

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

CRIMINAL APPLICATION NO.579 OF 2017

IN

CRIMINAL APPEAL NO.345 OF 2017

Sonu Jayprakash Thakur @ Manjeetkumar ...Applicant
Jayprakash Jhaa
Versus

The State of Maharashtra ...Respondent

Mr. Vikrant A.Desai h/f Adv.S.M.Kamble for the applicant.

Mr. Prashant Jadhav, APP for the State.

CORAM: A.M. BADAR, J.
DATED: 11th JANUARY 2018

PC:-

1. This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him.

2. The applicant/accused is convicted of the offence punishable under Section 353, 366A, 354 of the Indian Penal

Code and under Section 10 of the Protection of Children from Sexual Offences Act by the learned Special Judge, Kolhapur. For the offence punishable under section 363 of the Indian Penal Code and under Section 10 of the Protection of Children from Sexual Offences Act the applicant is sentenced to suffer Rigorous Imprisonment for five years on each count. Lesser sentence is imposed on the applicant so far as, the other offences allegedly proved against him are concerned. All substantive sentences imposed on the applicant/accused are directed to run concurrently.

3. Heard the learned advocate appearing for the applicant/accused. He argued that during pendency of the trial, the applicant/accused was on bail and he has not misused his liberty. The learned advocate further argued that first version of the prosecution reflected in the FIR goes to show that there was no physical contact between the present applicant and the alleged minor female victim of the crime in question. The learned advocate further argued that evidence

of first informant Dhanaji Akurde is in variance with his first version found in the FIR and he has added embellishment to his version by stating that minor female child was found sitting on the lap of the present applicant. The learned advocate further drew my attention to the deposition of all witnesses, who had allegedly seen the incident in question and submitted that all those witnesses have stated that the applicant was merely sitting in the company of the alleged minor female victim of the crime in question. With this the learned advocate argued that offences punishable under section 366-A of the Indian Penal Code and under Section 10 of the Protection of Children from Sexual Offences Act are not at all made out by the prosecution, still the applicant is erroneously convicted of these offences.

4. The learned APP opposed the application by contending that minor female victim of the crime in question has duly supported the version of the prosecution and therefore, charges are duly proved.

5. I have considered the rival submissions and also perused the copies of the deposition as well as the impugned judgment and order of conviction.

6. Section 366-A of the Indian Penal Code reads thus:-

366-A. Procuration of minor girl.-

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine."

There is no *prima facie* evidence to demonstrate that the applicant had procured the alleged minor victim of the crime in question in order to force or seduce her to illicit intercourse to some other person.

7. So far as the alleged aggravated sexual assault is concerned, the FIR lodged by the father of the minor female child is to the effect that he had seen the applicant sitting near the minor female child. As against this, in his evidence father

has stated that his minor female daughter was found sitting on the lap of the present applicant. Rest of the prosecution witnesses such as PW-2 mother of the minor female child, PW-5 Dayanand who had actually seen the alleged incident have spoken that they had seen the applicant sitting with the minor female child. The minor female child who is allegedly victim of the crime in question has not spoken that the applicant/accused had made her to seat on his lap. In this view of the matter, *prima facie*, it is not seen that the applicant with an sexual intent involved in physical contact with the minor female child.

8. Be that as it may, the short sentence of five years imprisonment is imposed on the applicant/accused, who was on bail during the pendency of the trial, he has not misused his liberty. The appeal filed by him may not be heard within a period of five years. I have already narrated the position of evidence available against the present applicant/accused.

9. In this view of the matter, I see no reason to refuse bail to the present applicant. Therefore, the following order:

(i) The application is allowed.

(ii) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.

(iii) As a condition of this order, the applicant/accused should not contact the minor female victim of the crime in question as well as her relatives in any manner.

(iv) The application stands disposed of accordingly.

(A.M. BADAR, J)