

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 72 OF 2019
IN
CRI. APPEAL NO. 874 OF 2018

Mahammad Kalin Mehamood Hasan

Shaikh @ Mohammad Kalilm

MohammadHasan Shaikh

..Applicant

v/s.

The State of Maharashtra

..Respondent

Mr. Amin Solkar for the Applicant.

Ms. Pallavi Dabholkar, APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 8th MARCH, 2019

P.C.

1. This is an application under Section 389 of the Code of Criminal Procedure seeking suspension of substantive sentence imposed upon the Applicant by District Judge-6 and Additional Sessions Judge, Thane vide judgment and order dated 19th June 2018 in Special Case (POCSO No. 6 of 2015), thereby convicting the Applicant for offences punishable under Sections 376 and 354 of the Indian Penal Code and under Sections 3, 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 and sentencing him to suffer rigorous imprisonment for seven years and to pay fine of Rs. 10,000/- in default of payment of fine, the Applicant has to undergo further simple imprisonment for six months.

2. It is unfortunate that the learned Additional Sessions Judge has not granted any compensation to the Victim to which she would be entitled under the Manodhairya Scheme. In view of this, learned counsel for the Applicant seeks liberty to add the victim as a party respondent in Appeal. Amendment to be carried out forthwith.

3. Perused the evidence recorded at the time of trial, more particularly, the substantive evidence of the victim. The victim has narrated the abusive act of the Applicant by all means. It appears that she has complained to her mother about the abusive act meted out to her at the hands of the present Applicant. The mother of the victim had taken the victim to the tailoring shop of the Applicant. The moment the Applicant had held the hand of the victim with the sexual intention, the mother of the victim intervened and had taken the victim to the police station and lodged the report. The mother of the victim (PW-1) has resiled from her earlier statement.

4. In view of this, learned counsel for the applicant has vehemently submitted that there was a quarrel between the mother of the victim and the applicant and therefore, the mother of the victim has falsely implicated the applicant in a heinous case like the present one. The defence has examined the wife of the applicant as a defence witness. It is also submitted that by passage of time, wisdom has prevailed upon the mother of the victim and therefore, she has resiled from her earlier statement. The learned counsel further

submits that the Applicant was on bail during the pendency of the trial and has been taken into custody only after his conviction and i.e. on 19th of June 2018.

5. As against this, learned APP submits that although the mother has turned hostile, the evidence of the victim appears to be made voluntarily and would inspire the confidence and therefore, it is not a fit case for bail.

6. Taking into consideration the evidence adduced by the prosecution at the trial, this Court is not inclined to allow the application seeking suspension of substantive sentence. However, in the interest of justice, the hearing of the appeal is expedited.

(SMT. SADHANA S. JADHAV, J)