

applicant faced no adverse allegations about her conduct when she was out on bail. Nor has she any criminal antecedents.

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15. First, the applicant, too, is a woman in her mid-50s; and, second, after her conviction, the applicant has been in jail for more than one year by now. Finally, as the appeal pertains to 2018, given the docket pressure, it is unlikely for this Court to take up the appeal immediately--in near future.

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16. So balancing the competing interests, I reckon it is appropriate that the Court suspend the sentence and enlarge the applicant on bail.

ORDER

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(i) Application is allowed.

(ii) Substantive sentence imposed on the applicant/3 rd accused is suspended and is directed to be released on bail on her executing P.R. Bond in the sum of Rs.30,000/- and on furnishing two sureties in the like amount by each.

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(iii) Pending the appeal, the applicant/accused No.3 should not contact the first informant, or any other witness, or any member of the deceased victim's family in any manner.

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(iv) The applicant's failure to abide by these conditions shall entail the prosecution to apply for cancellation of bail now granted to the applicant/3rd accused.

(v) Application is according disposed of.

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Result:- Application allowed.

**ABC 2019 (III) 54 BOM
ACQUITTAL & BAIL CASES
HIGH COURT OF BOMBAY**

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(Dama Seshadri Naidu, J.)

Criminal Application No 1479 of 2018 In Criminal Appeal No.1031 of 2018

Decided on 10 June, 2019

SHABBIR RAFIK MULANI

- Applicant(s).

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Versus

STATE OF MAHARASHTRA

- Respondent(s).

Law Covered:- (A)Protection of Children from Sexual Offences (POSCO) Act– Section 4 – Indian Penal Code, 1860 –

September 2019

a Sections – 376 & 312 – Bail & Suspension of sentence pending trial
 – Applicant & the victim are not strangers – strained relationship
 b between applicant & victim's family – Conduct of Victim – went to
 the hospital herself & got admitted to have her pregnancy terminated
 & informed the doctor that she had become pregnant because of her
 boyfriend – alleged forceful sex took place about two and a half
 months ago – later the victim left for her native place in Bihar &
 then came back – she got admitted in a hospital away from her
 residence perhaps for ignominy – sentence suspended. (Para 9 & 10)

c (B) Intention of legislation – Code of Criminal Procedure,
 1973 – Sections 438, 439 & 389 – Anticipatory Bail, Regular Bail &
 suspension of sentence – Purpose of – Delay in hearing the appeal –
 With the applicant's continued incarceration and given the Court's
 inability to take up the appeal soon – the system does not permit the
 convict to serve the sentence substantially – or in its entirety merely
 d because he has suffered conviction – otherwise, his statutory
 remedy of appeal renders itself an empty judicial exercise. (Para 13)

Law of relief:- The system does not permit the convict to
 serve the sentence substantially or in its entirety merely because he
 has suffered conviction.

e Held:- The record reveals that the applicant and the victim
 are not strangers. It seems that the applicant has engaged the victim,
 along with others, on a part-time or piece-rate basis to carry on the
 work of making what is said to be cosmetic jewelry. At some point in
 f time, the victim's family was the applicant's tenant. And as the tenant,
 the victim's family had a strained relationship with the applicant, for
 the reasons not germane here. (Para-9)

g Indeed, one of the treating doctors in the hospital, examined as
 PW-5, deposed that the victim herself came to the hospital and got
 admitted to have her pregnancy terminated. She joined the hospital past
 midnight and informed the doctor that she had become pregnant
 because of her boyfriend. It has further come in evidence that the alleged
 forceful sex took place about two and a half months ago, later the victim
 h left for her native place in Bihar and then came back. After realizing that
 she had become pregnant, she got admitted in a hospital away from her
 residence perhaps the ignominy impelled her to do so. (Para-10)

Then, with the applicant's continued incarceration and given
 the Court's inability to take up the appeal soon, the system does not
 permit the convict to serve the sentence substantially or in its entirety

merely because he has suffered conviction. For, otherwise, his statutory remedy of appeal renders itself an empty judicial exercise. (Para-13)

Counsel:- For Applicant(s): Ms. Tahera Qureshi a/w. Yakub Shaikh, Adv.

For Respondent(s): Mr N.B. Patil, Adv.

JUDGMENT

DAMA SESHADRI NAIDU, J.: - The applicant, an accused in Special POSCO Case No.227/2015 arising out of C.R.No.635/2015, was convicted for the alleged offences under Sections 376 and 312 of IPC, read with Section 4 of Protection of Children from Sexual Offences Act (POSCO Act). The Additional Sessions Court, Thane, sentenced him, through its judgment dated 31st July 2015, to undergo seven years rigorous imprisonment and to pay fine of Rs.25,000/-. In default of the applicant's paying the fine, he must undergo further simple imprisonment for six months.

2. After preferring Criminal Appeal No.103/2018 before this Court, the applicant came up with Criminal Application No.1479/2018, under Section 389 of CrPC., for suspension of sentence and his enlargement on bail.

3. Mrs. Tahera Qureshi, the learned counsel for the applicant, has taken me through the record and contended that it is entirely a false case foisted on the applicant by a mother and her daughter who were once the tenants of the applicant-accused, having strained relationship. According to her, the victim being almost 18 years old and claiming so went to a private hospital on her own and tried to have her pregnancy medically terminated. As the doctors found her to be 17½ years old, they reported the matter to the police.

4. While narrating the facts, Mrs. Tahera Qureshi has further submitted that, informed by the hospital authorities, the police in turn contacted the victim's mother and grandfather. Later, based on the mother's statement, the police registered a crime. In other words, the complaint was lodged after over two months from the date of the alleged event. And that was under compelling circumstances of the victim's surreptitious attempt at abortion coming to light. So the applicant, in that process, was made a scapegoat, given the prevailing animosity.

