

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1365 OF 2018

IN

CRIMINAL APPEAL NO.1000 OF 2018

WITH

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Subhash Ravindranath Das ... **Applicant**

V/s.

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

Mrs. Sudha Dwivedi for the applicant.

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

CORAM : A.M.BADAR J.

DATED : 12th SEPTEMBER, 2018.

P.C. :

1. These are applications for suspension of sentence and for releasing the applicant/accused on bail during pendency of the appeal filed by him.

2. The applicant/accused is convicted of offences punishable under Sections 354, 354A and 376(2)(f) of the Indian Penal Code

apart from offence punishable under Sections 6 and 10 of the Protection of Children from Sexual Offences Act, 2012. The learned trial Court has directed that all sentences imposed on the applicant shall run concurrently. Therefore, it is not necessary to mention sentences imposed on the applicant on all counts. Suffice to state that the highest sentenced imposed on the applicant is for the offence punishable under Section 6 of the POCSO and under Section 376 (2)(f) of the Indian Penal Code for which he is directed to suffer rigorous imprisonment for 10 years apart from payment of fine of Rs.1000/- on each count.

3. Heard learned Counsel appearing for the applicant/accused. She argued that the applicant has already undergone half of the substantive sentence imposed on him. It is further argued that the victim claimed to have taken shelter at the house of neighbourer named Sapna Das. According to the prosecution case, brother of the victim was present in the house at the time of incident. Still prosecution has not examined brother of victim girl so also neighbourer named Sapna Das. There is no evidence to show that the victim child has disclosed the incident to her brother and

neighbor named Sapna Das. Medical evidence is not supporting the case of prosecution so also forensic evidence. The applicant has deposited that the entire amount of fine. With these submission, the learned Counsel argued that the applicant is entitled for bail.

4. The learned Additional Public Prosecutor opposed the application by contending that considering the nature of offence the applicant is not entitled for bail.

5. I have considered the rival submissions and also perused the impugned judgment and order of conviction and resultant sentence so also copies of deposition of prosecution witness including that of PW1/victim girl child.

6. PW1 / victim girl child is daughter of the present applicant. She has in terms deposed about penetrative sexual assault on her by the applicant in the night intervening 10th March, 2014 and 11th March, 2014 in their house. Medical evidence adduced by the prosecution shows that there is injuries on person of the PW1/victim girl child apart from rupture of her hymen.

7. It is well settled that in cases of sexual offence against the

female, there is no requirement of any corroborative evidence if version of the victim is found to be truthful and trustworthy. Non disclosure of incident to the brother and the neighborer cannot outweigh the testimony of the victim as sense of shame might have prevented her to disclose the act of her own father to her brother and the neighborer. These, aspects will have to be considered at the time of final hearing of the matter.

8. In this view of the matter, considering the nature of offence and the manner in which it is committed, no case for grant of bail is made out. The applications are therefore rejected.

9. Hearing of the appeal is expedited.

Vina
Arvind
Khadpe

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(A.M.BADAR J.)