

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

CRIMINAL APPLICATION NO.2852 OF 2016 IN
CRIMINAL APPEAL NO.337 OF 2016

Sopan s/o Ananda Gaike ... APPLICANT

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Shri S.L. Bhapkar, Advocate for applicant
Shri K.D. Mundhe, A.P.P. for respondent/ State
.....

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

DATED: 1st July, 2016.

ORAL ORDER :

1. Heard learned counsel for the applicant - original accused. In this matter, the appeal has been admitted.

2. The learned counsel submits that, the applicant has been convicted for a short term sentence of three years for offence punishable under the Protection of Children from Sexual Offences Act and under Indian Penal Code. It is stated that,

there was no other corroborative evidence except the evidence of the victim. No medical evidence was brought regarding the oral evidence that there were scratches on the chest of the victim. It is submitted that, the incident is claimed to have occurred on 3.6.2015 while the F.I.R. was filed only on 6.6.2015. The counsel states that, the applicant - accused has good case on merits.

3. The learned A.P.P., on the other hand, submitted that the State has duly established the offence under Sections 7 and 8 of the Protection of Children from Sexual Offences Act as well as under Section 344 of the Indian Penal Code. The offence under Section 323 of the Indian Penal Code as well as 506 was also established. According to the A.P.P., the presumption under Section 29 of the Protection of Children under Sexual Offices Act was also available to the prosecution.

4. The appeal has been admitted. It will take some time to be decided. The learned counsel for the applicant - accused submits that, the applicant was on bail during the course of trial and that there was no complaint about the applicant - accused misusing the liberty. The counsel submits that, the applicant has

filed affidavit-cum-undertaking that he will reside outside the village of Mahalaxmi Hivre where the victim is residing. He states that, till the appeal is pending, the applicant will reside at village Singave, Taluka Pathardi, District Ahmednagar where the married daughter and other relatives of the applicant reside.

5. The affidavit-cum-undertaking is accepted. The application for bail deserves to be allowed and the same is allowed. During the pendency of the appeal, the substantive sentence of imprisonment alone shall stand suspended till decision of the appeal subject to the applicant - appellant appearing before the trial Court on 15th July 2016 and furnishing P.R.B. and S.B. in the sum of Rs.15,000/- (Rupees fifteen thousand). The applicant shall remain bound by the affidavit-cum-undertaking given in this Court and he shall not contact or trouble the victim in any manner. 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.

6. The accused has given undertaking to reside outside the village Mahalaxmi Hivre. However, in case of any emergency, liberty is granted to make request to this Court for permission.

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

fmp/cr2852.16