

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

***CRIMINAL APPLICATION NO. 1206 OF 2019
(FOR BAIL)***

***IN
CRIMINAL APPEAL NO. 1171 OF 2019***

Akshay Haridas Bobade	...Applicant
Versus	
The State of Maharashtra & Anr.	...Respondents

Mr. Ashok P. Mundargi, Sr. Advocate with Mr. Priyal G. Sarda for the Applicant

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

Ms. Savita Yadav, appointed Advocate for the Respondent No. 2

CORAM : REVATI MOHITE DERE, J.
(THROUGH VIDEO-CONFERENCING)
MONDAY, 3rd MAY 2021

P.C. :

1 Heard learned counsel for the parties.

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

3 The applicant, vide judgment and order dated 17th April 2019 passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No. 93/2017, has been convicted and sentenced as under:

- for the offence punishable under Section 305 of the Indian Penal Code, to suffer rigorous imprisonment for 7 years and to pay fine of Rs.5,000/-, in default of payment of fine, to undergo imprisonment for 1 month;
- for the offence punishable under Section 376(2)(i) of the Indian Penal Code, to suffer rigorous imprisonment for 10 years and to pay fine of Rs.5,000/-, in default of payment of fine, to undergo imprisonment for 1 month.

Both the sentences were directed to run concurrently.

Out of the said fine amount, an amount of Rs. 5,000/- was to be paid to the parents of the victim, as compensation under Section 357(1) of Criminal Procedure Code.

No separate sentence was imposed on the applicant under Section 4 of the Protection of Children from Sexual Offences Act, in view of Section 42 of the said Act.

4 Learned senior counsel for the applicant submits that the prosecution has not proved its case as against the applicant. He submits that all the witnesses have turned hostile and that despite the same, the learned Judge convicted the applicant as stated aforesaid. He submits that the suicide note does not mention the name of the applicant or that she was sexually assaulted by the applicant. He submits that infact, the suicide note has also not been proved by the prosecution. He submits that the applicant is in custody since 16th January 2017 i.e. for more than 4 years.

5 Having perused the evidence, it appears that all the witnesses in the said case have turned hostile. The report of the handwriting expert shows that no definitive opinion could be given, whether the suicide note was written by the deceased, for want of sufficient identifying characteristics. The suicide note does not mention about any sexual assault by the applicant. The applicant is in custody since 16th January 2017, for more than 4 years.

6 Considering the aforesaid, the applicant deserves to be enlarged on bail, pending the hearing and final disposal of his appeal, on the following terms and conditions :

ORDER

- (i) The applicant be released on cash bail in the sum of Rs. 20,000/-, for a period of 8 weeks;
- (ii) The applicant shall within the said period of 8 weeks, furnish P.R. Bond in the sum of Rs. 20,000/- with one or two sureties in the like amount;
- (iii) The applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till his appeal is finally disposed of;
- (iv) The applicant shall not contact or threaten the victim, witnesses or any person concerned with the case;

(v) 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;

7 The application is allowed in the aforesaid terms and is disposed of accordingly.

8 The High Court Legal Services Committee to pay the fees as per Rules, to Ms. Savita Yadav, learned appointed Advocate who has espoused the cause of the respondent No. 2.

9 Copy of this order be forwarded to The High Court Legal Services Committee, Mumbai, for information and necessary action.

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

REVATI MOHITE DERE, J.