

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
CRIMINAL APPLICATION (APPA) NO.780 OF 2022 IN
CRIMINAL APPEAL NO.607 OF 2022

Mayur s/o Dilip Shekokar Vs. State of Maharashtra and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri Hitesh Biherani, Advocate for appellant.
Shri A.M. Kadukar, APP for respondent no.1/State.
Ms Akshaya Kshirsagar, Advocate appointed for respondent
no.2/victim.

CORAM : ANIL L. PANSARE, J.
DATE : FEBRUARY 24, 2023.

On 09.02.2023, the following order was passed:

“CRIMINAL APPEAL NO. 607 OF 2022

. Heard.

2. Admit.

3. Call for the Record and Proceedings.

4. The Record and Proceedings be furnished in hard copy as well as soft copy 5. Mr. Kadukar, the learned APP waives service of notice on behalf of the Respondent No.1/State.

6. Ms. Akshaya Kshirsagar, the learned Counsel (appointed), waives service of notice on behalf of the Respondent No.2/Victim.

CRIMINAL APPLICATION (APPA) NO. 781 OF 2022

. The learned Counsel for the Applicant submits that in the order dated 19/1/2023 it is inadvertently written that none appeared for the Respondent No.2. According to him and rightly so, the Respondent No.2 had not only appeared in the Court but has stated before the Court, on enquiry, that she is not interested in proceeding with the matter and that nothing has occurred as alleged in the FIR.

2. Ms. Kshirsagar, learned Counsel, who was present was directed to take instructions from the Respondent No.2, if she (Respondent No.2) is willing to take legal aid.

3. The learned Counsel for the Respondent No.2

submits that the communication between her and the Respondent No.2, being a privileged communication, it will not be proper to disclose the same before the Court. She, however, submits that the communication was in favour of the Applicant.

4. Thus, the Respondent No.2, for some reason, has now taken a stand to support the Applicant. It is also pointed out that the Respondent No.2 did not support the prosecution version even before the trial court.

5. Stand over 17th February, 2023.”

2. The learned Additional Sessions Judge in its judgment recorded the findings in paragraphs 44 and 45, which reads thus:

“44] No blood, semen, urine, saliva were detected on underwear, shirt, jeans pant, sando baniyan, duppata, petticoat, Saree and blouse. There was no blood on nail clipping of Vandana or Mayur. No semen was detected in urine, pubic hair, valy 1 swab, vaginal swab, urethral swab. The reports of forensic science laboratory may not have supported the case of the prosecution, there is sufficient evidence of rape and oral sex against the accused.

45]In the history the informant had not narrated the history ofunnatural sex. There was no corresponding injuries to anu s of informant mentioned in Forensic Medical Examination Report Exh.29. The prosecution had failed to show that the accused had committed unnatural sex with the informant.”

3. Thus, it could be seen that the FSL report did not support the prosecution. The prosecutrix/victim has also not supported the prosecution. Despite such status the learned Sessions Court has held in paragraph 44 that there is sufficient evidence to prove oral sex against the applicant. This findings will have to be revisited in the light of the fact that FSL report and prosecutrix version is not supporting the prosecution.

4. The applicant is behind bars since 18.03.2021. Considering the pendency of appeals, the present appeal is not likely to be heard in near future. Hence, interest of prosecution can be protected by putting the applicant to appropriate terms.

5. In view of above, the following order is passed.

ORDER

- (i) Criminal Application is allowed.
- (ii) The execution of sentence imposed upon the applicant by the judgment and order dated 15.07.2022 passed by the Additional Sessions Judge, Court No.2, Achalpur in Sessions Case No.1/2022 is suspended.
- (iii) The applicant – Mayur s/o Dilip Shekokar, be released on bail on he furnishing PR bond in the sum of ₹25,000/- with one solvent surety in the like amount before the lower Court.
- (iv) The applicant shall remain present before this Court at the time of final hearing of the appeal.
- (v) The applicant shall not enter into the territorial jurisdiction of Achalpur Police Station, pending appeal.

JUDGE

Wagh