

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.525 OF 2017
AND
CRIMINAL APPLICATION NO.526 OF 2017
IN
CRIMINAL APPEAL NO.382 OF 2017**

MUKESH SURESH PANDIT)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Nazneen Khatri a/w. Mr.Raes Khan, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 14th FEBRUARY 2018

P.C. :

1 By these applications, the applicant/accused is seeking suspension of his sentence and releasing him on bail during pendency of the appeal filed by him. The applicant/accused is convicted of offences punishable under Sections 6 and 10 of the Protection of Children from Sexual Offences Act, 2012, and he has

been sentenced to suffer rigorous imprisonment for 10 years and rigorous imprisonment for 5 years on each count respectively, apart from imposition of some fine and default sentence.

2 Heard the learned advocate appearing for the applicant/accused. She argued that PW2 Sangeeta is mother of the alleged victim of the crime in question. PW2 Sangeeta had multiple affairs. She left her husband in the year 2004 but delivered a child in the year 2006. Thereafter, she claimed to have married the present applicant/accused at Jeevdani Temple. She was not even knowing the surname of her first husband, and therefore, her testimony is unworthy of credit. Possibility of tutoring cannot be ruled out. The learned advocate further argued that evidence of PW1 – the minor female victim is totally uncorroborated by the evidence of PW3 Dr.Mugdha, Assistant Professor of J.J.Hospital. This Medical Officer has deposed that she did not find hymen of the victim in torn condition, though the victim has deposed about peno-vaginal as well as peno-oral sex. My attention is drawn to Question Nos.42, 44, 45 and 47 asked to

the PW1 – the minor female victim to demonstrate that she has not disclosed the incident to police but had disclosed the same to her mother, who in turn, has disclosed the same to the police. Answer to Question No.47 is pointed out to show that in Hindi it is “No” whereas in English language it is transcribed as “Yes”. With this, the learned advocate for the applicant/accused argued that as the medical evidence is not supporting the case of the prosecution and as provisions of the Protection of Children from Sexual Offences Act, 2012, were not followed by videographing the version of witnesses, the applicant/accused is entitled for bail.

3 The learned APP opposed the application by pointing out evidence of the minor female victim of the crime in question as well as that of Medical Officer.

4 I have carefully considered the rival submissions and also perused copies of deposition of witnesses as well as the impugned judgment and order of conviction and the resultant sentence.

5 PW2 Sangeeta is mother of the PW1 – minor female victim, who is aged about 8 years. Evidence of PW2 Sangeeta do show that she left her husband in the year 2004, delivered a child i.e. PW1 – minor female victim in the year 2006 and then started residing with the present applicant/accused. She is not an eye witness to the crime in question.

6 PW1 – minor female victim in her deposition which is recorded in devnagari script with English translation by the learned trial court, has stated that the applicant/accused, who is her step-father, used to ask her to lick his penis and he used to commit penetrative sexual assault on her. This, according to her, was going on since last one year. She has deposed that this act was being done by the applicant/accused when her mother used to go for work. In cross-examination, suggestion was given to the PW1 – minor female victim that at the instance of her mother, she had told lies to police but this witness denied the suggestion. She stated that she did not tell anything to police, but she had disclosed the incident to her mother and then her mother has

narrated the incident to police. This version of the PW1 – minor female victim is perfectly in tune with the prosecution case as the First Informant in this case is not the PW1 – minor female victim but PW2 Sangeeta. The First Information Report (FIR) is at Exhibit 13. Hence, no capital of the fact that mother of the victim child has disclosed the incident to the police can be made at this stage. It is trite that when there is difference between deposition recorded in English language and deposition recorded in vernacular language, the deposition recorded in vernacular language always prevails. In this sense, one will have to appreciate the answer given to Question No.47.

7 PW3 Dr.Mugdha has specifically deposed that medical findings were consistent to the history narrated by the patient and it is not necessary that in case of digital penetration, hymen must get torn. The case in hand is a case of penetrative sexual assault on a female child aged about 8 years. Therefore, no capital can be made out of the fact that the hymen was not torn in the incident.

8 In cases of sexual assault on minor females, evidence is required to be appreciated keeping in mind broader probabilities of the prosecution case. Prima facie, I am unable to find out any material from the evidence which may demonstrate the motive with the prosecuting party to falsely implicate the applicant/accused in the crime in question. As such, at this stage, the finding that the prosecution case is concocted, cannot be given.

9 Considering the fact that the case is that of penetrative sexual assault on a child below 12 years of age by her step-father and the fact that upon trial, the offence is held to be proved against the applicant/accused, no case for release of bail is made out.

10 The applications are, therefore, rejected.

Hearing of the appeal is expedited. It be put up on board of final hearing on receipt of paper book.

(A. M. BADAR, J.)