

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2157 OF 2022
IN
CRIMINAL APPEAL NO. 677 OF 2022

Jakir Bandenavaj Mulla ... Applicant/Appellant

V/s.

The State of Maharashtra and Ors. ... Respondents

Mr. Jaydeep D. Mane, for the applicant.

Mr. A.R. Patil, APP for the State.

Ms. Farhana Shah, appointed advocate, for the respondent nos. 2 and 3.

CORAM : KISHORE C. SANT, J.

DATE : 26TH MARCH 2024.

PC:

1. Heard the learned advocate for the applicant, learned advocate for the respondent nos. 2 and 3 and learned APP for the Respondent-State.

2. This application is filed seeking suspension of sentence and release of the applicant on bail in connection with the offence punishable under sections 376 (2) (j), 376 (2) (n) and 506 of Indian Penal Code whereby the applicant is convicted by the judgment and order dated 13/15/2022 by the learned Additional Sessions Judge, Solapur in Sessions Case No. 292 of 2019. The learned Judge found

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the applicant guilty of the above said offences on the basis of the evidence led before the Court.

3. It is the case of the prosecution that the victim is mentally challenged person who was assaulted sexually by the present applicant. It is alleged that the applicant on various occasions took the victim with him and established physical relations.

4. Learned advocate vehemently argued that a DNA test was conducted of the victim, the foetus and the applicant-accused. DNA report excludes the possibility of applicant being biological father of the foetus. He further submits that though the allegation is that he was having physical relations with the victim by force still no complaint was made till the victim was pregnant of about 7 to 8 months, before that she also was taken to the hospital on various occasions. The victim had stated the fact to her mother and still even the mother never made any complaint. He further submits that he was falsely implicated in the offences. He submits that out of 10 years of sentence he has already suffered more than 5 years in custody as he was in custody during the trial.

5. Learned APP opposes the application stating that the trial Court has clearly observed that the victim is mentally challenged person she is not in a position to give consent.

6. Learned advocate appointed for the respondent nos. 2 and 3 also opposes the application stating that the prosecution has duly proved the offence. Since the victim herself is mentally challenged person, her consent assuming to be there is of no consequence. Learned APP and learned advocate for respondent nos.2 and 3 thus pray for rejection of the application.

7. It is clearly seen that the DNA report completely excludes the possibility of the applicant being biological father of the foetus and further, the mother of the victim never made any complaint against the applicant. The victim herself has stated that she had told the fact about physical relations to her mother prior to 2 to 3 months of the police complaint. All these things show that no immediate complaint was filed inspite of alleged incident, though the victim is alleged to be mentally challenged person. From her evidence, it is seen that she was understanding the Court question and was capable of giving of statement before the Court and therefore, considering all above incidents this Court finds that a case is made out to suspend the sentence. Hence, the following order:

ORDER

- (a) Interim application is allowed.
- (b) Sentence awarded by the learned Additional Sessions Judge, Solapur in Sessions Case No. 292 of 2019 shall stand suspended, pending appeal.
- (c) The applicant shall be released on bail on furnishing P.R.bond and solvent surety in the sum of Rs. 15,000/-. Fine amount is already paid.
- (d) The applicant shall not contact the victim or any of the relatives of the victim.
- (e) The applicant shall attend the police station on first Sunday of every month between 11:00 a.m to 1:00 p.m.

(f) The applicant shall furnish his contact details including mobile number to the concerned Police Station. If there is any change in the contact details, applicant shall immediately inform the same to the concerned police station.

8. With this, the application stands disposed of.

(KISHORE C. SANT, J)