

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

**INTERIM APPLICATION NO. 1335 OF 2019
IN
CRIMINAL APPEAL NO. 310 OF 2019**

Manoj Suresh Jadhav Applicant
v/s.
The State of Maharashtra and anr. Respondents

Mr. Satyavrat Joshi i/b. Mr. Nitesh Mohite for the Applicant.
Mr. S.V. Gavand, APP for the State.
Dr. N.V.B. Pawaskar i/b. Mr. Vijaykumar B. Dighe for R.No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 13th JULY, 2021.

P. C. :-

. This is an Application under Section 389 of the Code of Cr.P.C. for suspension of substantive sentence imposed by judgment dated 10/01/2019 passed by learned Additional Sessions Judge, Pune in Special SC No.299/2016.

2. The Applicant and the other co-accused have been convicted for offences punishable under Section 376 r/w. 107 of Indian Penal Code (IPC) & 376 (D) & 506 (II) r/w. 34 of IPC & Section 12 of Protection of Children from Sexual Offences (POCSO) Act, 2012 and sentenced as

under :-

(i) for the offence punishable under Section 376 r/w. 107 of the IPC to suffer rigorous imprisonment for seven years and to pay fine of Rs.1,000/- in default to undergo simple imprisonment of one month.

(ii) for the offence punishable under Sections 376(D) r/w. 107 of the IPC to suffer rigorous imprisonment for twenty years and to pay fine of Rs.2,000/- in default to undergo simple imprisonment for two months.

(iii) for the offence punishable under Sections 506(II) r/w. 34 of the IPC to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- in default to undergo simple imprisonment for fifteen days.

(iv) for offence punishable under Section 11(i) and Section 12 of POCSO Act, 2012 to suffer rigorous imprisonment for two years and to pay a fine of Rs.500/- in default to undergo simple imprisonment for fifteen days.

(v) All the aforesaid substantive sentences were directed to run concurrently.

3. Mr. Satyavrat Joshi, learned counsel for the Applicant states that the victim had narrated the incident to her mother after considerable delay. Furthermore, she had not disclosed the incident of rape. Hence, the FIR lodged on 31/05/2016 was for offenses under Sections 506 r/w. 34 of IPC & Section 12 & 17 of POCSO Act. He submits that the allegations of rape were made as afterthought in view of strained relationship with accused no.2, the maternal aunt of the victim who had lodged complaint for offence punishable under Section 498A against her husband i.e., the brother of the complainant and his family members. He submits that there are several omissions, contradictions and discrepancies in the evidence of the prosecutrix which have been detailed in the order dated 04/12/2020 of this Court (Coram : Prakash D. Naik, J.) while allowing the Criminal Application No.441/2019 and enlarging the co-accused on bail. He submits that the other co-accused has also been released on bail by order dated 08/04/2021 of this Court (Coram : Revati Mohite Dere, J.) in Criminal Application No.470/2019. He therefore urges that the Applicant is entitled for bail on the ground of parity.

4. Mr. Gavand, learned APP and Mr. Pawaskar, learned counsel for Respondent No.2 have vehemently opposed the Application. They contend that the Applicant is the main accused involved in committing rape. They contend that the role attributed to the Applicant is not similar to that of the co-accused and hence, the Applicant is not entitled for bail on the ground of parity. They contend that the victim was a minor and the gravity of the offence would not justify grant of bail.

5. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

6. The victim had been to the house of her grand parents at Mundwa, Pune on 13/04/2016. She returned to Buldhana, her paternal home on 26/05/2016. She narrated to her mother (complainant) several incidents wherein she had seen her maternal aunt (accused no.2) having physical relationship with accused no.3. The victim had also informed that accused no.2 had threatened her and told her to keep physical relationship with accused no.1. Based on the said information, the mother of the victim lodged the FIR on

29/05/2016 based on which crime was registered against the Applicant and the other accused for offenses punishable under Sections 506 of IPC and Sections 12 & 17 of POCSO Act. The FIR does not make any reference to the incident of rape. The victim, whose statement was recorded on 01/06/2016 also did not attribute any such role to accused no.1. The allegations of rape were made for the first time in the supplementary statement recorded on 09/06/2016, though she and her mother were in constant touch with the police till 04/06/2016.

7. In the supplementary statement, it is alleged that on 14/05/2016, the accused no.2 who is the maternal aunt of the victim had taken her to the flat belonging to her grand father. The accused no.2 pushed her on the floor. Accused no.4 caught her legs, accused no.3 caught her hands while the Applicant (Accused No.1) had sexual relationship with her against her wish and without her consent. It is pertinent to note that the accused no.2 who was allegedly instrumental in taking the victim to the flat and was involved in catching her legs and one of the co-accused who had caught hold of her hands while the accused no.1 was committing rape, have been released on bail. This Court (Coram : Prakash D. Naik., J.) while enlarging the co-accused on bail has in detail considered the evidence of the prosecutrix and her

mother/complainant and has discussed the infirmities in their evidence. Though it is argued that the Applicant was the main accused who had committed rape, the conviction against the Applicant (Accused No.1) and the other co-accused is for committing offense under Section 376 r/w. 107 and 376(D) r/w. of the IPC. The Applicant is not convicted independently for an offense under Section 376 of IPC. The accused who had aided the Applicant have already been released on bail. Having regard to the material omissions, contradictions and discrepancies in the evidence, the Applicant is also entitled for bail. It is also to be noted that the Applicant was on bail during the pendency of the trial and he has not misused the liberty granted to him. Appeal has been admitted and considering the fact that final disposal of the Appeal is likely to take time, in my considered view, this is a fit case for suspension of sentence pending hearing of the Appeal and enlarge the Applicant on bail.

8. Hence, the Interim Application is allowed on following terms and conditions :-

(a) The Applicant is ordered to be released on bail on furnishing bail bonds of Rs.25,000/- (Rupees Twenty Five Thousand) with one or two

sureties in the like amount to the satisfaction of the Trial Court ;

(b) 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 of ;

(c) The Applicant shall not contact the victim, her family members, complainant, witnesses or any person concerned with the case ;

(d) 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 ;

(e) 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 Interim Application stands disposed of in above terms.