

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 260 OF 2016
IN
CRIMINAL APPEAL NO. 154 OF 2016

Mr. Vishwas Somnath Bansode. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Biju Antony Aloor, advocate for Applicant.

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

CORAM : SMT.SADHANA S. JADHAV,J
DATE : APRIL 13, 2016

P.C.:

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

2 This is an application under Section 389 of the Code of Criminal
Procedure, 1973 seeking suspension of the sentence during the
pendency of the appeal. The applicant herein is convicted for the
offence punishable under Section 377 of the Indian Penal Code and
sentenced to undergo R.I. for 10 years and to pay fine of Rs. 5,000/-
I.d. to suffer R.I. for 6 months. The applicant is also convicted for the
offence punishable under Section 4 of the Protection of Children from

Sexual Offences Act, 2012 and sentenced to suffer R.I. for 10 year and to pay fine of Rs. 5,000/- I.d. R.I. for six months. The applicant is also convicted for the offence punishable under Section 8 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. 5,000/- I.d. R.I. for six months by the Special Judge & District Judge-1, Pune (Under the Protection of Children from Sexual offences Act, 2012) vide Judgment and Order dated 27/1/2016 in Spl.(C) SC No. 145 of 2014.

3 Perused the evidence on record. In the substantive evidence the child who is about 3 years and one month minor has deposed before the Court that on the date of incident, the applicant had unnatural sex with the child on the terrace of the house. The substantive evidence of P.W. 1 victim appears to be voluntary, truthful and inspires confidence of the Court.

4 The learned Counsel for the applicant submits that the applicant has been falsely implicated. P.W. 1 victim has been tutored by his mother. The learned Counsel for the applicant submits that the substantive evidence of the child is not corroborated by medical

evidence. According to the learned Counsel, the applicant herein deserves grant of bail during the pendency of the appeal for want of corroboration.

5 The learned Counsel has drawn attention of this Court to the evidence of P.W. 5. P.W. 5 Dr. Mane has deposed before the Court that on 19/11/2013, the victim child was brought by PSI Shelke and head constable Ombase for medical examination with allegation of sexual assault. The history was given by his father and police. P.W. 5 categorically stated as follows : “I also enquired from the boy and he also informed me about the allegations. He informed me that he was sexually assaulted. I referred the boy to expert i.e. Pediatric Surgeon.” P.W. 5 was not cross-examined since according to the defence, in the examination in chief, it was clear that the child was tutored.

6 Upon perusal of the record and proceedings annexed with the application, it is clear that the history was narrated by the child and the same is corroborated by the substantive evidence of P.W. 5.

7 The learned Counsel for the applicant has further drawn attention of this Court to the evidence of P.W. 2 i.e. mother of the victim child. P. W. 2 has deposed before the Court that on the date of incident, the child had returned home weeping and upon enquiry, he narrated the incident to his mother. He had requested his mother to apply some medicine and therefore, mother had cleaned the portion of the body with Dettol and applied sophramycin ointment. She had also enquired with the accused. Thereafter, she narrated the incident to one Jospin Fernandis. The said person dialled 100 and called police. P.W. 2 has lodged report. The learned Counsel for the applicant submits that the prosecution has not recorded the evidence of Jospin Fernandis and the same prejudices to the prosecution. The applicant has reiterated that the substantive evidence of the victim is not corroborated and therefore, he deserves to be enlarged on bail.

8 All other submissions can be appreciated at the stage of final hearing and not at the stage of bail, since that pertains to appreciation of evidence. At this stage, testimony of the victim child inspires confidence of the Court and appears to be sterling testimony. Hence,

the application seeking enlargement on bail deserves to be rejected.

The application is rejected and stands disposed of accordingly.

9 Liberty to mention the matter for final hearing after receipt of paper book.

(SMT. SADHANA S. JADHAV,J)