

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

**INTERIM APPLICATION NO.3447 OF 2022
IN
CRIMINAL APPEAL NO.1007 OF 2022**

Yadav alias Raju Kisan Petar Applicant

versus

State of Maharashtra Respondent

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- Mr. Akshay Bankapur, Advocate for Applicant.
- Smt. M. R. Tidke, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 17th OCTOBER, 2022**

P.C. :

1. The Applicant has filed Criminal Appeal No.1007 of 2022 challenging the Judgment and Order dated 17/09/2022 passed by Additional Sessions Judge, Nashik, in Sessions Case No.428 of 2018. The Applicant was convicted for commission of offence punishable u/s 354 and 376 r/w 511 of the Indian Penal Code. For the offence u/s 354 of the Indian Penal Code, he was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default of payment of fine to suffer

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rigorous imprisonment for one month. For the offence punishable u/s 376 r/w 511 of the Indian Penal Code he was sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.2,000/- and in default to suffer rigorous imprisonment for three months. Both the substantive sentences were directed to run concurrently.

2. Heard Mr. Akshay Bankapur, learned counsel for the Appellant and Smt. M. R. Tidke, learned APP for the State.
3. The prosecution case is that the victim i.e. the P.W.1 was unable to conceive and therefore she had gone to one person who promised that some ritual would help her in becoming pregnant. He had directed the victim to the father of the Appellant. It is the case of prosecution that the Appellant took advantage of the situation. He asked the husband of the P.W.1 to wait outside and inside the room he tried to commit sexual intercourse with the victim. The victim resisted and she came out.

4. Learned counsel for the Applicant submitted that there is contrary evidence led by the prosecution. The victim was referred to the father of the Appellant and not to the Appellant. Therefore there is case of mistaken identity. In any case the incident is improbable. He added that the alleged incident had taken place on 09/05/2015. The sentence is short. The Appellant has good case on merits and therefore the Appellant may be granted bail pending the Appeal.

5. Learned APP opposed this application. But she conceded that the sentence of Applicant is short.

6. I have considered these submissions. The Appeal is already admitted. The question raised by the learned counsel for the Applicant will have to be decided during final hearing stage of the Appeal. The Applicant was on bail during the trial. He has not misused the same, even after his conviction as pointed out by learned counsel for the Applicant, he was granted bail u/s

389 of Cr.PC. The sentence imposed on him is short and the Appeal is not likely to be decided within that short period. Therefore the Applicant deserves to be released on bail during the pendency of the Appeal.

7. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.1007 of 2022, the Applicant is directed to be released on bail on his furnishing PR. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only), with one or two sureties in the like amount.
- (ii) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)