

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

**CRIMINAL APPEAL NO.542 OF 2021
WITH
INTERIM APPLICATION NO.1974 OF 2021
IN
CRIMINAL APPEAL NO.542 OF 2021**

Shivshankar @Bhim Mangaru Gupta ...Applicant

Versus

The State of Maharashtra and Anr. ...Respondents

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Mr. A.R. Shukla i/b. M/s. A.R. Shukla and Associates for the Applicant.

Mr. P.H. Gaikwad, APP for Respondent No.1-State.

Ms Grishma Lad for Respondent No.2 (appointed)

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 25th OCTOBER, 2021.

P.C.:-

CRIMINAL APPEAL NO.542 OF 2021:-

Heard. Admit.

2. Mr. P.H. Gaikwad, learned APP waives service on behalf of Respondent No.1-State. Ms Grishma Lad, learned counsel, who is on legal aid panel, is appointed to represent Respondent No.2. Call for the record and proceedings. Paper book to be filed within a period of six months.

INTERIM APPLICATION NO.1974 OF 2021:-

3. This is an application under Section 389 of the Code of Criminal Procedure, 1973 for suspension of sentence imposed by judgment dated 17/03/2021 passed by learned Additional Sessions Judge, City Civil and Sessions Court, Greater Bombay in Sessions Case No.499 of 2016 and to enlarge the Applicant on bail.

4. By the impugned judgment, the learned Judge has held the Applicant guilty of offences punishable under Sections 366 and 376(2)(g) r/w 34 of the IPC and sentenced to undergo rigorous imprisonment for ten years and fine of Rs.5,000/- i/d to suffer rigorous imprisonment for three months for offence under Section 366 of the IPC and rigorous imprisonment for 15 years with fine of Rs.10,000/- i/d to suffer further rigorous imprisonment for six months for offence under Section 376(2)(g) of the IPC.

5. Heard Mr. A.R. Shukla, learned counsel for the Applicant, Mr. P.H. Gaikwad, learned APP for Respondent No.1-State and Ms Grishma Lad, learned counsel for Respondent No.2. Perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. The case of the prosecution in brief is that the Applicant had

forcible sexual intercourse with the prosecutrix against her wish, who at the relevant time was 16 years, 10 months of age. The evidence of prosecutrix reveals that on 23/12/2009 she had received a phone call from co-accused Munna. He called her at Bhandup station. She has stated that she refused to go. On the same date at about 12.30 p.m. she met the co-accused at Bhandup station. Said Munna took her to a room wherein the present Applicant was residing. She has stated that the co-accused as well as the Applicant had committed rape on her.

7. The evidence on record reveals that the victim was medically examined by PW7-Dr. Shivaji Daund. The evidence of this witness vis-a-vis the medical report prima facie reveals that the victim was subjected to forcible sexual intercourse. The Medical Officer had also collected vaginal smear and swab and taken blood sample of the victim and same was sent for clinical analysis. FSL report at Exhibit -19 reveals that there were blood stains on hymen origin and smear stains on Salwar, nicker and Kurta of the victim. The medical evidence therefore prima facie corroborates the evidence of the prosecutrix.

8. The material on record further indicates that the Applicant had absconded after commission of the offence. Hence, the trial was separated. The Applicant was arrested on 03/03/2016 at Orissa.

Considering the above conduct, possibility of the Applicant absconding cannot be ruled out .

9. Considering the above facts and circumstances, in my considered view this is not a fit case for suspension of sentence. Hence, the Application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)