

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.952 OF 2018

IN

CRIMINAL APPEAL NO.779 OF 2018

MOHAMMED IMRAN MOINUDDIN

)

SHAikh @ IMRANKARI

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Gaurav Parkar, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 25th JULY 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. The applicant/accused has been convicted of the offence punishable under Section 377 of the Indian Penal Code as well as under Section 6 of the Protection of Children from

Sexual Offences Act, 2012. On both counts, he has been sentenced to suffer rigorous imprisonment for 10 years apart from payment of fine of Rs.2500/- and in default, to undergo simple imprisonment for 1 month. Substantive sentences are directed to run concurrently.

2 Heard the learned counsel appearing for the applicant/accused. He drew my attention to the evidence of PW1 Abdul – the First Informant – who happens to be the father of the victim child. My attention is also drawn to evidence of PW2, who is victim of the alleged offence. The learned counsel argued that there is no evidence to connect the applicant/accused to the crime in question and negative burden was placed on the applicant/accused and that is how, he has been convicted. The learned APP opposed the application by contending that medical evidence is supporting the case of the prosecution and the applicant/accused has been identified by the victim of the crime in question.

3 I have considered the rival submissions and also perused the copies of deposition of prosecution witnesses. According to the prosecution case, victim of the crime in question is a young boy, aged about 13 years. The applicant/accused used to teach him Quran in the Madarasa. It is case of the prosecution that on 10th June 2015, the applicant/accused had committed carnal intercourse against the order of nature with PW2 – victim boy.

4 PW1 Abdul and his son PW2, who is alleged victim of the crime in question, has not supported the prosecution case in any manner. PW2 has deposed that on say of students from Madarasa, he has falsely implicated the applicant/accused. PW1 Abdul has stated that his son has not disclosed anything to him.

5 PW2 – the victim boy was subjected to medical examination on 12th June 2015 and PW4 Dr.Mahesh examined him. Evidence of PW4 Dr.Mahesh shows that upon examination of the PW2 he found semi dilated sphincter.

6 With this evidence, the applicant/accused is convicted and sentenced. Medical evidence is corroborative in nature. Unless and until there is evidence regarding authorship of the crime in question, medical evidence is hardly of any assistance. Considering the nature of evidence against the applicant/accused, the following order :

ORDER

- i) The application is allowed.
- ii) Substantive sentences of imprisonment imposed on the applicant/accused are suspended and the applicant/accused is directed to be released on bail on his executing P.R.Bond in the sum of Rs.25,000/- and on furnishing one or two sureties in like amount.
- iii) As a condition of this order, the applicant/accused should mark his attendance at the jurisdictional Police Station on every first date of each month from 10.00 a.m. to 11 a.m. till disposal of the appeal against him.
- iv) The applicant/accused should not repeat commission of similar offence in future.

- v) The applicant/accused should not contact the minor victim or his family members in any manner.
- vi) Failure to abide by these conditions shall entail the prosecution to apply for cancellation of this order.
- vii) The application is accordingly disposed of.

(A. M. BADAR, J.)

**Arti
Vilas
Khatate**

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Vilas Khatate
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