

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. APPLICATION NO.915 OF 2017
IN
CRIMINAL APPEAL NO.247 OF 2017

Vikas Yashwant Madhavi	..	Applicant
Versus		
State of Maharashtra	..	Respondent

Mr. Rashmi Gawande for applicant
Mr. Shahajirao Shinde, APP for State.

CORAM : ANUJA PRABHUDESSAI, J.

DATE : 28th August 2017.

P.C.

1] By this application, the applicant who was an accused in Special Case No.2 of 2013 has sought suspension of execution of sentence imposed by the judgement dated 16th December 2016. The applicant hereinafter will be referred to as the accused.

2] Brief facts necessary to decide this application are as under:-

The applicant herein was prosecuted for offences punishable under section 342, 361, 376, 377, 511, 354 and 172 of Indian Penal

Code and sections 3(b) and 5(i) and 5(m) of Protection of Children from Sexual Offences Act, 2012 (POCSO). The case of the prosecution in brief was that on 4th December 2012 at about 5.00 pm, the accused sexually abused the minor girl aged about 3 and half years old. Pursuant to the F.I.R. lodged by the mother of the victim, crime No.I-512 of 2012 was registered against the accused for the aforesaid offences. Upon conducting the investigation, charge sheet was filed against the applicant before the Special Court, Thane. The charge was framed and explained to the accused. The accused pleaded not guilty. Upon appreciating the evidence adduced by the prosecution and on considering the evidence of the accused, the learned Magistrate held the applicant guilty of the offences under section 342, 361 and 376(2)(f)(i) of Indian Penal Code and section 3(b) and section 5(m) of POCSO punishable with section 4 and 6 respectively. The accused was sentenced to undergo imprisonment of 10 years for offences punishable under section 376(2)(f)(i) of Indian Penal Code with fine of Rs.10,000/- and in default R.I. for six months and for offences under section 3(b) read with section 4 of POCSO accused was sentenced to undergo R.I. for seven years with a fine of Rs.500 and

R.I. for 10 years for offences under section 5(m) read with section 6 of POCSO.

Being aggrieved by the said conviction and sentence the accused has preferred this appeal. Since the accused is in custody, he has sought his release on bail and suspension of execution of substantial sentence, pending hearing and final disposal of appeal.

3] Ms. Gawade, learned Counsel for the accused submits that the accused is in custody since last four and half years. She further submits that the accused is not involved in committing the said crime and that he is falsely implicated. She further submitted that the accused is a permanent resident of Vashi and there are no chances of the accused absconding during the pendency of the appeal. She further submits that the accused has no other criminal antecedents and he is falsely implicated due to previous enmity.

4] Learned APP has submitted that the victim was about 3 and half years of age at the time of incident. He submits that the evidence of the mother as well as the medical evidence prima facie

indicate that the victim was subjected to sexual assault. He has further submitted that there is prima facie material to show the involvement of the accused in the crime. Learned APP submits that the gravity of offence disentitles the accused from release on bail.

5] I have heard the learned Counsel for accused and learned APP. I have perused the record. The victim in the present case was three and half years old at the time of incident. The evidence of the mother of the victim P.W.- 1 reveals that the accused was their neighbour. On 4th December 2012 the victim girl had gone to the house of the accused to play. Her testimony prima facie reveals that on the same date at about 8.30 p.m. the accused brought the victim to her house and, thereafter, the victim girl had complained of pain in her private parts. When the mother examined the private parts the victim, she noticed blood in her private part. Her daughter (victim girl) told her that the accused told her to remove her underwear and thereafter inserted finger in her private parts.

6] P.W.-4, is Medical Officer. His testimony prima facie reveals that redness found on labia minora. Clitoris was inflamed. Redness

on vaginal mucosa and inflammation seen at vaginal fourchette in 6 O'Clock position. Hymen found intact. No tears. There was no redness on perineum. The medical evidence thus prima facie supports the case of the prosecution.

7] On cumulative reading of the evidence on record as well as findings recorded by the learned Special Judge, I am of the prima facie view that there is material on record to show the involvement of the applicant in connection with crime against a girl child, who was barely 3 and half years of age as on the date of the incident. Needless to state that the offence is of serious nature. Considering the nature of the offence, in my considered view, this is not a fit case for grant of bail, solely on the ground that the applicant is in custody since last four years. Hence, the application is rejected. Liberty is granted to the applicant to file an application for expediting the hearing of appeal.

(ANUJA PRABHUDESSAI, J.)