

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.826 OF 2018

IN

CRIMINAL APPEAL NO.599 OF 2018

Mr.Manoj Madhukar Rane ... **Applicant**
V/s.

The State of Maharashtra ... **Respondent**

.....

Ms.Pracheta Rathod, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent/State.

....

CORAM : A.M.BADAR J.

DATED : 27th AUGUST 2018.

P.C. :

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 for the offences punishable under Sections 354(A), 376(2) and 506 of the Indian Penal Code as well as under Sections 6 and 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO' for the sake of brevity). For the offence punishable

under Section 354(A) of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for two years. For the offence punishable under Section 376(2) of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for ten years apart from payment of Rs.30,000/- and in default to undergo simple imprisonment for six months. For the offence punishable under Section 506 of the Indian Penal Code, he is sentenced to suffer for two years. For the offence punishable under Section 6 of the POCSO, he is sentenced to suffer rigorous imprisonment for ten years apart from payment of fine of Rs.30,000/- and in default to suffer rigorous imprisonment for six months. For the offence punishable under Section 10 of the POCSO, he is sentenced to suffer rigorous imprisonment for five years apart from direction to pay fine of Rs.15,000/- and in default to suffer rigorous imprisonment for four months. The learned trial Court had directed that substantive sentences shall run concurrently.

3 Heard the learned Counsel appearing for the applicant/accused. She argued that the allegations regarding the penetrative sexual assault are coming on record by way of omission, as the mother of the victim child has not stated about the same in the FIR. The omission is proved by the Investigating Officer P.W.No.3 Annasaheb Kadam. It is further argued that despite availability of victim child, her statement was not recorded immediately, but it was recorded belatedly. By taking me through

the evidence of the alleged victim of the crime in question, it was contended that the victim of the crime in question is a tutored witness. Medical evidence is pointed out to demonstrate that the same is not corroborating the version of the victim child. My attention was also drawn to the evidence of defence witnesses and it is argued that considering the evidence of defence witnesses prosecutions' version is improbable.

4 The learned Additional Public Prosecutor opposed the application by drawing my attention to the evidence of the P.W.No.2, who is victim of the crime in question and submitted that evidence of the victim is reliable and trustworthy.

5 I have carefully considered the rival submissions and also perused copies of depositions of prosecution as well as defence witnesses as well as impugned Judgment and Order of conviction and resultant sentence.

6 The FIR came to be lodged on 20/05/2017 by P.W.No.1, who happens to be mother of the victim child and the teacher by occupation. In the detail FIR, lodged by mother of the victim child, on the basis of recitals made by the victim child to her, the allegations are in respect of sexual assault and outraging the modesty of a female child. There are no allegations about the penetrative sexual assault. However, the P.W.No.1/mother of the

victim child deposed about recitals in respect of penetrative sexual assault for the first time in the Court. P.W.No.3 Annasaheb Kadam, Investigating Officer has candidly stated that version of the P.W.No.1 to that effect is by way of omission and improvement to her original version disclosed in the FIR.

7 Evidence of the P.W.No.1/mother of the victim shows that the victim was called to the Police Station on 21/05/2017, but her statement was not recorded. This fact is accepted by P.W.No.3 Annasaheb Kadam, the Investigating Officer. It is seen that subsequently during the course of investigation, the statement of the alleged victim of the crime in question came to be recorded.

8 Evidence of the victim/P.W.No.2 *prima faice* indicates that she has been tutored. Though she has spoken about penetrative sexual assault on her when she used to go for playing with daughter of the present applicant named Akshaya, in cross-examination, the victim/P.W.No.2 has candidly stated that she was not knowing what the applicant used to do with her and therefore, she has not disclosed the fact. Apart from that, it is seen that the victim/P.W.No.2 has admitted that whenever she used to visit the house of her friend Akshaya, grandmother of Akshaya always used to remain present in the house. Nobody else used to remain present there. The victim gave several admissions in favour of the defence.

9 On this factual backdrop, evidence of P.W.No.4

Dr.Tejaswita Hande is to the effect that she had not found any signs of physical assault on P.W.No.2/the victim. Thus medical evidence is not at all supporting the prosecution.

10 It has come on record that house of the applicant where the alleged incident took place is a small apartment admeasuring 350 to 400 Sq.Ft. in area. The P.W.No.1 has categorically admitted the fact that while sitting in the hall of that apartment, kitchen as well as bedroom is visible. On this backdrop, it is in evidence of Defence Witness No.3 Ketki that her sister Akshaya/D.W.No.2 used to return her house at 12.30 p.m. whereas she used to return to the house at 2.00 p.m. and thereafter they used to stay in the bedroom. Defence Witness Amita Rane is mother of the applicant. She has reiterated what is stated by the victim child/P.W.No.2. She stated that due to ill health she used to remain in house throughout the day. With this, *prima faice*, the alleged incident seems to be improbable.

11 On this backdrop, it is in evidence of P.W.No.1/ First Informant that her husband Girish used to work in G.M.Construction Company owned by one Pankaj Ghag. She admitted about talk of redevelopment in Society. She has not denied but stated that she do not know if Pankaj Ghag was interested in redevelopment of the Society. The P.W.No.1 has accepted the fact that the work of redevelopment is given to some another Builder. On this backdrop, it is in evidence of D.W.No.1

Amita that the applicant refused and objected the proposal for redevelopment of the Society through Pankaj Ghag – Employer of husband of the P.W.No.1.

12 In the light of this position of evidence against the applicant, *prima facie*, it appears that no case for penetrative sexual assault is made out and what is reflected from the evidence, if accepted, then at the most case of sexual assault can be made out. The applicant has already undergone sentence of one year and six months. In this view of the matter, considering the nature of evidence, the following Order :

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 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 victim child or her relatives in any manner and he should not repeat commission of similar offence in future.
- (iv) The application is disposed of accordingly.

\ **(A.M.BADAR J.)**