

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4775 OF 2015

IN

CRIMINAL APPEAL NO. 702 OF 2015

Balu @ Siddharth Sahebrao Kamble,
Age : 26 years, Occu. Driver,
R/o Umri (Malyachi), Taluka
and District Parbhani

APPLICANT

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Daithana Police Station,
Taluka and District Parbhani

2. The District Injury and
Rehabilitation Board,
Parbhani

RESPONDENTS

Mr. Swapnil S. Rathi, Advocate for the applicant
Mr. V.S. Badakh, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.

DATE : 28/10/2015

ORAL ORDER :

1. Heard both sides.

2. The present applicant/appellant, who is
convicted by the learned Special Judge, Parbhani for the
offences punishable under section 376 (2) (i) of the

Indian Penal Code and under section 4 and 6 of the Protection of Children from Sexual Offences Act (for short, "POCSO Act"), is praying for suspension of the substantive sentences awarded to him and for his release on bail.

3. The learned Special Judge has directed the applicant/appellant to undergo rigorous imprisonment for ten years for the offence punishable under section 376 (2) (i) of the I.P. Code, to undergo rigorous imprisonment for a term of seven years for the offence punishable under section 4 of the POCSO Act and to undergo rigorous imprisonment for a term of ten years for the offence punishable under section 6 of the POCSO Act. All the sentences were directed to run concurrently.

4. Mr. S.S. Rathi, learned counsel for the applicant points towards the admitted medico-legal certificate at Exhibit-23, which would show that immediately within five hours of the alleged incident, the victim of the incident, who was seven years old, was examined by the Medical Officer. No injuries were found either on the private part or on the person of the

victim. He further points towards the oral testimony of said Medical Officer i.e. PW8 Dr. Mohammad Faizal to the effect that the history of attempt of rape was narrated to him. He submitted that the learned Special Judge, however, convicted the present applicant/appellant for the offence punishable under section 376 of the I.P. Code and for aggravated sexual assault as defined in the POCSO Act. Mr. Rathi further submits that the applicant was not released on bail during the trial and as such, he is behind the bars since 14th August, 2014.

5. The learned A.P.P., however, opposed the application. He submitted that the present applicant is awarded sentence of ten years' rigorous imprisonment. Further, the prosecution has proved its case beyond reasonable doubt.

6. Considering all the material on record and particularly finding that the present applicant is behind the bars since 14th August, 2014 and that the hearing in the appeal may take its own time, without making any comment on merit of the case, in my view, the present application deserves to be allowed. Hence, the following order:-

7. The substantive sentences awarded to the present applicant/appellant are hereby suspended till the disposal of criminal appeal no. 702/2015.

. Upon deposit of fine amount, if not deposited till this date, the applicant/appellant be released on bail on his executing P.R. bond in the sum of Rs. 20,000/- (rupees twenty thousand) and also upon furnishing surety in the like amount.

. The applicant shall not enter the territorial limits of village Umri (Malyachi), Taluka and District Parbhani for a period of two years or till the appeal is finally decided, whichever occurs earlier, without prior permission from this Court.

8. The application is accordingly allowed and disposed of.

[M.T. JOSHI]
JUDGE

npj/criapln4775-2015