

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 986 OF 2017
IN
CRIMINAL APPEAL NO. 587 OF 2017

Mariappan Raju Devendra

..Applicant/ Appellant

v/s.

The State of Maharashtra

..Respondents

Mr. Vinod Kashid for the Applicant.

Mr. H.J. Dedhia APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : NOVEMBER 07, 2017.**

P.C.

1. The applicant herein has sought suspension of execution of sentence imposed by the learned Addl. Sessions Judge, Gr.Mumbai, vide judgment dated 10th March, 2017 in POCSO Special Case No. 459 of 2012 and to release him on bail.

2. Heard the learned Counsel for the applicant and the learned APP for the State. Perused the record and considered the submissions advanced by the learned Counsels for the respective parties.

3. The applicant herein was prosecuted for committing offences

under Section 354, 376(2)(f) r/w. Section 511 and 506 of IPC.

4. The case of the prosecution in brief is that on 13th March, 2012 the applicant sexually abused a minor girl aged about 5 years who was residing in his neighborhood. The crime was registered pursuant to the First Information Report lodged by the mother of the victim. Upon completion of investigation, chargesheet was filed and the case being Session's triable, was committed to the Court of Sessions. The learned Special Judge under POCSO Act after considering the evidence adduced by the prosecution, has held that the applicant guilty of the aforesaid offences and sentenced him to undergo rigorous imprisonment for 10 years for the offence under Section 376(2)(f) of I.P.C. and to pay fine of Rs.20,000/- in default to undergo rigorous imprisonment for one month. The applicant is also sentenced to undergo rigorous imprisonment of one year and fine of Rs.2000/- in respect of each of the offences under Section 354 and 506 of IPC in default, further rigorous imprisonment for two weeks.

5. I have perused the records and considered the submissions advanced by the learned Counsel for the applicant and the learned APP for the State. The victim girl is a minor of five years of age. Prima facie her evidence is not corroborated by the PW5, Medical

Officer whose testimony prima facie reveals that there were no external injuries on the private part of the victim. PW5 has also stated that there was no bleeding or stains and that the hymen was intact. PW5 claims that the victim was examined by a pediatrician who had noted that there was inflammation in genital area. PW5 has also stated that the victim had come for follow up treatment about 7 days thereafter and it was noticed that she had developed herpetic lesion in the genital region, which according to PW5 can develop only due to sexual transmission. It is to be noted that the prosecution has not examined the pediatrician who had examined the victim and who had allegedly noticed inflammation on the genitals of the victim. There are no medical reports on record to prima facie indicate that PW5 had examined the victim again on 14.3.2012 and that she had noticed herpetic lesion on the genitals of the victim.

6. No doubt, the charges leveled against the applicant are of serious nature. However, considering the nature of the evidence, in my view this is a fit case for suspending the execution of sentenced and enlarging the applicant on bail till the appeal is heard finally on merits.

7. The learned Counsel for the applicant submits that the

applicant will deposit the fine amount of Rs.24,000/- within a period of eight days. He has further submitted that till the appeal is decided on merits, the applicant will not visit New MHADA Colony, MGP Colony at Mankhurd, wherein the victim is residing and that the applicant will not interfere with the victim girl in any manner. Statement accepted.

8. In view of the above , following order is passed:

- i) The application is allowed.
- ii) The execution of sentence imposed vide judgment dated 10th March, 2017 in POCSO Special Case No. 459 of 2012 is suspended till disposal of the appeal on merits, on the applicant furnishing fresh bail bond in the sum of Rs.25,000/- (Rupees Twenty-five Thousand Only) with one or two solvent sureties in the like amount, to the satisfaction of the learned Addl. Sessions Judge, and Designated Judge for POCSO, Gr. Bombay.
- iii) The applicant shall not interfere with the victim girl in any manner.
- iv) The applicant shall furnish his permanent address, as well as his address where he proposes to reside during the pendency of the

appeal, and his contact number, to the Investigating Officer as well as in the fresh bail bonds. The Investigating Officer to verify the address furnished by the applicant before his release.

- . Application is accordingly disposed of.

(ANUJA PRABHUDESSAI, J.)