

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1322 OF 2021
AND
INTERIM APPLICATION NO.1323 OF 2021
IN
CRIMINAL APPEAL NO.402 OF 2021

Ilahi Husainlal Shaikh

Applicant

versus

The State of Maharashtra

Respondent

Mr.Vijay M. Emul, Advocate for applicant.

Mr.Arfan Sait, APP, for respondent.

CORAM : PRAKASH D. NAIK, J.

DATE : 25th March 2022

PC :

1. These applications are preferred by applicants for suspension of sentence and grant of bail during pendency of Criminal Appeal No.402 of 2021.

2. The applicant is convicted for the offence under Sections 363, 376, 324, 506(II) of Indian Penal Code by Additional Sessions Judge, Pune in Sessions Case No.383 of 2017 and sentenced to suffer imprisonment of 2 years, 10 years, 2 years and 1 years respectively on each count.

3. The prosecution case is that the victim was residing with family at Pimpri. She used to visit house of her friend. She was acquainted with accused who is aged about 45 years. He used to park his vegetable handcart near the house of victim's friend. He

used to have conversation with victim and hence she was acquainted with him. On 14th January 2017 the victim left the house to meet her grandmother at YCM Hospital, Pimpri. While she was walking towards hospital the accused came on his motorcycle and forced her to sit on the motorcycle. She was threatened. The victim was taken behind the S.T. stand in bushes. He took out the knife and threatened the victim. She was forced to undress. He outraged her modesty and committed forcible sexual intercourse with her. The victim resisted. She was assaulted. The accused hit her with stone on her forehead. She was also assaulted with fist and kick blows. Blood was oozing from her head. Accused then fled away from the place of incident. The victim had suffered injuries. She was taken to YCM Hospital. She narrated the incident to her grandmother and aunt. The FIR was registered on the basis of her statement. Investigation proceeded. Charge sheet was filed.

4. The accused was tried for the aforesaid offences and convicted by judgment and order dated 13th February 2020.

5. Learned advocate for applicant has submitted that the applicant has been falsely implicated in this case. He is in custody for 5½ years. The friend of victim was not examined by prosecution. There are discrepancies in the evidence. The evidence of witnesses is contrary to each other. The appeal may not come up for hearing within short span of time.

6. Learned APP submitted that offence is of serious nature. The victim was subjected to sexual intercourse. She was brutally assaulted by accused. She had suffered several injuries on account of

assault. Medical evidence supports prosecution case. There is no reason to disbelieve the version of victim. The DNA report corroborates the prosecution case.

7. From the evidence of victim it is apparent that accused had committed forcible sexual intercourse. On resistance, she was assaulted. Victim was treated for the injuries suffered by her. The injury certificate and evidence of PW-2 (medical officer) refers to 12 injuries sustained by victim. PW-2 has stated that injuries are on face, arm and neck. Prosecution case is that accused had assaulted by knife. There is recovery of knife during the course of investigation. The DNA report corroborates. The FIR was registered immediately after incident. The evidence of victim (PW-5) refers to the sexual assault by accused. She was assaulted by stone. She was threatened at the point of knife. Prima facie, there is sufficient evidence to show involvement of applicant. Considering the fact that applicant is in custody for substantial period of time, hearing of the appeal can be expedited. Hence, I pass following order :

ORDER

- (i) Both the Interim Applications are rejected;
- (ii) Hearing of Criminal Appeal No.402 of 2021 is expedited.

(PRAKASH D. NAIK, J.)

MST