

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 61 OF 2017
IN
CRIMINAL APPEAL NO.29 OF 2017

Pradeep Ramnayan Yadav	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.Pravin Shukla i/b N.D.Shrivastava
Mr. P.H.Gaikwad Patil,APP for the State.

CORAM: SMT.ANUJA PRABHUDESSAI,J
DATED: 18th AUGUST, 2017

PC:-

1. By this Application, the Applicant has sought bail and suspension of the execution of sentence imposed vide judgment dated 23.12.2016 in POCSO Special Case No.1172 of 2013. By the said judgment the learned Special Judge (POCSO), Greater Bombay has convicted and sentenced the Applicant as under :-

(i) Simple imprisonment for three years and to pay fine of Rs.5,000/-, in default to undergo simple imprisonment for one month for the offence punishable under Section 363 of the Indian Penal Code,1860;

(ii) Simple imprisonment for five years and to pay fine of Rs.5,000/- i/d simple imprisonment for one month for the offence punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act").

2. Heard Mr.Pravin Shukla,the learned Counsel for the Applicant and Mr.P.H.Gaikwad-Patil, the learned APP for the State. The learned Counsel for the Applicant has submitted that the Applicant has been falsely implicated. He has further submitted that material witnesses are not examined and that the victim has not identified the Applicant. He submits that the Applicant was on bail during trial and that he had not violated the terms and conditions of the bail. He therefore

Contents that the execution of the sentence needs to be suspended.

3. The learned APP for the State submitted that the victim is a minor girl barely four years of age. He has further submitted that the other evidence on record establishes the identity of the Applicant. He has submitted that considering the gravity of the offence the sentence of imprisonment should not be suspended.

4. I have perused the records and considered the submissions advanced by the the learned Counsel for the Applicant and learned APP for the State.

5. At the outset, it may be mentioned that the fact that the Applicant was on bail during trial by itself is not a ground for suspending the sentence and releasing the Applicant on bail after his conviction. Be that as it may, the records reveal that the Applicant was charged for kidnapping and had

sexually assaulting a minor girl, who was 4 years of age. The Applicant herein had taken the victim girl to the office. The evidence of PW-2, who is the mother of the girl also prima facie reveals that after the incident her daughter had complained that she was not feeling well. Later on the victim narrated the incident to her father. The evidence of PW-2 also prima facie reveals that the victim girl had taken them to the spot of the incident and had pointed out to the Applicant as the person who had sexually abused her. The statement of the PW-2 is also corroborated by PW-5 Nadim Ansari. The evidence of the aforesaid witnesses prima facie establishes the identity of the Applicant. The record reveals that the victim was a 4 year girl and there is prima facie material to show that the Applicant had sexually assaulted the said minor girl.

6. Considering the nature of the offence as well as the evidence in support thereof, in my considered view, this is not a fit case for suspension of execution of sentence. However, considering the fact that the maximum sentence of

imprisonment is of five years, hearing of the Appeal can be expedited.

7. Hence, the Application is dismissed. Hearing of the Appeal is expedited.

(ANUJA PRABHUDESSAI,J)