

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.215/2023

IN

CRIMINAL APPEAL NO.782/2019

(Shashikapoor @ Chocho S/o Jevarsingh Bhosle Vs. The State of Maharashtra)

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

Court's or Judge's orders

Mr. C.R.Thakur, Advocate for the applicant.
 Mr. S.S. Doifode, A.P.P. for the non-applicant/State.

CORAM: SMT. VIBHA KANKANWADI & MRS.VRUSHALI V. JOSHI, JJ.

DATE OF RESERVING THE ORDER: 25.7.2024.

DATE OF PRONOUNCING THE ORDER: 31.7.2024.

ORDER (Per Mrs. Justice Vrushali V. Joshi)

The applicant has filed this application for suspension of sentence and grant of bail under Section 389 of the Code of Criminal Procedure.

2. Prosecution case is that all the five accused persons have committed dacoity in the house of one B on 18.1.2013 at about 10 p.m. When the family of the victim was watching television, they heard barking of dogs. One Bandu Borkar came out of the house to see why the dogs are barking. He went under the mango tree. Three persons rushed on his person and started assaulting him by fist blows and sticks in their hand. Other two to three persons joined them and also started beating by fist blows. They broke the torch and dragged him inside the house. When his wife and son tried to save him, assailants started beating them by means of stick, fist and blows and demanded valuables by uttering "paise nikalo, sona chandi do" and they instructed the prosecutrix to open the boxes. After that the first informant heard the cries of his daughter "Bapre Melo". Those persons dragged his

daughter out of house, who was screaming for help. They took out his daughter out of the house and confined the complainant, his wife and son inside the house. He heard cries of his daughter for help like *Wachwa - Wachwa* for considerable period. After one and half hours his daughter - victim came along with Chitapur villagers and by opening the door set the complainant free. Thereafter the first informant enquired with his daughter. She narrated about rape committed by all the accused persons inside the house and outside the house. The F.I.R. was lodged and the crime is registered.

3. The applicant has filed the appeal challenging the judgment and order dated 9.8.2019 passed by the Additional Sessions Judge, Nagpur in Sessions Trial No.228/2013 thereby sentencing the applicant to suffer maximum imprisonment for life for the offence punishable under Sections 376(2)(g) along with other sentences for the other sections.

4. Learned Advocate for the applicant has stated that identification parade and substantive testimony of witness Bhaurao before the Court is nothing but concoction. Said witness in his cross-examination has admitted that assailants had muffled their faces and this witness has improved his evidence. Therefore, identification parade and identification before the Court is a farce. The evidence of P.W.1 victim has not corroborated her statement which is given before police and doctor as she has stated that four persons had committed sexual intercourse with her and in history in the medical certificate she has stated that two persons had committed sexual intercourse and thus the testimony of this witness is

doubtful. The D.N.A. Report excludes the present applicant and there is no recovery of any weapon on the part of the present applicant. C.A. Report is not positive. The assailants had muffled their faces, therefore, identifying the assailants by this witness is impossible. The applicant has been acquitted by the trial Court for the offence punishable under Sections 397, 395, 354, 342, 452, 504, 506 and 427 of I.P.C. which are alleged to have committed in the house of Tumbaji Khobragade, in the house of Deorao Chacherkar and Shyam Puri. There are material omissions and contradictions in the evidence of prosecution witnesses. The applicant is in jail since his arrest i.e. from 24.1.2013, near about 10 years and 1 month. Hence prayed to release him on bail.

5. Learned A.P.P. opposed the application and stated that there is ample evidence on record against the present applicant to show the involvement of this applicant in the crimes. Hence prayed to reject the application.

6. It appears from record that on the date of offence i.e. 18.1.2013 the applicant along with other co-accused has committed dacoity in five houses. Five crimes are registered against all these accused persons for offence along with offence under Section 376(2)(g) of I.P.C. and other sections of I.P.C. The applicant is acquitted in offences for dacoity in the houses of other informants but he is convicted for the offence punishable under Section 376(2)(g) of I.P.C. for committing rape. The defence of the accused /applicant is that their faces were muffled and there was no occasion for the victim to identify this applicant and identification of this applicant is concocted.

7. After going through the evidence of the victim, it is

seen that victim has specifically mentioned the role of this applicant. She has stated that all the accused had committed sexual intercourse with her and thus applicant has committed rape on her twice. She has identified the applicant as that person. She has stated in her evidence that when the accused was committing rape on her she had removed the scarf from his face and she saw the accused. She has identified him in identification parade and also in Court and she has specifically stated that he has committed rape on her once inside the house and thereafter outside the house. As the role of this applicant is clearly mentioned and he is identified by the victim, no case is made out to release him on bail. Hence the application is rejected.

(MRS.VRUSHALI V.JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)