

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 505 OF 2016
IN
CRIMINAL APPEAL NO. 132 OF 2016

Ajim Balaso Mulla

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Ganesh K. Gole Advocate for Applicant.

Mr. S. S. Pednekar APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : MAY 2, 2016.

PC :

Heard. This is an application under section 389 of Code of Criminal Procedure, 1973 seeking suspension of substantive sentence. Applicant herein is convicted for offence punishable under section 376 & 506 of Indian Penal Code and under section 5 (l) & 5 (p) punishable under section 6 of the Protection of Children from Sexual Offences Act, 2012 (Hereinafter referred as "POCSO") and sentenced to suffer rigorous imprisonment for 10 years and fine of Rs. 50,000/- in default to suffer simple imprisonment for one year by Additional Sessions Judge & Special Judge under POCSO, Ichalkaranji in

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Sessions Case No. 39 of 2013 vide Judgment and Order dated 16/01/2016.

2) It is the case of prosecution that P.W. 2 is the minor. According to her, her date of birth is 28/10/2000. Applicant was residing in front of her house and was referred by her as Ajim Bhaiya. She has deposed before the Court that on the day of the incident, her mother had sent her to fetch Rs. 10,000/- from the accused which she had extended to him. There was a quarrel as the accused had refused to return Rs. 10,000/-. Accused was hurling abuses at the mother of the victim. She attempted to intervene, she was pushed by the accused, she had received some injuries to her hand and thereafter, her maternal uncle advised them to lodge a report at the police station. Accordingly they lodged the report. Victim was declared hostile.

3) It is pertinent to note that after victim was declared hostile, she was confronted by the prosecutor with her statement which was recorded under section 164 of Code of Criminal Procedure, 1973. She has admitted the contents of the said statement under section 164 of Code of Criminal Procedure, 1973 which is marked at Exhibit 26. However, she has admitted in the cross-examination that she has deposed before the Judge as per the instructions given by the police and that she was apprehensive of police and

therefore had not disclosed the true facts before the Judge. In this case, almost all witnesses are hostile, including the parents of the victim.

4) P. W. 13 Dr. Vitthal Kulkarni has also admitted in the cross-examination that he had not noticed any injury marks to her private parts. It is also admitted that in the notes taken by him, there is no mention that the victim girl has given the history of the incident.

5) Similarly P.W. 15 Pralhad Koli has deposed before the Court that when the complainant first approached him, he did not scribe her complaint, but forwarded the complainant to Bodhade madam.

6) P. W. 16 Archana Bodhade has deposed before the court that complainant had informed that her brother Kumar had informed her about the gossiping in the area about the relations of the victim girl with accused Ajim Mulla upon which she inquired with the victim girl. Complainant had further informed that the victim had told her mother that accused used to call her to his house frequently and had established sexual relations with her under the pretext that he will marry her after she attains majority. That she had collected the birth certificate of the victim girl which showed that the date of birth is 28/10/2000. Learned Special Judge has observed as follows:

“Many times, minor victims are afraid or confused because of the sudden attack on them by their nearer & dearer or by the unknown persons; and hence they cannot disclose their agonies to any one, due to shame or with the apprehension that their words will not be believed by the elder ones ----- . What is clear is that it is time to take stock of our legislative response while dealing with sexual crimes.”

Learned Special Judge further observed as follows :

“At last this court would like to discuss on the issue as to whether the prosecution witnesses more particularly PW-1, PW-2, PW-14 requires any penal proceedings against them for an attempt to give false evidence before the court. If we peruse the evidence of these witnesses it appears that though initially they were retracted from the prosecution case, later on they admitted the case of prosecution with confirmation that the said events were occurred. The instant case is a best example throwing light on the urgent need of “witness protection”; which aspect is still remained on papers or for discussion only and its execution is still not appears to be having the fruits to the prosecution agencies.”

7) In fact, in the fitness of circumstances, Special Court ought to have, forthwith issued notice to PW 1 as to why she should not be prosecuted for having committed an offence punishable under section 195 of Indian Penal Code. In all probabilities, the victim would not have dared to resile from her

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statement recorded under section 164 of Code of Criminal Procedure, 1973. In the eventuality that the court was of the opinion that the witnesses were threatened or that they were won over by the accused, the Special Court should not have hesitated to direct an inquiry under section 340 of Code of Criminal Procedure, 1973. Learned Court was of the opinion that Government should implement the witness protection scheme in the interest of the victims. Apart from what the State Government could have done in such a case, the Court could have issued notice for prosecution under section 195 of Indian Penal Code.

8) As on today, the substantive evidence of the witnesses is not sufficient to deny bail to the accused person.

ORDER

- (i) 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. 25,000/- with one or more sureties in the like amount.
- (iii) Applicant shall report to Sessions Court, Ichalkaranji once in six months, on the date specified by the Sessions Judge, till the conclusion of

appeal.

(iv) Upon failure to attend any two consecutive dates, prosecution would be at liberty to seek cancellation of bail.

9) Application is allowed and disposed of in the above terms.

(SMT. SADHANA S. JADHAV, J.)