IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 4010 OF 2022
IN
CRIMINAL APPEAL NO. 1163 OF 2022

Topanna Mayappa Hubnur ...Applicant
Versus
State Of Maharashtra And Anr. ...Respondents

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Mr. Kuldeep Patil Advocate for Applicant.

Mr. Y. M. Nakhwa, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 9th JUNE, 2023.

P.C.:-

1. This is an application for suspension of sentence and grant of bail during the pendency of criminal appeal challenging the conviction.

2. The applicant has been convicted vide judgment and order dated 30th September 2022 passed by learned Additional Sessions Judge (Special Court) Sangli in Special (Atrocity) Case No.201 of 2020 for an offence punishable under Section 376 of Indian Penal Code and sentenced to suffer rigorous imprisonment for 10 years.

3. The case of the prosecution is that, the applicant had visited the hut of the victim beyond midnight and committed sexual intercourse with her.

The victim is aged around 64 years. FIR was lodged on the next day of incident.

4. Learned Advocate for the applicant submitted that the applicant is in custody since last three years. The evidence of the victim does not inspire confidence. The circumstances on record does not indicate that the victim was subjected to forceful sexual intercourse. The victim has admitted in her cross-examination that she did not shout at the time of alleged incident. The spot panchnama indicate that incident had occurred outside the hut. The victim was indulging in bootlegging activities. One case was registered against her under Prohibition Act. The victim had lodged similar cases of sexual assault against the other persons in the past. Medical evidence does not support the prosecution case.

5. Learned APP submitted that the evidence of the victim attributes specific overtact of sexual assault to the applicant. There is no reason to disbelieve victim's version. The FIR was lodged immediately after the incident.

6. The alleged incident had occurred at about 01:00 clock in the night. The victim lady was residing alone in her hut. From her evidence it appears that she was acquainted with the applicant. According to her, she was subjected to sexual intercourse. The evidence does not depict any protest by the victim. Medical evidence does not corroborate the version of the victim. The applicant is in jail since last three years. Appeal may not be come up

for hearing immediately. Considering the aforesaid circumstance, case for suspension of sentence and grant of bail is made out.

ORDER

(i) Interim Application No.4010 of 2022 is allowed;

(ii) The substantive sentence of imprisonment imposed vide judgment and order dated 30th September 2022 passed by learned Additional Sessions Judge (Special Court) Sangli in Special (Atrocity) Case No.201 of 2020 is suspended and the applicant is directed to be released on bail in executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

(iii) The applicant is permitted to furnish cash bail security in the sum of Rs.25,000/- for a period of 8 weeks in lieu of surety.

(iv) The applicant shall report concerned police station once in six months on first Saturday of the month between 11.00 am to 01.00 pm till final disposal of the Appeal.

(v) Interim Application stands disposed off.

(PRAKASH D. NAIK, J.)