

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

**CRIMINAL APPLICATION NO. 2781 OF 2022
IN
CRIMINAL APPEAL NO.616 OF 2022**

**ABA RAGHO BHIL
VERSUS
THE STATE OF MAHARASHTRA**

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**Advocate for Appellant : Mr. Deshpande Chaitanya C
APP for Respondent State: Mr. S.P. Deshmukh**

**CORAM : SHRIKANT D. KULKARNI, J.
DATE : 30th AUGUST, 2022**

ORDER:

1. This is an application for suspension of sentence and bail moved by the original accused.
2. Heard Mr. Chaitnya Deshpande, the learned Advocate for appellant and Mr. S.P. Deshmukh, the learned APP for the State.
3. Mr. Deshpande, the learned counsel for the appellant submitted that the appellant came to be convicted for the offence punishable under section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years. The learned trial Judge has given the benefit of set off under section 428 of the Criminal procedure Code in respect of the period which the appellant /accused has undergone during pendency of the trial. He submitted that the appellant/accused is behind the bars since the date of arrest i.e. from 31.05.2017. He submitted that the appellant/accused has

completed sentence of five years three months out of the sentence of seven years rigorous imprisonment. He submitted that there are no chances to take up this appeal for final hearing in near future. As such, the appellant/accused may be enlarged on bail. He further invited my attention to the copies of deposition including the deposition of prosecutrix as well as observations made by the learned trial judge. He submitted that the Doctor who has examined the prosecutrix is not examined before the trial court. As such, the medical evidence is not before the trial court. The chemical analysis report in respect of vaginal swab, pubic hair, clothes, etc. is not supporting to the prosecution case. No semen was detected on the clothes so also on the pubic hairs. No blood was found on the clothes. No injuries on the back of the prosecutrix, though she was thrown away on the ground, according to the prosecution. He submitted that PW-2 Rupchand Patil is an interested witness and he is from the tribal community and, therefore, he is supporting to the testimony of the prosecutrix. He submitted that in view of lack of medical evidence and in view of negative chemical analysis report, the defence put forth by the accused is found to be probable. He urged to release the appellant on bail by suspending the sentence.

4. Mr. S.P. Deshmukh, the learned APP for the state, also took me through the relevant part of the depositions of prosecutrix- PW-1, Rupchand Patil- PW-2 and the Investigation Officer. He submitted that evidence of prosecutrix/victim is supported by PW-2 Rupchand Patil as well as panch witness. The broken bangles of the prosecutrix were recovered from the scene of offence under panchanama. He also invited my attention to the observation made by the trial court and submitted that the defence of consensual sex has been thrown away by the trial court by recording sufficient reasons. He submitted that in view of

heinous offence proved against the appellant/accused it is not a fit case to release him on bail though he has completed five years and three months of sentence in the jail. He, therefore, strongly opposes to allow this application.

5. I have considered the submissions of both the sides. I have also gone through the deposition of prosecutrix- PW-1, Rupchand Patil PW-2 and panch witness and Investigating officer. Further, I have gone through the relevant part of the impugned judgment wherein medical evidence and report of chemical analysis are discussed.

6. It appears from the record that the appellant/accused came to be arrested in connection with the present crime on 31st May 2017. He is behind the bars since the date of arrest. The learned trial judge was pleased to convict the appellant/accused vide judgment and order dated 04.08.2022 in Sessions Case No.84/2017 and maximum sentence awarded against the appellant/accused is rigorous imprisonment for seven years and fine of Rs, 1000/- which has been deposited with the trial court. The appellant/accused has been given benefit of set off under section 428 of the Cr.P.C. for the period for which he was in jail during the pendency of the trial. Having necessary calculation, it would be clear that the appellant/accused has completed five years and three months sentence in the jail, meaning thereby, he has completed 2/3rd portion of the sentence in the jail.

7. The question is, whether the circumstances require that the appellant/accused need to be kept behind bars till decision of the appeal ? It is an appeal of 2022. There are remote chances to take up this criminal appeal in near future for final disposal. This important aspect needs to be considered apart from other grounds raised by the learned counsel for the appellant regarding lack of medical evidence

and report of chemical analysis which are not supporting to the prosecution case. It may be not be proper to touch merits of the case. Sufficie to say, the appellant/accused has already undergone five years and three months sentence out of seven years awarded by the learned trial court. That sentence is awarded by the trial court as per sentence prevailing at that time. The sentence for the offence has been enhanced by way of amendment in the year 2018.

8. There are no extraordinary circumstances to keep the appellant behind bars during the appeal period in the above scenario but one aspect needs to be considered while releasing the appellant on bail by suspending the sentence. The appellant and the prosecutrix are from the same village. In order to safeguard the interest of the prosecutrix, it would be just and proper to ask the appellant/accused to stay away from the village till final decision of the appeal. If that condition is imposed it would meet the ends of justice.

9. Having regard to the above reasons and discussions, I proceed to pass the following order.

O R D E R

- (i) The execution of sentence imposed against appellant/accused in Sessions Case No. 84 of 2017 by the Additional Sessions Judge, Dhule, dated 04.08.2020 is hereby suspended till final decision of the appeal.
- (ii) The appellant shall be released on bail on his furnishing P.R bond of Rs.20,000/- with one or two solvent sureties in the like amount on the following conditions:

- (a) The appellant shall not enter village Burzed, Taluka and District Dhule where the prosecutrix is residing, till final decision of the appeal.
- (b) He shall furnish in detail address with Cell No. with the concerned trial court as well as the concerned police station.
- (c) Bail before the trial Court.
- (d) Criminal application is accordingly disposed of.
- (e) Authenticated copy be issued.

(SHRIKANT D. KULKARNI, J.)

JPChavan