committed misdeeds with her; that on the next date, he accompanied her to one field; that the said accused i.e. accused No. 1 made a phone call and called other boys i.e. accused Nos. 2 to 4 and that all the said accused also committed misdeeds with her. All the accused are alleged to have assaulted her and left her alone at the field. She has further stated that after the incident, she returned home, after which, she was taken to the police chowky, where her complaint was lodged.

7 As far as applicant is concerned, there is no corroborative evidence to the prosecutrix's evidence, as is available against accused Nos. 1 and 3 i.e. the DNA report. The applicant has no antecedents and is in custody for more than 7 years.

8 Considering the aforesaid, learned counsel for the applicant has made out a case for suspension of applicant's sentence and enlargement on bail.

9 Accordingly, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his appeal, on the following terms and conditions :

ORDER

- i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.30,000/- with one or two local solvent sureties in the like amount;
- ii) The applicant shall not contact or attempt to influence the prosecutrix or tamper with the evidence, witnesses or any person concerned with the case;
- iii) The applicant shall report to the trial Court, once in two months on the day/date specified by the trial Court, till his appeal is finally disposed of;
- iv) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

v) 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 an application seeking cancellation of bail.

9 The Application is accordingly disposed of.

10 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.