

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**15 CRIMINAL APPLICATION NO. 3322 OF 2017
IN
CRIMINAL APPEAL NO. 290 OF 2017**

BHAGWAT S/O ZUMBAR LABDE

VERSUS

THE STATE OF MAHARASHTRA

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Mr. V.B.Anjanwatikar, Advocate for Applicant.

Mr. S.Y.Mahajan, A.P.P. for Resp. - State.

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CORAM : V.L.ACHLIYA, J.

DATE : 31st 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.

2. Heard the learned counsel for the applicant, A.P.P. for the respondent – State and perused impugned Judgment and order passed by the trial Court. The

applicant was tried for the offence punishable u/s 363,366-A,354,504,506 of Indian Penal Code and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 [for short 'POCSO Act'] with allegation that on 20/04/2015, the applicant kidnapped prosecutrix i.e. minor girl aged about 11 years from the lawful custody of her guardian with such intention to force her for illicit intercourse. The prosecutrix was taken to lonely place. The accused outraged her modesty and sexually exploited the victim. On conclusion of trial, trial Court convicted the applicant for the said offences except offence u/s 504 of the Indian Penal Code. For committing offence u/s 354 of the Indian Penal Code, rigorous imprisonment of two years has been imposed. For committing offence u/s 366-A of the Indian Penal Code, rigorous imprisonment of three years and fine of Rs. 5,000/- has been imposed. Similar sentence has been awarded for committing offence u/s 8 of POCSO Act. Beside the said offence, the applicant is also convicted for the offence u/s 363 and 506 of the Indian Penal Code and u/s 12 of the POCSO Act. Maximum sentence awarded is three years.

3. Learned counsel for the applicant strenuously contended that the prosecution has utterly failed to prove

the guilt against the accused beyond reasonable doubt. He submits that the evidence as adduced by the prosecution has not been properly considered by trial Court in the light of the defence of accused that he has been falsely implicated in this case. He submits that on account of dispute of property, false story has been cooked up and complaint was lodged at the instance of prosecutrix to falsely involved the accused. He submits that looking to short sentence, the applicant be enlarged on bail. During the trial, the applicant was on bail and in order to prefer Appeal, trial Court has suspended the sentence.

4. On the other hand, learned A.P.P. opposed the application with the contention that there is strong evidence against the applicant to prove the guilt against him beyond reasonable doubt. He submits that the prosecutrix and the complainant have supported the case of prosecution. Medical evidence also corroborates the evidence of prosecutrix.

5. Looking to the short term sentence, overall facts of the case, the nature of offence, I am of the view that the applicant deserves to be enlarged on bail. During

the trial, the applicant was on bail. Trial Court has suspended the sentence. Maximum sentence awarded is of three years. In case sentence is not suspended, there is every likelihood that Appeal may become infructuous. Looking to the huge pendency, it may not be possible to take up the Appeal immediately 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 Bhagwat s/o Zumbar Labde be enlarged on bail on his furnishing bail in the sum of Rs. 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 before the Officer in-charge of Police Station Lohara, Dist. Osmanabad for the purpose of recording

appearance on last day of each month in between 10.00 a.m. to 11.00 a.m.

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

[iii] The applicant shall furnish the names and addresses with phone number of his three (3) close relatives.

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

[4] Police Inspector of Lohara Police Station, Dist. Osmanabad 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 two weeks from the date of this order. Failure to furnish the bail within the stipulated period, the order of grant of bail stands recalled. Trial Court is directed to send the Compliance report.

[6] Hearing of the Appeal is expedited. Paper book is already received. Place the Appeal for final hearing on 11/09/2017.

[V.L.ACHLIYA, J.]

KNP/Cr. Apln. 3322.2017 in Cr.A. 290.2017