

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1143 OF 2016

IN

CRIMINAL APPEAL NO.1039 OF 2015

NITIN PURUSHOTTAM AROLE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Debajyoti Talukdar, Advocate for the Applicant.

Mr.A.R.Kapadnis, APP for the Respondent - State.

CORAM : P N. DESHMUKH, J.

DATE : 7th OCTOBER 2016.

P.C. :

1 This application is filed for suspension of sentence and for grant of bail by applicant, who is convicted by the learned Special Judge, Pune, in Special Case No.10 of 2013 for the offences punishable under Section 354 of IPC and is sentenced to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for 6 months. Applicant is further convicted for the offence punishable under Section 8 of Protection of

Children from Sexual Offences Act, 2012 (POCSO Act), and is sentenced to suffer rigorous imprisonment for 4 years and to pay a fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for 9 months. Both the sentences are directed to run concurrently.

2 Learned APP at the outset has pointed out that earlier application filed by applicant is rejected by this court by its order dated 13th April 2016. The counsel for applicant, however, has pointed out that in paragraph 8 of order, liberty is granted to applicant to apply afresh for suspension of sentence, in the event appeal is not taken up for final hearing by 30th July 2016. It is, therefore, submitted that application is tenable before this court. Having considering fact of grant of liberty in favour of applicant as aforesaid, application is heard.

3 Learned counsel for applicant has submitted that case of prosecution since its inception is not convincing, as according to him, though father of PW2 Shrawani has attended the drama class to collect his daughter, and at that time had noted Shrawani as well as PW1 Gayatri – the complainant, weeping, has not inquired from them reason for the same. It is, therefore, contended that, thereafter false complaint came to be lodged by PW1 Gayatri involving applicant.

4 It is further contended that infact, from the evidence of defence witnesses Ketaki and her mother, it is established that at the time when the incident is alleged to have occurred, applicant was not present in the institute. It is, therefore, submitted that application be allowed by imposing suitable terms and conditions, as applicant was on bail pending trial.

5 Learned APP opposed the application contending that there is direct evidence of minor girls, of whom applicant has outraged the modesty and has contended that there is no reason for any of the witnesses who are between 12 to 16 years of age to falsely implicate the applicant. It is, therefore, submitted that application be rejected.

6 In the background of submissions advanced as aforesaid, it appears to be the case of prosecution that incident took place on 15th April 2013 at about 3.50 p.m. at “Kilbil Natyarang Bhumi” situated at Sinhagad, Pune, where applicant was working as Dance and Drama Teacher and on that day by calling PW1 Gayatri Shinde, aged 12 years, PW2 Shrawani Vaidya, aged 12 years, PW3 Jhanvi Marathe, aged 14 years, PW4 Swara Korde, aged 15 years and PW5 Rutuja Tambe, aged

16 years, inside the room, inappropriately touched these minor girls and on the same day had attempted to outrage the modesty of Jhanvi Marathe, Swara Korde, and Rutuja Tambe. It is further case of prosecution that on Gayatri and Shrawani informing about such act of applicant to their mother, report came to be lodged against applicant on the same day.

7 Evidence of PW1 Gayatri in clear terms establish involvement of applicant. Her evidence reveals that on the day of incident, at around 3.00 p.m., after calling her with PW2 Shrawani inside the room, applicant directed Shrawani to leave the room on false pretext to collect measurement tape and by locking the room from inside, sat with Gayatri and on inappropriately touching her person, pulled her underwear downwards. It appears that, at the same time, there was a knock on the door, since Shrawani arrived back. The door was opened by Gayatri before which she pulled up her underwear. In the background of evidence as above, it is found that, had Shrawani not arrived at that moment, there was every possibility of applicant committing other heinous act than outraging modesty of minor girl, as deposed by her.

8 Similar evidence is of PW2 Shrawani, when she has stated that at the same time, applicant on the pretext of getting CD from some room sent PW1 Gayatri outside the room and thereafter committed similar act with Shrawani, due to which she started weeping and on arrival of Gayatri, opened the door. From her evidence, it is further noted that while both of them were going to house of Shrawani, Gayatri disclosed about incident to Shrawani and though learned counsel for applicant has submitted that from the evidence of these two witnesses it has come on record that Shrawani's father had arrived at the institution to collect her, he had not inquired from the girls why they were weeping, and has therefore, submitted that his conduct as aforesaid is doubtful, as there is no reason put forth by prosecution, why he did not make any inquiry. However, it is noted that merely because father of Shrawani not inquiring as aforesaid, does not doubt their version. More particularly, when there is no reason for minor girls to implicate applicant.

9 Evidence of PW3 Jhanvi, PW4 Swara and PW5 Rutuja further establish involvement of applicant having outraged modesty of said minor girls when she has deposed that on the day of incident, for

by-hearting dialogues of a play which they were to perform, when they were proceeding towards one room and were stepping down the staircase, applicant was walking with them at a very close distance and on reaching the room, when both the girls occupied the bench, applicant sat on the same bench and caught hold of hand of PW4 Swara and tried to embrace her. At that time, PW5 Rutuja left the room saying that she wants to have water. Evidence of PW3 Jhanvi is found corroborated by evidence of PW4 Swara and PW5 Rutuja. Infact, PW4 Swara deposed that applicant then occupied the bench, he sat in between her and Jhanvi and put his hand around both the girls due to which they felt uncomfortable and got themselves rescued by removing his hand. However, applicant again kept his hand around their neck when Rutuja on the pretext of having water went out of the room.

10 Above evidence certainly establish involvement of applicant and as such there is no substance in the case of applicant of he being falsely implicated. By referring to the evidence of Ketaki and her mother Surekha, learned counsel for applicant has submitted that their evidence establish that on the date of incident, from 11 a.m. till about 4.30 – 4.45 p.m., applicant was not present in the institution, and thus, there is no question of his outraging modesty of these girls.

DW1 Ketaki has deposed that on that day applicant had left the classroom at 11.00 a.m. and came at about 4.30 to 4.45 p.m. Her evidence is not specific, if the day, which she has referred is the same day on which the alleged incident took place. Even otherwise, according to FIR and evidence of prosecution witnesses, incident has taken place at about 3.30 p.m. In that view of the matter, there cannot be much time difference and there is possibility of minor contradictions as aforesaid in the case of prosecution. Infact, in the cross-examination Ketaki admitted that she knew all the prosecution witnesses named above and had gone to the room near the staircase at 3 – 3.30 p.m. She has further admitted that she attended the court for the purpose of giving evidence as applicant had asked her to depose in the court.

11 Similarly, evidence of DW2 Surekha appears to be hearsay as she stated that on the day of incident she had visited the class at 2.30 p.m. to supply tiffin to her daughter Ketaki when she asked Madam as to where Sir was, upon which she was informed that he had gone out for some work. Learned counsel for applicant stated that “Madam” is referred to wife of applicant. Admittedly, she is not examined as defence witness. In that view of the matter, much importance cannot be given to evidence of Surekha as aforesaid.

12 Having considering facts as aforesaid, and as this court while rejecting earlier application had also noted that considering the nature of evidence on record, no case is made out for grant of suspension of substantive sentence and for grant of bail, application is liable to be rejected as per order below :

Application is rejected.

However, applicant is at liberty to renew his request for fixing the appeal for final hearing in the week commencing from **5th December 2016.**

(P N. DESHMUKH, J.)