

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1716 OF 2017

IN

CRIMINAL APPEAL NO. 1040 OF 2017

Raju Lalsingh Keni ... **Applicant**

V/s.

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

Mr.Moinuddin Khan for the applicant.

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

CORAM : A.M.BADAR J.

DATED : 20th APRIL 2018.

P.C. :

1. This is an application for suspension of sentence and releasing applicant / accused on bail during the pendency of the appeal filed by him challenging his conviction of the offences punishable under Sections 10 of the Protection of Child from Sexual Offences Act, 2012 (herein after referred to as 'POCSO' for the sake of brevity.) as well as for the offence punishable under Section 354 of the Indian Penal Code. For the offence punishable under Section 10 of POCSO he is sentenced to suffer rigorous imprisonment for five years apart from payment of fine of Rs.10,000/- and default sentence of three months. For the

offence punishable under Section 354 of the Indian Penal Code, the applicant is sentenced to suffer rigorous imprisonment for two years apart from payment of fine of Rs.10,000/- and default sentence of simple imprisonment for three months.

2. Heard, the learned Advocate appearing for the applicant/accused. He submitted that the trial itself is vitiated because of non-according opportunity of cross-examining the material prosecution witness viz. PW1 who is the alleged victim of crime in question, PW2 Mona, who is the first informant and mother of the PW1. The learned Advocate submitted that dispute was going on between the applicant and his learned Advocate, and therefore his learned Advocate declined to cross examine the PW1 and therefore at the instance of the Court, the applicant who is cook by occupation and illiterate, put just two questions to the victim. PW2 Mona is discharged by the learned trial Court without according opportunity to cross examine her by the applicant.

3. The learned APP opposed the application by arguing that the applicant was on bail and therefore such argument did not lie in the mouth of the learned Advocate appearing for the applicant.

4. I have carefully considered the rival submission and also perused the record and proceedings which is received from the learned trial Court.

5. Allegations against the applicant are to the effect that he had committed sexual assault on PW1 who at the relevant time was below 12 years of age and as such committed the offences of aggravated sexual assault and outraging her modesty.

6. After recording chief examination of PW1, which is running into about eight pages, when cross-examination of the PW1 began, the learned Advocate appearing for the applicant declined to cross examine the witness. The learned trial Court asked the accused to cross examine the PW1 in person. The applicant had put two questions to the PW1, and the questions so put reflects that the applicant who is layman could not challenge the version of the PW1 because of lack of requisite education in the field.

7. Thereafter, evidence of PW2 Mona who is the first informant and to whom the alleged incident came to be narrated is examined by the prosecution. Her evidence running in three pages. Thereafter, the applicant, orally requested time for cross-examination of PW2 Mona. It

is seen from the record that thereafter trial was adjourned to 31st March, 2015, and then on 7th April 2015. Roznama both these dates does not show the presence of PW2 Mona for cross-examination. Then trial was adjourned to 24th April, 2015, 16th June, 2015, 16th July, 2015 and 6th August, 2015. On 6th August, 2015, the learned trial Court closed evidence of PW2 Mona by recording presence of applicant and absence of his Advocate.

8. Thus, the record shows that no effective opportunity of cross-examination of the PW1 and no opportunity to cross-examine the PW2 Mona was granted to the applicant/accused.

9. At this juncture, the provision of Article 21 of the Constitution of India as well as that of Section 304 of the Cr. P.C. become relevant for following due process of law. It was expected from the learned trial Court to appoint an Advocate from the panel of the Legal Aid at the costs of the State to represent the applicant/accused and to grant opportunity to defend the case against him. At least, the learned trial Court could have appointed some competent Advocate as an *Amicus Curie* and could have got the material witnesses cross examined in order to ascertain veracity of their evidence.

10. The applicant/accused was on bail during the pendency of the trial. It is seen that he has not misused the liberty granted by the trial Court while on bail.

11. Considering all these aspects, I am of the opinion that liberty needs to be restored to the applicant till disposal of the appeal, and therefore, the following order;

:: ORDER ::

- (i) The application is allowed.
- (ii) 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 should not contact the victim/PW1 or her relatives in any manner and he should not repeat commission of similar offence in future.
- (iv) The prayer for suspension of conviction made by the applicant stands rejected.
- (v) The application is accordingly disposed of.

(A.M.BADAR J.)