IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2994 OF 2017
IN
CRIMINAL APPEAL NO. 223 OF 2017

Hari @ Harish Bharat Gurav **..... APPLICANT**

V E R S U S

The State of Maharashtra **..... RESPONDENT**

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Mr. J.R.Shah, Advocate for Applicant.
Mr. G.O.Wattamwar, A.P.P. for Resp. - State.

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CORAM : V.L.ACHLIYA, J.
DATE : 6th JULY, 2017

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ORDER :

1. The applicant has moved this application seeking suspension of sentence and release on bail during pendency of Appeal, for the reasons set out in detail in the application as well as grounds raised in the appeal memo.

2. Heard the learned counsel for the applicant, A.P.P. for the respondent – State and further perused record and proceedings.

3. The applicant/accused was tried for committing offences punishable u/s 376,452 of the Indian Penal Code and section 4,5,(c) (p),6,7 and 8 of the Protection of Children from Sexual Assault Act, 2012 [for short, 'POCSO Act'] for committing rape on a minor girl. On conclusion of trial, learned Additional Sessions Judge Nandurbar was pleased to acquit the applicant/accused for the offence punishable under section 376 of the Indian Penal Code and section 4,5 (c) (p),6,7 of the POCSO Act. However, applicant/accused is convicted for committing an offence punishable under section 452 of the Indian Penal Code and sentenced to suffer rigorous for one year and to pay fine of Rs. 1,000/-. He has also held the applicant guilty for the offence punishable under section 8 of the POCSO Act and sentenced him to suffer rigorous imprisonment for three years and to pay fine of Rs. 2,500/-.

4. Mr. J.R. Shah, learned counsel for the

applicant strenuously contended that the judgment and order passed by the trial court is not sustainable in law. By referring to the testimonies of the witnesses and the reasons and findings recorded by the trial court, learned counsel pointed out that the version of the prosecutrix leading to conviction of appellant is highly improbable and can not be believed. It is pointed out that as per the prosecution case, and facts deposed by prosecutrix the alleged incident occurred within a room of admeasuring 10 x 10 feet, that too, at about 3.00 a.m in the mid night while the prosecutrix was sleeping in the said room along with her parents and her two brothers. It is pointed out that the learned additional Sessions Judge has observed in the judgment that it is improbable to believe that incident occurred in the manner stated by the complainant and acquitted the accused under section 376 of the Indian Penal Code. However, based upon the testimony of same witnesses convicted the appellant under section 452 of the Indian Penal Code and section 8 of POSCO Act. In this back ground the learned counsel submit that arguable case lies in favour of appellant to be considered in appealas against the sentence of three years awarded by the trial court, the applicant/accused

has already undergone the sentence of one and half-years as under trial prisoner. He therefore, urged to entertain the application and release the applicant/accused on bail during the pendency of the appeal.

5. On the other hand, learned A.P.P appearing for the respondent - State opposed the application contending that there is strong evidence to prove the guilt of the applicant/accused. He submits that prosecutix supported the case of the prosecution. Pair of the slippers which was left by the accused while running away from the room were seized during the course of the investigation. The victim girl was physically handicapped and aged about 13 years. He therefore, urged that looking to the nature of the offence committed and the sentence awarded, the request of applicant for release on bail may not be entertained and application be rejected.

6. In order to appreciate the submissions advanced I have perused the impugned Judgment and Order passed by the trial court as well as copies of the depositions placed on record. In my view, the case is made out to entertain the application. A complaint was filed alleging

that the accused entered into the room, switched off the light and went to the place where the victim girl was sleeping. The accused is alleged to have removed her undergarments and also removed his clothes and committed forcible sexual intercourse in the room admeasuring 10 x 10 feet where the parents and brother of the prosecutrix were alleged to be sleeping. As per the report of the medical examination of the prosecutrix, neither the signs of physical violence detected. So also no signs of tear, or bleeding noticed as per vaginal examination. Her hymen was found intact. No stain semen detected over the clothes of the accused as well as prosecutrix seized during the course of the investigation.

7. Considering the over-all evidence, trial court has acquitted the accused for offence punishable under section 376 of the Indian Penal Code as well as section 3,4,5 (p) and 6 of POCSO Act. However, trial Court convicted the applicant under section 452 of the Indian Penal Code and section 8 of the POCSO Act based upon the testimonies of the said witnesses. I am therefore, of the view that arguable case is made out to be considered in appeal. The applicant has already under gone about half of the sentence awarded by the trial court as under trial

prisoner. In case, the sentence is not suspended and the applicant is not enlarged on bail, there is every likelihood that the very purpose of filing of the appeal may be frustrate and appeal become infructious. Looking to the huge pendency, it may not be possible to immediately take up the Appeal for final hearing. I am, therefore, inclined to allow the application and pass the following order.

ORDER

[1] Pending disposal of the appeal, the execution of substantive sentence stands suspended subject to deposit of fine amount by the applicant.

[2] Pending disposal of the appeal, applicant Hari @ Harish Bharat Gurav be enlarged on bail on his furnishing bail in the sum of 50,000/- [Rupees Fifty Thousand] with one or two sureties in like amount on following conditions.

[i] Pending disposal of the Appeal, the applicant shall appear and record his appearance before the Police Inspector of Nandurbar City Police Station, Nandurbar on last date of each month in between 10 to 11 a.m.

[ii] The applicant shall not contact the prosecutrix and prosecution witnesses.

[iii] The applicant shall not leave Nandurbar city without intimating the Police Inspector of Nandurbar City Police Station, Nandurbar.

[iv] The applicant shall not indulge in the commission of similar offence.

[v] The applicant shall furnish the names and addresses of his three close relatives.

[3] In case of breach of any condition, the bail granted to the applicant shall be liable to be cancelled.

[4] Police Inspector of Nandurbar City Police Station, Nandurbar is directed to submit the report in respect of compliance of conditions after every six months.

[5] Bail to be furnished in the trial Court within the period of suspension as ordered by the trial Court or within one week from the date of order. Failure to

furnish the bail within the stipulated period, the order of grant of bail stands cancelled. Compliance report be sent to this Court.

[6] Criminal Application stands disposed of in above terms.

[V.L.ACHLIYA, J.]

YSK/Cr. Apln. 2994.2017 in Cr.A. 223.2017