

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1904 OF 2018
IN
CRIMINAL APPEAL NO.1418 OF 2018

Ashok Yadav Rankhambe.

..Applicant.

V/s.

The State of Maharashtra.

..Respondent.

Mr. Rahul Arote, advocate for applicant.

Mr. S. H. Yadav, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : DECEMBER 3, 2018.

P. C. :

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 389 of the Code of Criminal Procedure, 1908 seeking suspension of substantive sentence imposed upon the applicant. The applicant herein is convicted by the Special Judge under Protection of Children from Sexual Offences Act, Greater Bombay vide Judgment and Order dated 19th October, 2018 in Special Case No. 279 of 2014 thereby convicting the applicant for offence punishable 8 of the Protection of Children from Sexual Offences Act, 2012 and is sentenced to suffer R.I. for 5 years and to pay fine of Rs. 1000/- I.d. to suffer S.I. for one month. The applicant is also convicted for the offence punishable under section 354 of the Indian Penal Code.

3 It is the case of the prosecution that the applicant was

Talwalkar

residing in the neighbourhood of survivor. She was about 7 to 8 years old at the time of incident i.e. in the year 2014. It is alleged that the survivor used to play with Mayank, Soham, Bunty, children of the applicant in their house. It is alleged that the applicant had outraged modesty of the victim and had touched inappropriately with sexual intent. That she had complained about the same to her mother and law was set into motion.

4 Perused the substantive evidence of the victim. She has admitted that at the time of the incident, she was playing with the children of the applicant. That the wife of the applicant was at home. The victim had not disclosed anything to the wife of the applicant and had narrated the said incident to her mother. In the cross-examination, the enmity of both the families is brought on record. The applicant is sentenced to R.I. for 5 years.

5 The learned Counsel for the applicant submits that the applicant was enlarged on bail during the pendency of the trial after considering the allegations stated in the charge-sheet. He has not committed breach of the conditions imposed on him while on bail.

6 As on today, the applicant is custody since 19th October, 2018. In view of the Judgment of the Hon'ble Apex Court in the case, **Kiran Kumar v/s. State of M.P. 2001 AIR SCW 5130**, the applicant would be entitled to be enlarged on bail as this Court is hearing appeal of the year 2012 and 2014, where the accused are in jail. Hence, he would be entitled to be enlarged on bail during pendency of the appeal. It is made clear that suspension of sentence shall not be construed as suspension of conviction.

7 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) The substantive sentence imposed upon the applicant vide Judgment and Order dated 19/10/2018 in Special Case No. 279 of 2014 by Special Judge under Protection of Children from Sexual Offences Act, 2012, Greater Bombay is hereby suspended.

(iii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more solvent sureties in the like amount.

(iv) The applicant shall report to Special Court under POCSO Act, 2012, Gr. Bombay once in 6 months on the date assigned by the concerned Court. Upon failure to attend the concerned court on two consecutive dates, the Special Court under POCSO Act, 2012, Gr. Bombay shall report the same to the High Court and the prosecution is at liberty to file application for cancellation of bail.

(v) The applicant shall continue to reside at CBD Belapur during the pendency of the appeal.

8 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]