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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 176 OF 2024
IN
CRIMINAL APPEAL NO. 1282 OF 2023

Bhalchandra Shankar Mhatre ...Applicant/Appellant

Versus

The State of Maharashtra and Anr. ...Respondents

Mr. Aniket Vagal, for the Applicant/Appellant.

Ms. R.D. Humane, APP for Respondent No.1/State.

Mr. Harshad Inamdar for Respondent No.2 (appointed through Legal Services Committee).

CORAM : M.M. SATHAYE, J.

DATE : 5th DECEMBER, 2024

P.C. :

1. Heard learned counsel for the Applicant/Accused No.1, learned APP for Respondent No.1/State assisted by learned counsel for Respondent No.2/Victim.
2. This is an application for suspension of sentence and grant of interim bail. By the impugned Order dated 13.09.2022 passed in Sessions Case No. 15 of 2018, the Applicant is convicted of the offences punishable u/s. 376(2)(f), 376(2)(j), 376(2)(k), 376(2)(l) & 376(2)(n) of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for 20 years and also to pay fine.
3. The Appeal is already admitted on 02.11.2023 and the same is pending for final hearing.
4. The alleged incident has taken place in the month of January

2017. The Applicant was arrested on 22.03.2017 and he is in custody since then.

5. The case of the prosecution is as under. That since prior to 4 years from the complaint, the victim's mother was working as a maid servant in the house of the Applicant and the victim used to assist her. It is the case that the victim is not a mentally fit person. On the day of incident, when Accused No. 2 (wife of Applicant) was away at Mumbai, the victim was cleaning a loft (mezzanine), when the Applicant committed rape on her. The incident had happened twice. The victim was found pregnant. However, Applicant alongwith the wife and sister-in-law of Applicant (Accused Nos. 2 & 3, who are acquitted) tried to pressurize victim's mother against complaining. They offered money and even tried to convince the victim and her mother to undergo an abortion. In such circumstances, the complaint was lodged.

6. Learned counsel for the Applicant submitted that there are discrepancies in the evidence about proper collection of samples from the Applicant for the purpose of DNA test. It is submitted that the Applicant had refused to give his sample for DNA test. He submitted that the medical test of the Applicant took place in November 2017 when the alleged incident was of January 2017. He submitted that the Applicant is 73 years old as of today, suffering from diabetes and high blood pressure and he has already suffered detention for about 7 years and 8 months.

7. Learned APP for Respondent No.1/State with the assistance of

learned counsel for the Respondent No.2/Victim submitted that the child was born to the victim and the DNA test conducted on the Applicant has conclusively proved that the Applicant is the father. It is submitted that the victim was mentally challenged and was assisted by PW-4 teacher. It is submitted that the Applicant is landlord in the area and the other Accused Nos.2 & 3 i.e. wife and sister-in-law of present Applicant tried to threaten the victim and attempts were made to pressurize the victim to abort the child. In such circumstances, it is submitted that no indulgence should be shown.

8. Learned counsel for the Applicant has relied upon Order dated 28.03.2022 passed in Interim Application No.3152 of 2021 (Mohd. Salim Noor Mohd. Shaikh Vs. State of Maharashtra And Anr.) and Order dated 28.10.2020 passed in Criminal Bail Application No.1731 of 2019 (Dhonduram Bhiku Tambe Vs. State of Maharashtra) passed by this Court, in support of his case.

9. I have considered the submissions. Perused the record.

10. Admittedly the victim and her mother both used to work as maid/help in the Applicant's house and therefore the position of dominance/control is apparent. It has come on record by medical evidence of PW-9 Doctor that Applicant has been found capable of performing sexual intercourse. It is apparent from evidence of PW-9 that though the Applicant had refused to give his samples such as hair, nail, semen etc, but his blood sample was collected for examination. Prima facie, the evidence of this witness is not shaken

in cross examination. Ultimately by DNA test (report Ex. 120), it is established that the Applicant is the father of girl child born to Victim.

11. There is material to indicate prima facie, that attempts were made to hush up the incident and get rid of the pregnancy. Though the victim was 23 years old at the time of incident (based on birth certificate Ex. 100), she has been found to be mentally retarded and her IQ has been found to be 42% as per psychiatrist report Ex. 69. Therefore prima facie, consent aspect is not material.

12. So far as the orders of Mohd. Salim and Donduram (supra) relied upon by this Applicant are concerned, it is settled position that interim bail has to be considered in the facts of each case. In Mohd. Salim's case, accused had suffered 6 years out of 10 years sentence. In present case sentence is of 20 years. In Dhonduram's case, victim had not supported the prosecution case and had admitted that earlier dispute existed between parties and serious contradictions were found in the versions of witnesses. Present case is totally different. Therefore the said orders relied upon by the learned counsel for the Applicant, do not advance his case.

13. In the aforesaid facts and circumstances, I am not inclined to grant interim bail. The Application is accordingly rejected.

14. Considering the age of the Applicant, hearing of the appeal is expedited.

(M.M. SATHAYE, J.)