

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 514 OF 2016
IN
CRIMINAL APPEAL NO. 280 OF 2016

Nitin @ Anil Nagnath NanawareApplicant
V/s.
The State of MaharashtraRespondent

Mr. Ritesh Thobade Advocate for Applicant.
Mr. S. S. Pednekar APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : APRIL 29, 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 sections 354 (A) of Indian Penal Code and section 8 of Protection of Children from Sexual Offences Act and sentenced to suffer rigorous imprisonment for 4 years and fine of Rs. 5,000/- in default to suffer simple imprisonment for 3 months by Additional Sessions Judge 4, Solapur in Special Case No. 44 of 2016 vide Judgment and Order dated 05/04/2016.

2) Applicant was arrested on 03/02/2016 and was produced before the

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court on the next date i.e. on 04/02/2016 along with the charge-sheet. Investigation appears to have been completed in a speedy manner and hastily the charge-sheet was filed within 24 hours from the time of registration of the offence. It is apparent that except recording the statement of the victim which was treated as First Information Report and recording the statement of mother-in-law who had reached the house first in point of time to whom the incident was disclosed, there appears to be no investigation at all for the reasons best known to the investigating agency. Since the charge-sheet was filed within 24 hours, accused had not filed any application under section 439 of Code of Criminal Procedure, 1973 and had instead prayed that recording of evidence may not take time since there were only two witnesses to be examined besides Investigating Officer and therefore, Special Judge has decided the case within a period of 3 months from the date of registration of the offence. Learned Special Judge, in all fairness, could have directed the investigating agency to investigate the case under section 173 (8) of Code of Criminal Procedure, 1973, however, since there was scanty evidence to be recorded, the case was tried expeditiously.

3) Learned counsel for the applicant submits that victim was a married

woman. She was married on 15/08/2015 and incident has occurred on 03/02/2016. Mother-in-law of the victim Smt. Chingubai was examined by the prosecution as prosecution witness no. 2. She has deposed before the court that on the day of incident at about 12.30 noon, she returned home from work with fodder. At that time, she had seen that accused was leaving her house. Her daughter-in-law came out of the house and she was crying. Accused had left the house on the motor-cycle. She has admitted in the cross-examination that when she returned home, initially the door of the house was closed. That when she threw the sugarcane fodder from her head, there was a big sound and thereafter, immediately her daughter-in-law came out of the house and she was crying. Mother-in-law and father-in-law of the victim are working as labours with the present applicant who happens to be labour contractor.

4) P. W. 3 Vikram Gaikwad is the Investigating Officer who was posted as P.S.I. at Tembhurni Police Station. According to him, the statement of the victim which was treated as F.I.R. was recorded by Police Naik. He has admitted in the cross-examination that he had not collected the documents showing that the prosecutrix is studying in school or that she has not attained majority. It is pertinent to note that the victim was not sent for medical

examination. He was unable to depose before the court as to whether complainant had been to the police station at about 7.00 p.m. on 03/02/2016. It is pertinent to note that there is no mention of the age of the victim or her date of birth in the F.I.R. and yet charge-sheet was filed within less than 24 hours under the provisions of Protection of Children from Sexual Offences Act. It is unfortunate that no effective steps were taken by investigating agency. That in fact, the court cannot travel beyond papers of investigation which are presented before the court and therefore, on the basis of scanty evidence, applicant has been convicted and sentenced to 4 years rigorous imprisonment.

5) Learned counsel for the applicant submits that sentence imposed upon the applicant is a short term sentence and it is not likely that the appeal would be heard in the near future.

6) Taking into consideration the fact that sentence imposed upon the applicant is a short term sentence, applicant deserves to be enlarged on bail.

ORDER

(i) Application is allowed.

(ii) The substantive sentence imposed upon the applicant is hereby

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suspended and 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 Court of Sessions Solapur, once in six months on the date as 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.

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

(SMT. SADHANA S. JADHAV, J.)