

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

**CRIMINAL APPLICATION NO.6196 OF 2016
IN
CRIMINAL APPEAL NO. 697 OF 2016**

Balaji Ramesh Shendge

.. Appellant

Versus

The State of Maharashtra

.. Respondent

Mr.S.J.Salunke, Advocate with Mr. Rajdeep D. Raut,
Advocate for the applicant

Mr.A.D.Namde, APP for the respondent/State

CORAM : V.L.ACHLIYA, J.

DATED : 15.12.2016

P.C. :-

1. The applicant/original accused No.1 has preferred the appeal against the judgment and order dated 14.07.2016 in Special Case (POCSO) No. 12/2015 passed by the Additional Sessions Judge-2, Latur. By the present application the applicant is seeking bail till pending disposal of the appeal.

2. The applicant alongwith co-accused were tried for committing offence punishable under Section 377 r/w 34 of the Indian Penal Code, 1860 and Section 4 of the Protection of Children From the Sexual Offences Act,

2012.

3. On conclusion of the trial the present applicant was convicted under Section 377 and Section 4 of the POCSO Act and sentenced to suffer R.I. for 7 years and to pay fine of Rs.2,000/- each. The Co-accused i.e. Amar Savase acquitted under Section 377 of the Indian Penal Code and convicted under Section 17 of the POCSO Act and award sentenced to undergo R.I. for seven years and to pay fine of Rs.2,000/-.

4. Mr. S.J.Salunke, Advocate alongwith Mr. Rajdeep D. Raut, Advocate strenuously contended that conviction of the applicant is not sustainable in law for the sole reason that the prosecution utterly failed to prove the guilt against the applicant beyond reasonable doubt. By referring the evidence on record the learned counsel submits that the trial court has grossly erred in appreciating the evidence. The applicant has been falsely implicated in the case by lodging the false complaint as the present applicant has stated that he would lodge the complaint against the son of the complainant for committing theft of sugarcane from his field. He further submits that there is no credible evidence to sustain the conviction. At the time of commission of offence the age of applicant was 18 years. He has already spent about two

years in jail. He further submits that looking to huge pendency of the cases it may not be possible to finally hear the appeal in near future. He further submits that co-accused has been enlarged on bail by this Court. He, therefore, urged to release the applicant on bail.

5. On the other hand learned APP opposed the application with contention that there is a prima-facie evidence to connect the applicant with the commission of the offence. The victim boy and other prosecution witnesses have fully supported the case of the prosecution. The testimony of the victim boy duly corroborated by the Medical Officer who has examined the victim boy immediately after the incident. He further submits that the case of co-accused stands on different footing and therefore the applicant is not entitled to be released on bail on the ground of parity.

6. Having appreciated the submissions advanced in the light of record and proceedings I am of the view no case is made out to entertain the request of the applicant to enlarge him on bail. During pendency of the trial the applicant was in jail. The applicant is found to be guilty of offence under Section 377 of the Indian Penal Code. The victim boy aged about 10 years has fully supported the case of the prosecution. The testimony of

the victim boy found due corroboration from the report of medical examination. The complaint was lodged immediately after the incident. The medical examination of the victim boy was also made on same day. At the time of medical examination the Medical Officer has found the abrasion on perineal area of dimension 2 x 0.2 cm on each side of buttocks and also noticed blood on perineal region. The Medical Officer categorically opined that the boy has recently undergone sexual (anal) intercourse. In this view there is a strong case to connect the applicant with the offence for which he has been convicted.

7. The applicant is not entitled to claim the bail on the ground of parity for the sole reason that case of the co-accused stands on different footing and he has been found guilty of offence under Section 17 of the POCSO Act i.e. abetting the commission of perineal sexual assault. Whereas the applicant has been held guilty of sodomy.

8. So far as the submissions advanced that at the time of commission of offence the applicant was 18 years of the age & looking his young age he be released on bail, I am of the view that the young age of the person cannot be sole criteria to entertain the request to enlarge the person on bail. The nature of the offence

also to be taken into consideration while considering the age of the person. In the present case the applicant is found to be guilty of offence of perineal sexual assault with a small boy aged 10 years. I am, therefore, not inclined to entertain the application. However, considering the fact that the applicant has already undergone sentence of about two years, I am of the view that the hearing of the appeal deserves to be expedited.

9. It is clarified that the observations made above are made for the limited purpose of deciding the present application. It is not to be treated as observation made by the Court as to the merit of the matter.

10. I am, therefore, inclined to pass the following order.

ORDER

The application is rejected. However the hearing of the appeal is expedited. The appeal be listed for final hearing in the month commencing from February-2017.

[V.L.ACHLIYA, J.]