

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5408 OF 2015
IN
CRIMINAL APPEAL NO. 760 OF 2015

Ramdhan s/o Babasaheb Choure,
Age : 20 years, Occu. Agri.,
R/o Jiwachiwadi, Tq. Kaij,
District Beed

APPLICANT

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Wadwani, Tq. Wadwani,
District Beed

2. Balu s/o Dadarao Ujgare
Age : Major, Occu. Agri.,
R/o Bhimnagar, Wadwani,
Tq. Wadwani, District Beed

RESPONDENTS

Mr. P.R. Patil, 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 is convicted by the learned Special Judge, Majalgaon for the offence punishable under section 377 of the I.P. Code and

section 4 of the Protection of Children from Sexual Offences Act (for short, "the POCSO Act") as well as under section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He was sentenced to suffer rigorous imprisonment for three years, seven years and three years, respectively for these offences. He is, therefore, praying for suspension of those sentences and for his release on bail.

3. The allegations are that he has attempted to have anal intercourse with six years old victim boy. However, as he cried during the said incident, the eye witness, as referred in the FIR, came and the complete intercourse was not possible.

4. Mr. P.R. Patil, learned counsel for the applicant points towards the fact that while the Medical Officer who has examined the victim, has suddenly deposed during the oral evidence that during local examination, he found laceration and mild bleeding, the injury certificate passed by him immediately after examination at Exhibit-26 would not show that any such injury was found. He further submits that the present

applicant was examined immediately after the alleged incident. However, no injury was found on his genital as against the prosecution case that due to attempt to insert penis in the anal, the victim had bleeding injury. He further submits that the applicant/appellant was behind the bar during the trial for a period from 01.05.2014 to 09.09.2014. Mr. Patil further submits that the applicant had barely completed the age of eighteen years before the alleged incident and in fact, it was a case of mistaken identity.

5. The learned A.P.P., on the other hand, opposed the application. He submitted that the Medical Officer in the witness box deposed about the injuries found on the person of the applicant/appellant.

6. Considering all the material on record, without going into merit of the case, finding that the applicant/appellant was behind the bars for certain period during trial and that the hearing in the appeal may take its own time, in my view, the substantive sentences awarded to the present applicant/appellant can be suspended and the applicant can be released on bail on certain condition. Hence, the following order:-

7. The substantive sentences awarded to the applicant/appellant are hereby suspended till disposal of the criminal appeal.

. 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.

8. Since the applicant/appellant is not resident of the village of the victim, he shall not enter the territorial limits of village Wadwani, Taluka Wadwani, District Beed till the decision of the appeal, without prior permission from this Court.

9. The present application is accordingly allowed and disposed of.

[M.T. JOSHI]
JUDGE

npj/criapln5408-2015