

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

**INTERIM APPLICATION NO. 1644 OF 2024
IN
CRIMINAL APPEAL NO. 534 OF 2019**

1) Santosh Yashwant Shelke	
2) Rajkumar Tikeshwar Sahani	 Applicants
v/s.	
The State of Maharashtra	 Respondent

Adv. Yashodeep Deshmukh a/w. Ms. Vaidehi Pradeep for the Applicants.
Mr. S.V. Gavand, APP for the State.

**CORAM: A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATED : 22nd APRIL, 2024.

P. C. :-

1) This is a successive Application preferred by the Applicants for suspension of sentence and enlarging them on bail.

1.1) The earlier Application preferred by the Applicants along with accused no.1-Naveen Ashok Bagade was rejected on merits by an Order dated 29th July, 2019.

1.3) Present Application is preferred by the Applicants on the ground that, the Applicants have undergone incarceration of more than 10 years.

2) The Applicants are the Original accused nos.2 and 3. The Applicants are convicted for offences punishable under Sections 376-D,

428, 452 read with 34 of the Indian Penal Code and are sentenced to suffer rigorous imprisonment by the learned District Judge-7 and Additional Sessions Judge, Thane by its Judgment and Order dated 14th February, 2019.

3) It is the prosecution case that, the victim and her family members i.e., her husband and father-in-law were residing in a house. In the intervening night of 16th August, 2014 and 17th August, 2014 the Applicants along with co-accused forcibly barged into the house of the victim, dragged her husband aside and committed an act as contemplated under Section 376-D against the wish of the prosecutrix. Initially, the victim did not disclose the said fact due to fear and because of her reputation in the society. However, after the police gave her moral and legal support, she disclosed the said fact to the police.

3.1) As noted earlier, the Applicants are convicted under Section 376-D of the Indian Penal Code. Perusal of the evidence on record indicates that, there were bite marks on the body of the victim, noted by the Medical Officers (PW. Nos.15 and 17). Those bite marks are supported by blood marks on clothes. The learned Judge of the trial Court in paragraph no.60 has relied on the same. The victim has identified the Applicants herein in the Test Identification Parade. On the next day, the husband of the victim has identified accused no.1. The keys of the motorbike from which the Applicants had been to the scene of offence were seized from the site i.e.,

near the scene of offence. The medical and forensic evidence duly corroborate the version of the victim, prima facie indicting the Applicants in the present crime.

4) As noted earlier, the Applicants with common intention, barged in the house of the prosecutrix in the wee hours, assaulted her husband, took him aside and thereafter committed forcible sexual intercourse against the wish of the prosecutrix in her matrimonial home. According to us, the offence alleged and committed by the Applicants is of very serious and heinous nature and therefore the Applicants do not deserve to be released on bail at this stage.

4.1) In view of the above, the Application is rejected.

5) As the Applicants are behind bars for more than 10 years, list this Appeal along with connected Criminal Appeal No.1220 of 2022 on final hearing board for the week commencing from 06th May, 2024.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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