

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 1758 OF 2022
IN
CRIMINAL APPEAL NO. 403 OF 2022**

1. Amol Tarachand @ Khadwadya Pawar
2. Rajjak Chiwlya Kale
3. Sagar Potya @ Bandu Kale ..APPLICANTS

VERSUS

State of Maharashtra and Another ..RESPONDENTS

**WITH
CRIMINAL APPLICATION NO. 1759 OF 2022
IN
CRIMINAL APPEAL NO. 404 OF 2022**

Chakya @ Lankesh Chiwlya Kale ..APPLICANT

VERSUS

State of Maharashtra and Another ..RESPONDENTS

....
Mr. A.M. Gaikwad, Advocate for applicants
Mr. R.B. Bagul, A.P.P. for respondent no.1 – State
Mr. A.S. Riyaz, Advocate for respondent no.2
....

**CORAM : R.G. AVACHAT AND
R.M. JOSHI, JJ**

DATE : 19th OCTOBER, 2022

PER COURT :

1. Both these applications are being decided by this common order since they arise from the appeals preferred against one and the same order of conviction and sentence. The applicants hereby seek suspension of

substantive sentence of imprisonment passed by the learned Additional Sessions Judge, Shrigonda in Sessions Case No. 17 of 2020 vide judgment and order dated 12th April, 2022. The applicants have been convicted for the offences punishable under Sections 376D and 394 read with Section 34 of the Indian Penal Code (I.P.C.) and therefore, sentenced to suffer rigorous imprisonment for twenty years and ten years respectively. The substantive sentences are directed to run concurrently

2. Learned counsel for the applicants would submit that evidence of the prosecutrix (victim) is unreliable. He took us through her cross-examination to substantiate his claim. He would further submit that the medical evidence does not support the prosecution. The applicants were in jail pending trial. It will take time for the appeals to come up for hearing by its turn. The applicants are in the age group of 20-24 years. He, therefore, urged for grant of the applications.

3. Learned A.P.P. and learned counsel appointed to represent Respondent No.2 - victim would, on the other hand, submit its a serious offence. Four persons committed rape of the prosecutrix by turn. She was assaulted as well. The medical examination report indicates the victim to have suffered number of injuries. Both the learned counsel, therefore, urged for rejection of the applications.

4. Considered the submissions advanced. Perused the impugned judgment and order. Gone through the evidence relied on. True, the prosecutrix, in her examination-in-chief testified consistent with her case in the F.I.R. It is her case that on the fateful day she was on her way to Karjat as her husband was arrested. She was proceeding alone on foot. It was about 10:00 in the morning. The applicants and two others intercepted her way and forcibly took her to a Pomegranate orchard. All of them (including the applicants) committed rape of her. Her blouse was torn. Her breasts were injured. It is also her case that a knife was inflicted in her private part. She became unconscious. After having gained consciousness, she came to Ranmal Wasti in Belwandi Shivar. It was about 10:30 a.m. She was completely naked. She contacted her mother on cell phone. Mother came to the spot in an auto-rickshaw. Then she was taken to the hospital.

5. The cross-examination of prosecutrix indicates that she admitted that she had lodged F.I.R. against one Mithun Bandya Kale way back in 2014 alleging to have had committed rape of her. She further admits that she had lodged another report against one Nitin Sudrik alleging to have committed rape of her. It is informed that both of them have been acquitted. Learned counsel for the applicants would submit that he has certified copies of the concerned Court papers indicating the prosecutrix to have had lodged not less than five such complaints against various persons. He also brought to the

notice of this Court admission given by the prosecutrix that she had given consent for giving bail to some accused persons. True, she has offered some explanation in this regard. It is however, case of the applicants that the victim is in habit of lodging such complaints and extorting money for settlement of the matter. The applicants have every reason to contend so. There is also admission given by the prosecutrix to indicate that she was serving at Ruby Hospital, Pune. F.I.R. was lodged against her for having duped/cheated her colleague serving in the very hospital.

6. Medical examination report of the prosecutrix though suggests she had suffered some injuries, the opinion given by the medical officer is *“Possibility of sexual intercourse may or may not be happened. Cannot give opinion firmly.”*. As such, medical report does not support the prosecution. The applicants have placed on record chemical analysis report to counter the prosecution case. Admittedly, the victim was medically screened within hours of the alleged incident. She had not taken bath. Vaginal swab was obtained for chemical analysis. No semen was detected thereon. The report in that regard is nil.

7. In the aforesaid backdrop, in our opinion, the applicants appear to have a good case in appeals. We are, therefore, inclined to grant the applications as under :-

ORDER

- (i) Criminal applications are allowed in terms of prayer clause (A).
- (ii) Pending the appeals, the substantive sentences of imprisonment imposed by the trial Court are suspended. The applicants be released on bail on executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety in the like amount.
- (iii) Bail before the trial Court.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)

SSD