

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 1743 OF 2022
IN
CRIMINAL APPEAL NO. 587 OF 2022**

Vijay Tulshidas Divekar ..Applicant.
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Satyavrat Joshi i/b. Nitesh Mohite for Applicant.

Dr. Kirti Kulkarni, Spl. P. P. a/w. Mr. P. H. Gaikwad, APP for
State/Respondent No.1.

Mr. Kedar Purav for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 11th OCTOBER 2022**

PC :

1. This is an application for bail pending final hearing and disposal of Criminal Appeal No.587 of 2022 filed by the applicant.
2. Heard Shri. Satyavrat Joshi, learned counsel for the Applicant, Dr. Kirti Kulkarni, learned Special P. P. for the State/Respondent No.1 and Shri. Kedar Purav, learned counsel for the Respondent No.2.

3. The Applicant was convicted and sentenced by learned Additional Sessions Judge, Kalyan vide his Judgment and order dated 26/05/2022 passed in Sessions Case No.74 of 2015.

The applicant was convicted for commission of offence punishable U/s.376(2)(f) of I.P.C. and was sentenced to suffer R.I. for 10 years and to pay a fine of Rs.3000/- and in default of payment of fine to suffer R.I. for 30 days.

He was convicted for commission of offence punishable U/s.452 of I.P.C. and was sentenced to suffer R.I. for three months and to pay a fine of Rs.1000/- and in default of payment of fine to suffer R.I. for 15 days.

Both the sentences were directed to run concurrently. He was granted set off U/s.428 of the Cr.p.c. for the period that has spent as an under trial prisoner.

4. The prosecution case is that the applicant was brother in law of the victim-PW-1. They were residing in the same building. The victim's family was residing on the ground floor and the applicant's family was residing on the first floor. The applicant's

parents were residing with him. The victim's husband i.e. applicant's brother was in Merchant Navy and he used to go for attending his job in high-seas for long period. In this case, he had gone to attend his duties from August 2013 to January 2014. In the meantime, in the month of November 2013, the applicant took advantage of the fact that there was no one in the house of the victim and that there was no one in his own house; except his father who was engaged in religious pooja.

5. It is the case of the prosecution that, taking advantage of this situation the applicant committed rape on the victim-PW-1. This happened in November 2013. Because of that the victim got mentally disturbed. Her son saw the change in her behaviour, therefore, she was referred for psychiatrist treatment after her husband came back at the end of January 2014. During that treatment on 26/05/2014, she told her doctor that the applicant had committed rape on her in November 2013. The doctor then advised her to inform her husband. Her husband was informed. The victim tried to commit suicide on 07/06/2014 by hanging herself, but she was saved in time by her husband and son.

Thereafter this F.I.R. regarding commission of rape was lodged. Initially, the complaint was given to Bazar Peth police station, but it was subsequently investigated by the Mahatma Phule Chowk police station. The F.I.R. was lodged on 09/06/2014. The applicant was arrested on 10/06/2014 and was released on bail on 30/07/2014.

6. Learned counsel for the Applicant submitted that, there is gross delay in lodging F.I.R. The date of incident is not mentioned. The incident is improbable. The father in law of the victim was present in the same building, but no complaint was made to him. Even in the past there was an allegation that the applicant had tried to behave objectionably with her. At that time, the victim had complained to her mother in law. But on this occasion, the victim neither complained to the father in law who was present in the building, as well as, to her mother in law, who admittedly, at that time was residing in the same building; though, according to the prosecution, she was not present at that time in the same building. He submitted that, her conduct assumes importance, particularly, when she had even not informed her own

mother about the offence. He submitted that, conduct of her husband is also doubtful because after he came to know about the incident on 26/05/2014, he had not taken any steps to lodge the F.I.R. Only after the victim tried to commit suicide the F.I.R. was lodged. He submitted that, the evidence shows that the victim was under treatment for her mental disturbance in the year 2004-2005 also. Therefore, her treatment in the year 2013-2014 has nothing to do with the alleged incident. He submitted that the evidence of Dr. Sandeep Patil, who is examined as PW-7 shows that one of the tablets given to her was for the treatment of schizophrenia. He, therefore, submitted that, there is a strong possibility of false implication.

7. According to the applicant there was dispute between victim's husband and the applicant's father. The victim's husband wanted his share in the property, but applicant's father and victim's father in law did not accept the demand of the victim's husband. There was a quarrel between the applicant's brother and his father; for that one non cognizable complaint was lodged against the victim's husband by her father in law. Being aggrieved with

this, to pressurise the applicant's father this case was lodged falsely. Even the police constable who had taken the F.I.R. was connected with the victim's husband. Cousin of that police constable was a classmate of applicant's brother.

8. Learned counsel invited my attention to the evidence of the victim, the Doctor, her husband and son.

9. Learned Special P. P., as well as, learned counsel for the Respondent No.2 submitted that, it is a heinous crime. The crime assumes seriousness because the victim had undergone depression and had ultimately tried to commit suicide. After the incident, the victim's family had to leave the place and had suffered a lot. The applicant does not deserve to be released on bail as the evidence of the victim is sufficient to convict the applicant. The delay in this case cannot be the decisive factor because it was not possible for the victim in this situation to complain immediately because her own brother in law had committed this offence.

10. I have considered these submissions. This is an application for bail. Deep appreciation of the evidence is not

permissible. At this stage, it is necessary to see whether there is reasonable possibility of the impugned order being proper and correct. Learned trial Judge has considered all these aspects. The evidence of PW-1 is probable. Though, it is brought on record that exact date of offence is not mentioned, but she had mentioned that the offence had taken place in November 2013. Thereafter she got disturbed and she had to take psychiatrist treatment. Ultimately, on 26/05/2014 she told about this incident to her Doctor and then her husband was informed. After that, she tried to commit suicide. There is strong link between all these events and, therefore, it cannot be said that, there is a delay affecting the prosecution case. The occurrence of the incident was within family. The applicant was brother in law of the victim and, therefore, it was difficult for her to inform about this incident within her family or to anybody else. Even on the date of incident, according to her, nobody was at home except her father in law who was on the first floor performing pooja. Therefore, at this stage, it cannot be appreciated that the victim could have raised hue and cry at the time of incident or could have sought help. All these factors will have to be

decided at the stage of final hearing. At this stage, there is sufficient material against the applicant for deciding this application.

11. Considering this, the application is rejected. However, since the applicant was on bail during trial, hearing of the Appeal is expedited. Observations made in this order are restricted to passing of this order. The Appeal will have to be decided independent of these observations.

(SARANG V. KOTWAL, J.)