

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1427 OF 2022
IN
CRIMINAL APPEAL NO.1422 OF 2018

Mohd. Farukh Abdul Latif Khan

Applicant
(Accused no.2)

versus

The State of Maharashtra

Respondent

Mr.Farzan with M.B.Shaikh, Advocates for applicant.
Mr.S.V.Gavand, APP, for State.
PSI S.V.Mungekar, Paydhuni Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 4th May 2022

PC :

1. This is an application for suspension of sentence and grant of bail pending Criminal Appeal No.1422 of 2018. The applicant (accused no.2) has been convicted vide judgment and order dated 26th September 2018 passed by learned Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay. Applicant has been convicted for the offence punishable under Section 376-D of Indian Penal Code and sentenced to suffer imprisonment for 20 years. The applicant is also convicted for the offence punishable under Section 341 of IPC and sentenced to suffer imprisonment for one month.

2. The case of prosecution is that the victim was married to one Ranjit Kanojia. Her husband was ill-treating her. Hence she had shifted to her parents home and residing with them. Accused no.1 is relative of victim's husband. He was acquainted with the family of the victim. The parents of the victim had decided to send the victim

to Mumbai with accused no.1 for job. Both of them left Lucknow on 8th March 2017. At Lucknow railway station they were acquainted with Mohd. Farukh Khan. He offered them to travel on his reserved seat. On reaching Mumbai the victim and accused no.1 started residing together. During the said period accused no.1 had committed sexual intercourse with the victim for about 4 to 5 times. On 16th March 2017 the victim was taken to the house of applicant (accused no.2) by accused no.1. During the night, victim tried to escape from the premises. During the attempt, she lost her balance and fell down in the gutter. As a result of that, she suffered injuries. Police reached the spot. She was taken to hospital for treatment. She was hospitalized. Thereafter FIR was registered under Sections 376D, 341, 506 r/w Section 34 of IPC. On completing investigation charge sheet was filed.

3. Learned advocate for applicant stated that applicant is in custody for a period of about 6 years. Victim is a married lady. She was major woman. The victim and accused no.1 were acquainted with each other. Their marriage was performed in temple. The offence of rape is not made out. The applicant had not been attributed role of penetrative sexual assault. In the history provided by the victim, it was stated that she is a married lady. The injuries were sustained by her on account of fall. Medical evidence does not indicate that the victim was forcefully subjected to sexual assault. The defence had examined father of victim. Defence witness fortified the fact that marriage was performed between accused no.1 and victim. The allegations about sexual assault were afterthought. Accused no.1 has been granted bail by suspending sentence of imprisonment.

4. Learned APP submitted that there is no proof of marriage between the victim and accused no.1. The evidence of the victim discloses that she was forcefully subjected to sexual intercourse. On the second occasion, both the accused had connived with each other and sexually assaulted the victim. The offence is of serious nature. There is substantial evidence to prove charge against them.

5. Applicant is in custody from 17th March 2017. he has undergone the detention for a period of about 6 years. Undisputedly victim is a married lady. She had differences with her husband. Parents of the victim sent her along with accused no.1 to Mumbai for job. Accused no.1 and the victim stayed together. According to victim, there was physical relationship between them. Apparently, there was no complaint or protest after the alleged incident. Thereafter victim was allegedly taken to the house of applicant. The applicant is not attributed role of committing rape. Evidence of PW-1 mentions that she was trying to escape from the premises and she fell in gutter which had resulted in injuries. It is pertinent to note that evidence on record discloses that victim was taken for treatment. However, she had not disclosed the incident of sexual assault to the Doctor. She had only disclosed that she had fall in gutter and suffered injuries.

6. PW-3 is Medical Officer. She has stated that the victim is a married lady. She noticed injuries on her body. These injuries were on account of fall in gutter. Injuries noticed on the hymen of the victim were old.

7. PW-6 is another Medical Officer. She has stated that victim had given history of fall. Undisputedly accused no.1 and the victim had stayed together in Mumbai after travelling together from Lucknow and Mumbai. Accused had examined defence witness. He is father of the victim. He has stated that victim and the accused no.1 had performed marriage in temple. Applicant is in custody for a period of more than 6years. Taking into consideration the above facts, the sentence of imprisonment can be suspended. Hence, I pass following order :

ORDER

- (i) Interim Application is allowed and disposed of;
- (ii) During pendency of Criminal Appeal No.1422 of 2018, the sentence of imprisonment imposed by judgment and order dated 26th September 2018 passed by Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay in Sessions Case No.451 of 2017 is suspended and applicant is directed to be released on bail on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of sureties;
- (iv) The applicant shall attend Trial Court once in six months on First Saturday of the month till disposal of the Criminal Appeal;
- (v) In the event there are two consecutive defaults in attending the Trial Court, the Trial Court shall submit report to this Court;
- (vi) 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.)