5. Mrs. Tahera Qureshi has laid much emphasis on the depositions of the doctors who were examined as PW-2 and PW-5.

a Besides that, she has also tried to point out the contradictions in the depositions of the mother and the daughter, who were examined as PW-1 and PW-3 respectively. In the end, the learned counsel has urged this Court to enlarge the applicant on bail because, among other things, he had been on bail during the trial and that no guilt could be brought home against him in the trial.

b 6. On the other hand, the learned Additional Public Prosecutor has contended that victim was, indeed, a minor. The alleged incident raping a minor girl--attracted not only Sections 376 and 312 of IPC but also Section 4 of the POCSO Act. In that context, he has asserted that as
c the victim remained under 18, whatever is the intention and whatever be the nature of sexual contact between the victim and the applicant, the guilt stood established--consent or no consent.

d 7. The learned APP has also submitted that as the applicant was sentenced to seven years imprisonment, which is substantial; the Court may adopt no lenient view. He also underlines that a competent trial court has already established the petitioner's guilt beyond any reasonable doubt, so this Court must adopt a stricter standard to consider the applicant's plea for suspension of sentence and bail. Thus, the learned APP has urged this Court to dismiss the
e application for suspension of sentence and bail.

f 8. Heard Mrs. Tahera Qureshi, the learned counsel for the applicant, and the learned Additional Public Prosecutor, besides perusing the record.

g 9. The record reveals that the applicant and the victim are not strangers. It seems that the applicant has engaged the victim, along with others, on a part-time or piece-rate basis to carry on the work of making what is said to be cosmetic jewelry. At some point in time, the
g victim's family was the applicant's tenant. And as the tenant, the victim's family had a strained relationship with the applicant, for the reasons not germane here.

h 10. Indeed, one of the treating doctors in the hospital, examined as PW-5, deposed that the victim herself came to the hospital and got admitted to have her pregnancy terminated. She joined the hospital past midnight and informed the doctor that she had become pregnant because of her boyfriend. It has further come in evidence that the alleged forceful sex took place about two and a half months ago, later the victim left for her native place in Bihar and then

came back. After realizing that she had become pregnant, she got admitted in a hospital away from her residence perhaps the ignominy impelled her to do so. a

11. There has been, *prima facie*, evidential prevarication on the issues whether the victim's family knew beforehand about the pregnancy and whether the applicant administered the abortion pills to the victim while she was in the hospital or before her getting admitted there. Even the victim's mother has gone on record asserting that she has never seen her daughter in the applicant's company. b

12. That said, I must clarify that the offence involves a minor her being on the verge of attaining majority being of no consequence; the applicant faced the allegation of raping a minor girl; and, after trial, his supposed guilt was brought home. It resulted in a substantial sentence: seven-year imprisonment. Therefore, all the observations and putative contradictions I have adverted to are *prima facie* and do not affect the case of either party, at this stage. c d

13. Then, with the applicant's continued incarceration and given the Court's inability to take up the appeal soon, the system does not permit the convict to serve the sentence substantially or in its entirety merely because he has suffered conviction. For, otherwise, his statutory remedy of appeal renders itself an empty judicial exercise. e

14. So to consider the ameliorating factors, besides what has already been mentioned, I may note that the applicant has been on bail during the trial and faced no allegation of abusing the bail. That apart, by now out of seven years, the applicant seems to have served about 15 months in jail: four months pre-conviction and eleven months post-conviction. f

15. Under these circumstances, I hold that it is a fit case for the Court to suspend the sentence and enlarge the applicant on bail, of course, subject to these conditions: g

ORDER

(i) Application is allowed. h

(ii) The substantive sentence imposed on the applicant-accused is suspended and he shall be released on bail on his executing P.R. Bond for Rs.20,000/- and on furnishing two sureties in the like amount by each.

September 2019

a (iii) Pending the appeal, the applicant/accused should not contact the first informant, or any other witness, or any member of the victim's family in any manner.

b (iv) The applicant's failure to abide by these conditions shall entail the prosecution to apply for cancellation of bail now granted to the applicant/accused.

(v) Application is accordingly disposed of.

Result:- Application allowed.

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ABC 2019 (III) 59 BOM
ACQUITTAL & BAIL CASES
HIGH COURT OF BOMBAY
(T.V. Nalawade & K. K. Sonawane, JJ.)
Criminal Application No 3479 of 2018
Decided on 6 June, 2019
Aurangabad Bench

DILIP UTTAM LOMATE

- Applicant(s).

Versus

e STATE OF MAHARASHTRA & ANR.

- Respondent(s).

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Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 482 – Quashing of FIR – Indian Penal Code, 1860 – Section 354 – complaint under – Touching the hands of subordinate teacher by head-master – Complaints against the complainant in regard to insubordination, negligent conduct & demeanor while discharging the duties – adverse report lodged by applicant to the superior against complainant – No use of criminal force or assault – no culpable intention on the part of accused to commit the offence of outraging her modesty – no circumstances, sufficient to conceive that the act of touching the hands of complainant had anything to do with the sex of the victim which is the essence of woman's modesty – Held, the FIR is an placebo device to lull the inquiry initiated against her for dereliction of duties – such kind of activities during the course of employment should not be allowed to be developed & promoted – FIR quashed. (Para 12 & 13)

(B) Indian Evidence Act, 1872 – Section 3 – Relevant fact – Outraging modesty of a woman – Culpable intention – The head master touched hands of assistant teacher in the classroom – Held, Had there been any culpable intention of the applicant to commit