

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

**INTERIM APPLICATION NO. 3778 OF 2022
IN
CRIMINAL APPEAL (ST) NO. 19112 OF 2022**

Sandesh Sadanand Chikhale ..Applicant
Versus
The State of Maharashtra ..Respondent

Mr. Aniket Vagal a/w. Kunal Pednekar for Appellant.
Mr. S. R. Agarkar, APP for State/Respondent.

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

PC :

1. This is an application for bail pending hearing and final disposal of the criminal Appeal preferred by the applicant. The applicant was convicted and sentenced by learned Additional Sessions Judge, Greater Bombay in Sessions Case No.960 of 2015. He was convicted for commission of offence punishable U/s.376 of I.P.C. and was sentenced to suffer R.I. for 15 years and to pay a fine of Rs.10000/- and in default of payment of fine to suffer R.I. for 6 months.

He was convicted for commission of offence punishable

U/s.377 of I.P.C. and was sentenced to suffer R.I. for 15 years and to pay a fine of Rs.10000/- and in default of payment of fine to suffer R.I. for 6 months.

He was also convicted for commission of offence punishable U/s.328 of I.P.C. and was sentenced to suffer R.I. for 10 years and to pay a fine of Rs.5000/- and in default of payment of fine to suffer R.I. for 3 months.

He was also convicted for commission of offence punishable U/s.385 of I.P.C. and was sentenced to suffer R.I. for 2 years and to pay a fine of Rs.4000/- and in default of payment of fine to suffer R.I. for two months.

He was further convicted for commission of offence punishable U/s.67 of the Information Technology Act, 2000 and was sentenced to suffer R.I. for two years and to pay a fine of Rs.4000/- and in default of payment of fine to suffer R.I. for 2 months. All the sentences were directed to run concurrently.

2. Heard Shri. Aniket Vagal, learned counsel for the Applicant and Shri. Agarkar, learned APP for the State.

3. The prosecution case is that the applicant and the victim-PW-1 were working in the same hospital. The applicant promised to give her another job in a private hospital and for that purpose he called her to a hotel. He took her in a hotel room. He gave her some drink mixed with some substance because of which she felt giddiness. She did not recollect the incident after that. After a few days she had given her mobile phone to the applicant for some purpose at his request. When she received her mobile phone back she saw that there was a video clip showing video of sexual act committed with the victim. In the act of unnatural sex her face was clearly seen in the video. The face of the other person was not seen but his thumb was seen with a tattoo mark which matched with the applicant's tattoo. On this basis she was sure that it was the applicant who had committed this act when she was taken to a hotel. After that she went to the police station and lodged her F.I.R. The applicant was arrested. His mobile phone was seized. The trial was conducted before the learned Special Judge.

4. During trial, prosecution examined various witnesses including the victim, her husband, police officers and the Doctor.

The applicant examined himself as a defence witness. His case was that, he was having consensual physical relations with the victim. The victim's husband came to know about this and, therefore, this F.I.R. is lodged.

5. Learned counsel for the applicant submitted that the prosecution has failed to prove its case beyond reasonable doubt. The F.I.R. is lodged after one month from the alleged incident. He submitted that the victim had not given the correct date of the incident. She initially told the police that the incident had occurred on 05/08/2015, but subsequently corrected herself and told the police that the incident had taken place on 19/08/2015. He submitted that, when she went to a hotel she knew the intention of the applicant and she knew the consequence of her act. Therefore, it could not be a case of rape. He submitted that the face of the other person is not seen in the video, therefore, there is no reason to infer that the Appellant had committed that act. He further submitted that, seizure of the mobile phone from the appellant is not properly proved. On the other hand, the mobile phone of the victim did not show any objectionable material.

6. Learned APP opposed these submissions. He submitted that the Medical Officer has given his deposition about examination of the accused and he has described the tattoo mark on his thumb which matched with the tattoo mark on the thumb of the person in the video clip. He further submitted that the learned Judge has seen that video clip which is reflected in the Judgment. The video clip was highly objectionable and it described the incident in detail, wherein, it was also seen that the victim was under influence of some substance. The description given by learned Judge in his Judgment shows seriousness of the offence.

7. I have considered these submissions. The prosecution case is that the applicant was demanding money for deleting the video clip from the mobile phone. The mobile phone was seized by the police officers. The Judgment in paragraph 55 mentions the video clip in detail. The learned Judge has relied on that particular video clip. The act is described in detail. It is a serious offence. The applicant's identity is established through the tattoo mark. In any case, defence of the applicant is that it was a consensual physical relations. His case is not that of total denial. In that case there is

no explanation as to why the applicant's mobile phone was having that particular video clip. This shows that the allegations made by the victim are true because there was no reason for the applicant to preserve that video clip in the mobile phone. The victim was taken to a hotel on the pretext of giving her a job and she was taken to a room on the ground floor. There is no reason to disbelieve, at this stage, that she was offered a job and she trusted the appellant for that opportunity. The sentence imposed against the applicant is of 15 years. The offence is quite serious. At this stage of consideration of bail the evidence against the applicant cannot be reappreciated any further. Therefore, considering all these aspects, no case for grant of bail pending the appeal is made out. Learned counsel for the applicant emphasised that the applicant was on bail during trial. This particular aspect cannot be the only consideration for grant of bail pending appeal after the conviction of the applicant recorded based on consideration of entire evidence by the competent Court.

8. The application is rejected.

(SARANG V. KOTWAL, J.)