

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL INTERIM APPLICATION NO.118 OF 2022
IN
CRIMINAL APPEAL NO.784 OF 2015

Ali Mohd. Subrati Khan : Applicant.
Versus
The State of Maharashtra : Respondent.

Ms. Anjali Patil for the Applicant/Appellant.
Mr. Y M Nakhwa, APP for the Respondent/State.

CORAM : S. S. SHINDE,
N. R. BORKAR, JJ
Reserved on : 31st JANUARY 2022
Pronounced on : 09th February 2022

P. C.

1 This is an Interim Application filed by the Applicant, who is original Accused No.2, for suspension of sentence and bail during the pendency of Criminal Appeal No.784 of 2015, which has been filed by him against his conviction.

2 The Applicant/Appellant is convicted for the offence punishable under Section 376(2) of the Indian Penal Code and sentenced to suffer imprisonment for life and, he is also convicted for the offence punishable under Section 506-II of the Indian Penal Code and sentenced to suffer R. I. for seven years. The Applicant was arrested on 08/12/2013 and since then he is in jail.

3 The learned counsel appearing for the Applicant submits that, the evidence of Prosecutrix suffers from omissions, contradictions and, improvements. In support of the said contention, she invites our attention to the deposition of P.W. No.1. The learned counsel also invites our attention to the deposition of other prosecution witnesses and submitted that there is every chance of acquittal of Applicant/Appellant, and therefore, he may be enlarged on bail. She further submits that, on medical ground also the Application deserves to be allowed. She invites our attention to the medical papers received from Jail Authority so also the grounds taken in the Application for suspension of sentence and bail, and humbly prays that the Application may be allowed.

4 Per contra, the learned APP appearing for the Respondent/State, invites attention of this Court to the findings recorded by the Trial Court, the notes of evidence, and in particular the Chemical Analysis Report and submits that, the Applicant/Appellant has committed serious offence not individual in nature but against the Society, and therefore, the Application may be rejected.

5 We have given due consideration to the rival submissions, notes of evidence so also the medical papers and, we are of the opinion that the Application does not deserve consideration for the brief discussion appearing herein below.

Firstly, the offences committed by the Applicant with Co-Accused are very serious in nature and have great impact upon the Society. Secondly, the evidence brought on record by the prosecution is clinching showing clear involvement of the Accused in commission of serious offences. Thirdly, there is reliable evidence of the prosecution witnesses including prosecutrix and expert witnesses. Fourthly, the crime was registered with promptitude and, the Accused were apprehended on the same day. Therefore, possibility of concoction of witnesses is ruled out.

6 Importantly, the Trial Court, upon appreciation of prosecution evidence, and in particular Chemical Analysis Report, in Paragraph-27 of the the impugned judgment held as under :-

“27 In Exhibit – 10 comparative charge of examination of the samples seized, in which articles at No.2 to 7 are the clothes of victim. Articles Nos.8 & 9 are the clothes of accused no.2, Articles no.10, 11 and 12 are the clothes of accused no.1, is given. In the same Articles no. 5 and 6 i.e. nicker and pajama of the victim are found with semen stain. The ‘ABO’ group of semen of Article -5 is ‘B’ which is of the accused no.2. The same is also found at Article – 8 i.e. pants of accused no.2. The semen is found on A. Considering the chemical analysis report the blood group of accused no. 2 is clearly found on the clothes of the victim, detected in semen. However, there

is no clear report in respect of the presence of blood group 'O' i.e. of accused No.1.”

7 We have seen the medical paper sent by Jail Authority. It clearly reveals that proper treatment is being given to the Applicant/Appellant. However, we direct the Jail Authority to once again take the Applicant/Appellant in government hospital for complete check up within one week from today, and give him the best treatment as per medical advise of expert.

8 We do not wish to elaborate further reasons on merits, since the Appeal filed by the Applicant/Appellant is pending for final hearing. For the aforesaid reasons we are not inclined to entertain the Application, hence the same stands rejected.

9 The aforesaid observations are made only for the purpose of adjudication of the present Application.

10 We direct the Registry to list the aforesaid Criminal Appeal No.784 of 2015 along with Criminal Appeal No.110 of 2016 for hearing on 08th March 2022.

11 The concerned Jail Authority shall send a report of compliance of

directions contained in Paragraph 7 herein above on or before 25th February 2022 to the learned APP appearing for the Respondent/State and also to the Criminal Branch of the Registry of this Court.

[N. R. BORKAR, J]

[S. S. SHINDE , J]