

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.363 OF 2022  
IN  
CRIMINAL APPEAL NO.213 OF 2022

Lala Mohan Purobiya

Applicant

versus

The State of Maharashtra and others

Respondents

Mr.Rakesh Jadhav with Mr.Nitin B. Morajkar, Advocate for applicant.  
Ms.PN.Dabholkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 8<sup>th</sup> March 2022

PC :

1. This is an application for suspension of sentence and grant of bail during pendency of Criminal Appeal No.213 of 2022.

2. The applicant has been convicted for offence under Section 376(1) of Indian Penal Code and sentenced to suffer imprisonment of ten years. He is also convicted for the offence under Section 506(II) of Indian Penal Code and sentenced to suffer imprisonment for one year. Both the sentences were directed to run concurrently.

3. The case of prosecution is that the victim is married lady having two children. She used to visit residence of her maternal uncle situated in the vicinity of her residence. The complainant noticed some change in her physical appearance and on enquiry with her, the victim had disclosed that the accused had subjected her to sexual assault in public toilet. The victim was taken to doctor. It was

revealed that she was pregnant. The FIR was registered. Investigation proceeded. The accused was arrested. Charge sheet was filed.

4. Learned counsel for applicant submitted that the applicant is in custody for a period of about 5½ years. The alleged incident had occurred in May-2016 and the FIR was lodged in August-2016. It is difficult to accept that victim was subjected to sexual assault forcibly in public toilet. No evidence is brought on record indicating that victim had shouted and protested at the time of incident. It is the case of prosecution that victim was mentally retarded. However, there is no evidence in that regard. The witnesses have stated that the victim was suffering from epilepsy. There is distinction between epilepsy and mental retardation. The victim was sent to hospital for the first time after registration of FIR to find out whether she was mentally retarded. Her evidence does not reflect that she suffers from any mental illness.

5. Learned APP submitted that there is no reason to disbelieve the version of victim. The consent, if any, of the victim is immaterial, as she was suffering from mental retardation. The victim has categorically stated that she was forcibly subjected to sexual assault. The medical evidence supports prosecution case. The medical case papers also reflect that victim was mentally retarded. She was also suffering from epilepsy.

6. The victim is a married lady having two children. Her evidence discloses that she used to visit residence of her maternal uncle. It is alleged that the applicant was striking conversation with

her. She was taken to toilet and subjected to sexual intercourse. PW-1 is the step father of victim. He has stated that victim was suffering from epilepsy. On 14<sup>th</sup> August 2016 she complained of abdominal pain. Thereafter she was taken to doctor and it was disclosed that she was pregnant. From the evidence of this witness it can be seen that the victim did not disclose the incident to him or her mother immediately after its occurrence. It is only after noticing some changes in the appearance of the victim, enquiry was made with her and thereafter it was disclosed that she was allegedly subjected to sexual assault by the accused in public toilet. Except of stating that victim is suffering from epilepsy, this witness has not referred to the fact that victim was mentally retarded. PW-2 is the medical officer who has examined the victim on 16<sup>th</sup> August 2016. He has stated that age of the victim was 22 years. History was provided during examination indicating that there were two instances of sexual assault. PW-3 is the medical officer who has referred to the examination of DNA and stated that it matches with the accused. PW-4 is the victim. Her evidence discloses that she was treated for tuberculosis. Her evidence does not disclose date of incident. According to her the incident was disclosed to her sister. From the tenor of her evidence it does not appear that she was mentally retarded or was not in position to understand good and bad. She is married lady having two children. She has admitted that toilet where the alleged incident had occurred, is situated in front of the house of her uncle. The defense has alleged that relationship at the most can be consensual in nature. From the cross-examination of the said witness it appears that there was no protest from the victim at the time of incident. The history provided to the doctor refers to the fact that there were two instances of sexual assault. It is pertinent to

note that till the FIR was registered, there is no medical history of the victim suffering from mental retardation. PW-6 is clinical psychologist, who had examined the victim on 14<sup>th</sup> February 2020. She has recorded that victim has mild retardation. This examination was conducted for the first time in the year 2020. The alleged incident had occurred in 2016. The applicant is in custody for a period of about 5½ years.

7. Considering the aforesaid circumstances, case for suspension of sentence and grant of bail is made out. Hence, I pass following order :

#### **ORDER**

- (i) Interim application is allowed and disposed of;
- (ii) The sentence of imprisonment imposed vide judgment and order dated 10<sup>th</sup> July 2021 by learned Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay in Sessions Case No.87 of 2017 is suspended, and applicant is directed to be released on bail on executing PR bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- (iii) The applicant is permitted to furnish cash bail in the sum of Rs.20,000/- for a period of eight weeks in lieu of sureties;
- (iv) The applicant shall not contact in any manner and meet the victim;
- (v) The applicant shall attend Trial Court once in six months on first Saturday of the month till final disposal of the Criminal Appeal;
- (vi) In the event there are two consecutive defaults in attending the Trial Court, the Trial Court shall submit report to this Court;
- (vii) In the event of default committed by the applicant in attending

the Trial Court, the prosecution will be at liberty to prefer application for cancellation of bail.

(PRAKASH D. NAIK, J.)

MST