

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1989 OF 2021
IN
CRIMINAL APPEAL NO.244 OF 2021

Santosh Ramsagar Kanojia .. Applicant
v/s.
The State of Maharashtra .. Respondent.

Ms. Anjali Patil, for the Applicant.
Mr. S. V. Gavand, APP for the Respondent-State.

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CORAM: PRAKASH D. NAIK, J.
DATED : 25th FEBRUARY, 2022.

PER COURT:

This is an application for suspension of sentence and grant of bail pending Criminal Appeal No.244 of 2021. The Applicant has been convicted vide judgment and order dated 26th September, 2018 passed by learned Additional Sessions Judge, City Civil & Sessions Court, Greater Mumbai. Applicant has been convicted for the offence punishable under Section 376 (2) (f, n) of Indian Penal Code. He is also convicted for the offence punishable under Section 376-D of Indian Penal Code and sentenced to suffer imprisonment of 10 years and 20 years on each count respectively.

2 The case of the prosecution is that, the victim was married to one Ranjit Kanojia. He was ill-treating her. Hence, she had shifted for parent's home and residing with her parents. Accused No.1 is a relative of victim's husband. He was acquainted with the family of the victim. The parents of the victim had sent

the victim to Mumbai along with Accused No.1 (Applicant) for job. Both of them left Lucknow on 8th March, 2017. At the railway station, they were acquainted with Accused No.2. On reaching Mumbai, the victim and Accused No.1 have started residing together. During the said period, Accused No.1/ Applicant had committed sexual intercourse with the victim for about 4 to 5 times. On 16th March, 2017, victim was taken to the house of Accused No.2 by the Applicant. Accused No.2 subjected her to molestation. Applicant subjected the sexual intercourse with her. During the night, victim was allegedly tried to escape from the said premises. During the said attempt, she lost her balance and fell down in the gutter. As a result of that, she had suspended injuries. Police reached the spot. She was taken to the hospital for treatment. She was hospitalized. Thereafter, FIR was registered under Sections 376D, 341, 506 read with Section 34 of Indian Penal Code. Applicant was arrested on 17th March, 2017. On completing the investigation, charge-sheet was filed.

3 Both the Accused were tried for the aforesaid offences. They were convicted for the offences as stated herein above.

4 Learned Advocate for the Applicant stated that Applicant is in custody for the period of about 6 years. Victim is a married lady. She was a major woman. Both of them were acquainted with each other. Marriage was performed in the temple. The offence of rape is not made out. In the history provided by the victim, it was stated that she is a married lady. The injuries were sustained by her undisputedly on account of fall. Medical evidence does not indicate that the victim was forcefully subjected to sexual

assault. The defence had examined father of the victim. Defence witness fortified the fact that marriage was performed between Applicant and the victim. The allegations about sexual assault were afterthought.

5 Learned APP submitted that there is no proof of marriage between the victim and the applicant. 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.

6 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 the Applicant to Mumbai for job. Applicant and the victim stayed together. According to the victim, there was physical relationship between them. Apparently, there was no complaint or protest after the alleged incident. Thereafter, victim had allegedly taken to the house of Accused No.2 and the Applicant had allegedly subjected her to forcefully sexual assault. 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 to treatment. However, she had not disclosed the said incident of sexual assault to the Doctor. She had only disclosed that she had fall in gutter and suffered injuries.

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

8 PW-6 is another Medical Officer. She has stated that victim had given history of fall. Undisputedly, Applicant and the victim had stayed together in Mumbai after traveling together from Lucknow to Mumbai. Accused had examined defence witness. He is father of the victim. He has stated that, victim and the Applicant had performed marriage in temple. It is true that in the cross examination conducted by prosecution, he stated that she had no proof of marriage. Applicant is in custody for a period of more than 6 years. Taking into consideration the above facts, the sentence of imprisonment can be suspended.

9 Hence, I pass the following order:-

- (i) During the pendency of Appeal No.244 of 2021, the sentence of imprisonment imposed by Judgment and order dated 26th September, 2018 passed by Additional Sessions Judge, City Civil & Sessions Court, Greater Mumbai in Sessions Case No. 451 of 2017 is suspended and the Applicant is directed to be released on bail on executing P R Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (ii) Interim Application No.1989 of 2021, is allowed;
- (iii) Applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety;
- (iv) Applicant shall report the concerned Police Station once in a

six months on first Saturday of the month till the final disposal of the Appeal;

- (v) In the event the applicant is found involved in similar offence in future, the prosecution is at liberty to move application for cancellation of bail.
- (vi) Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)