

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

**INTERIM APPLICATION NO.2912 OF 2022
IN
CRIMINAL APPEAL NO.877 OF 2022**

Navnath Tukaram Behere Applicant
versus
State of Maharashtra & Anr. Respondents

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- Mr. Umesh R. Mankapure, Advocate for Applicant.
- Mr. S. R. Agarkar, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 18th JANUARY, 2023**

P.C. :

1. This is an application for bail pending final disposal of the Applicant's Appeal. The Applicant was convicted for commission of offence punishable u/s 376(i) of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.25,000/- and in default of payment of fine to suffer rigorous imprisonment for six months.
2. Heard Mr. Umesh R. Mankapure, learned counsel for the Applicant and Mr. S. R. Agarkar, learned APP for the State.

3. The prosecution case is that, in July 2013 the Applicant committed rape on the victim at a secluded spot. The husband of the victim was passing from that area. He saw the victim sitting there and crying. After that, the victim was sent to her parents house and the FIR was lodged after about 3 months from the incident.
4. Learned counsel for Applicant submitted that the Applicant was on bail during trial. There are no allegations that he has misused that liberty. The Applicant is falsely implicated. The Applicant's father had lodged the FIR against the victim's husband and victim's nephew regarding assault. As a counterblast, a false case was registered against him. He submitted that the incident as described by the victim was false.
5. Learned APP opposed this application. He relied on the evidence of the victim itself.
6. I have considered these submissions. The victim's case is that the incident took place at around 07.00 p.m. when she was returning to her house. She had reached upto her

agricultural field. At that time, the Applicant came there and committed rape on her and threatened her. At that time, the Applicant saw a torch light and therefore ran away from the spot. The victim's husband came there and he assaulted her. Then she told the incident to her husband. Because of this incident her husband was quarreling with her. During that incident the Applicant's mobile phone fell on the spot. It was found there. The victim had gone to her parents' house and after about 3 months she lodged her FIR.

7. Her husband is examined as P.W.2. He has deposed that when he was walking in that area he was carrying a torch. He heard shouts. He went there. He saw that the victim was sitting below a Neem tree and she was crying. She told him about the incident. A mobile phone was found lying at the spot. He picked it up. The victim went to her parents' house for about 3 months and then this FIR was lodged.

8. From the evidence it does appear that some reasonable doubt is created about the prosecution case. It is the victim's case that the Applicant ran away from the spot on seeing the torch light. The husband of the victim has not spoken about the presence of the Applicant. There is no explanation about the delay of 3 months in lodging the FIR. Therefore, the Applicant's false implication cannot be ruled out. The Applicant was on bail during trial. There are no allegations that he has misused the liberty. In this view of the matter, the Applicant can be granted bail pending final disposal of his Appeal.

9. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.877 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.)