

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 20 OF 2022

IN

CRIMINAL APPEAL NO. 17 OF 2022

Sunil Samadhan Dhandar (In jail) vs. State of Maharashtra and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms. Sapana Jadhav, Advocate for applicant.
Mr. Indranil Damle, APP for respondent No.1 State.

**CORAM : MANISH PITALE AND
VALMIKI SA MENEZES JJ.**

DATE : 12/08/2022

This is an application for suspension of sentence and for release of the applicant on bail pending appeal. The appeal filed by the applicant was admitted on 11/01/2022.

2. Ms. Jadhav, learned counsel appearing for the applicant submitted that although the applicant in the present case has been convicted and sentenced for a serious offence i.e. rape of his own sister, the material on record is riddled with contradictions and that the applicant has a strong prima facie case in his favour in the appeal.

3. By referring to the statement of the victim, (who unfortunately died during the course of trial and could not depose before the Court) it was submitted that the First Information Report (FIR) stood registered about two days after the alleged incident. It was pointed out that even according to the victim the incident allegedly took place around 9.00 to 9.30 p.m. on 14/11/2019 and the oral report was lodged leading to registration of FIR about two days later on 16/11/20019 at about 5.30 p.m. It was submitted that the victim was admittedly patient of AIDS and she was terminally ill. By inviting attention to the medical examination report of the victim, as also the C. A. report and depositions of witnesses, particularly mother of the accused and the victim and a neighbor, it was submitted that there was material to indicate dispute between the accused and the victim, which could have led to false implication. It was submitted that the applicant never applied for bail during the course of trial due to financial constraints and therefore, he has continued behind bars from the date of his arrest in November 2019. On this basis, it was submitted that this Court may consider the present application favourably.

4. On the other hand Mr. Damle, learned APP strongly opposed the present application, contending

that the Sessions Court in the present case had analyzed the evidence and material on record to reach cogent findings against the applicant and he was found guilty of serious offence under Section 376(2)(f) of the Indian Penal Code. It was submitted that a heinous crime was committed against his own sister by the accused and that therefore, the present application did not deserve consideration. Much emphasis was placed on certain portions of the impugned judgment and order of the Sessions Court, as also the evidence and material on record, to contend that no case was made out by the applicant in his favour. It was submitted that the appeal could be expedited for final hearing.

5. We have considered the rival contentions in the backdrop of the material placed on record. We find that the medical examination report of the victim clearly indicates that apart from being HIV positive and being extremely weak at the time of medical examination, the victim was also found to have globules and blisters all over her body. It is also recorded that there were no external injuries visible at the time of medical examination. When the aforesaid physical condition of the victim is considered in the backdrop of her statement leading to registration of the FIR, wherein it is described as to

the manner in which the applicant allegedly threw her on the floor and committed the act of forcible sexual intercourse, prima facie there appears to be contradiction.

6. Apart from this, the evidence of the mother of the accused and the victim shows that she had left the house after an altercation with the accused. In the cross-examination she also concedes that there was dispute between the accused and the victim as the accused was objecting to the presence of the victim in the house. The victim being HIV positive and apparently terminally ill, could have been a reason for the accused to have objected to her presence in the house. This backdrop of admitted facts when appreciated along with other material on record does indicate a prima facie case in favour of the applicant. The C. A. report does not conclusively indicate presence of semen on the cloths of the victim or the quilt which was in the room at the time of the incident.

7. An over all analysis at this stage does indicate that the applicant may have a prima facie case in his favour.

8. Considering the fact that the applicant continued to remain behind bars through out the trial

and as on today he appears to have already remained incarcerated for about three years, we are of the opinion that in the peculiar facts and circumstances of the case, the present application can be allowed, along with the direction to expedite the hearing of the appeal.

9. In view of the above, the application is allowed.

10. Consequently, the applicant shall be released on bail on furnishing P.R.Bond of Rs.25000/- [Rupees Twenty Five Thousand only] and a surety in the like amount to the satisfaction of the trial Court.

11. The applicant/appellant is directed not to harass the witnesses, who deposed before the trial Court, in any manner during the period he is enlarged on bail.

12. The appeal, bearing Criminal Appeal No.17 of 2022, shall be heard expeditiously and preferably within a period of one year from today.

JUDGE

JUDGE