

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2810 OF 2016 IN
CRIMINAL APPEAL NO.333 OF 2016

Macchindra s/o Bhanudas Gunjal ... APPLICANT

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Shri H.D. Deshmukh, Advocate for applicant
Mrs. V.N. Patil Jadhav, A.P.P. for State
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 10th August, 2016.

ORAL ORDER :

1. Heard learned counsel for the applicant - original accused No.2. The appeal filed by the applicant has already been admitted. The applicant has been convicted under Section 7 read with Section 8 of the Protection of Children from Sexual Offences Act as well as Sections 341, 323 and 506 of the Indian Penal Code. It is stated by the learned counsel for the applicant that, regarding the alleged incident of outraging of modesty, in the trial Court there was evidence only of the victim. The main accused against whom the allegation of forcibly embracing the victim was accused No.1 Shivaji, who expired. It is stated that, the only allegation against the present applicant was holding the

hands of the victim when the victim fell due to dash of motorcycle. The counsel states that, the prosecution case contained further allegations that, in the evening when the brother of victim went to question the accused persons, they had beaten him also. Although medical certificate was proved, the said brother Sachin did not depose and the evidence of the victim on that count was hear-say. Thus, according to counsel, the applicant has good case and he should be released on bail.

2. The learned A.P.P. has opposed the application. According to her, looking to the fact that the offence under Protection of Children from Sexual Offences Act is made out, the accused should not be released on bail.

3. Going through the judgment of the trial Court and the record and proceedings as well as the bail application, what appears is that, it is a short term sentence and the present applicant was on bail during the pendency of the trial and even after conviction he has been released on bail pending filing of the appeal. It would be appropriate to suspend the sentence of imprisonment pending decision of the appeal.

4. The application is allowed. The sentence of imprisonment alone is suspended during pendency of the appeal subject to the undertaking which has been given by the applicant

- accused that he will not enter village Chilekhandwadi where the victim resides without permission and that during pendency of the appeal he will be residing at village Kukana, Taluka Newasa, District Ahmednagar. In case of emergency to enter village Chilekhandwadi for short visit, the applicant - accused shall seek necessary permission from the Sessions Court. The undertaking tendered by the applicant is accepted. The applicant - accused shall be released on P.R.B. and S.B. of Rs.15,000/- (Rupees fifteen thousand). At the time of releasing the applicant - accused on bail, the trial Court shall add condition of accused marking presence in the trial Court every three months, till disposal of the Criminal Appeal. Trial Court shall yearly send report in January of marking presence by accused in this regard to this Court till disposal of appeal.

5. The applicant shall appear before the trial Court for compliance of these directions on 29th August 2016. Till then, the present bail submitted by him shall continue.

6. Criminal Application is disposed of accordingly.

(A.I.S. CHEEMA, J.)