

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 71 OF 2016
IN
CRIMINAL APPEAL NO. 31 OF 2016

Harish Eknath Lad. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mrs. Sangeeta S. Salve, advocate for Applicant.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : MARCH 23, 2016

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State.

2 This is an application under Section 389 of the Code of Criminal
Procedure, 1973 seeking suspension of substantive sentence. The
applicant herein is convicted for the offence punishable under
Section 10 of the Protection of Children from Sexual Offences Act,

2012 and sentenced to suffer R.I. for 5 years and to pay fine of Rs. 2,000/- i.d. to suffer S.I. for 15 days, the applicant is also convicted for the offence punishable under Section 506 of the Indian Penal Code and sentenced to suffer R.I. for 6 months and to pay fine of Rs. 500/- i.d. to suffer S.I. for 7 days by the Special Judge under POCSO Act in Special Case No. 48/2015 vide Judgment and Order dated 18/11/2015.

3 The learned Counsel for the applicant submits that the applicant is in custody since 13/12/2014 and has almost undergone 1 and half year out of 5 years.

4 Perused the records and proceedings more particularly, the statement of the victim and the medical case papers. The victim was 9 years old at the time of incident. Her date of birth is 31/12/2005. Her substantive evidence was recorded in question and answer form.

5 According to her, the applicant was working as a driver of school van in which she used to go to school and return home. According to her, the driver was touching her chest and shoulder, he used to intimidate her with a blade and had threatened her of dire consequences in the eventuality that she disclosed the incident to anybody. She has deposed that she used to get scared. She was asked the specific question as to how many times, the accused had indulged into such activities and she answered that it occurred twice. It is clear that she had reported about the matter one month after the incident. It is admitted by her that she had not disclosed about the same to her mother. It is pertinent to note that the victim had first disclosed the incident to a teacher from her school i.e. P.W. 2 who was not her class-teacher. On 4/12/2014 the victim had informed P.W. 2 Ms. Nikita that the driver had misbehaved with her and she would not return home by the same bus. P.W. 2 had taken her to Head Mistress. It is alleged that the victim had reiterated the same allegations.

6 From the perusal of the substantive evidence of P.W. 2, it is clear that there was no enquiry made with any other students who were travelling in the same bus. It is neither case of the prosecution that the accused had behaved with other students in a similar manner. After disclosing the incident to the Head Mistress, mother of the victim was called and she was informed about the same. Thereafter, the first information report was lodged by P.W. 3 Veena Francis Kardoja.

7 P.W. 3 has deposed before the Court that on 4/12/2014 Ms. Nikita had informed her that the victim is not willing to return home in the said van because the driver had touched her inappropriately. She had enquired with the victim and then lodged the report which is marked at Exh. 13. P.W. P.W.3 happens to be the supervisor of the said school and it was her duty to supervise the van engaged by the school. She has admitted in the cross-examination that despite instructions, the victim had not informed her of any such untoward

incident. The mother of the victim had visited the school after two days. The report was lodged on 12/12/2014.

8 The learned Counsel for the applicant has drawn the attention of this Court to the substantive evidence of the victim. It is submitted by her that upon being questioned as to why she did not inform her mother first in point of time, she has disclosed that she was scared and therefore, did not inform her mother. According to the learned Counsel, the only allegation against the applicant is that he had touched stomach and shoulder of the victim inappropriately. It is submitted that there was no reason for innocent child not to inform about it to her mother. The incident had taken place twice. The incident had not occurred just before she had disclosed about it to P.W. 2. Learned Counsel submits that in any case, the sentence imposed upon the applicant is a short terms sentence. Hence, he deserves to be enlarged on bail.

9 Reliance can be placed upon the Judgment of the Apex Court in the case of **Kiran Kumar v/s. State of M.P. 2001 AIR SCW 5130** for seeking suspension of substantive sentence during the pendency of the appeal which cannot be heard at the earliest thereby causing the prayer to become infructuous.

10 Taking into consideration all these aspect, the applicant is entitled to be enlarged on bail.

11 Hence, the following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence imposed upon the applicant is hereby suspended. He be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 20,000/- and one or two sureties in the like amount.
- (iii) The applicant shall furnish his residential address, contact numbers such as cell phone numbers, landline numbers etc. to the learned Special Court under POCSO Act, 2012, Gr. Bombay.

(iv) The applicant shall report to Special Court under POCSO Act, 2012, Gr. Bombay once in 3 months on the date specified by the concerned Court. Upon failure to report on two consecutive dates, the prosecution is at liberty to move for cancellation of bail.

12 The record and proceedings be returned to the Special Court under POCSO Act, 2012, Gr. Bombay for preparation of paper book.

13 The application is disposed of accordingly.

Parties to act on the authenticated copy of this order.

(SMT. SADHANA S. JADHAV,J)