

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 306 OF 2019
IN
CRIMINAL APPEAL NO. 326 OF 2019

Brijlal Rudraprasad Tiwari.

..Applicant.

V/s.

The State of Maharashtra & anr.

..Respondents.

Mr. Vijay Tiwari a/w. Mr. Atul Pandey a/w. Mr. Dattatray Pathak I/b. Mr. Gaurav Pandey, advocate for applicant.

Mr. Y.M. Nakhwa, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : APRIL 5, 2019.

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. The applicant herein is convicted for the offence punishable under section 354 of the Indian Penal Code and sentenced to suffer R.I. for 2 years and fine of Rs. 2,000/- I.d. to suffer R.I. 2 months. The applicant is also convicted for offence punishable under section 10 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to suffer R.I. for 5 years and to pay fine of Rs. 2000/- I.d. to suffer R.I. for 2 months.

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3 Perused the evidence of the victim, the mother of the victim and the Investigating Officer. It is pertinent to note that the statement of the victim was not recorded under section 164 of the Code of Criminal Procedure, 1973. It is contended that C.C.T.V. cameras were installed at the place of incident. However, the investigating officer has not taken the C.C. T.V. footage. The learned Judge has observed that the investigating officer has carried out investigation in a casual manner. It is further observed that the victim cannot be disbelieved for want of proper investigation.

4 It is true that the investigation has been carried in a most casual manner. There is no reason why the C.C.T.V. footage was not taken. P.W. 3 Investigating Officer Mr. Shrikant Jadhav has admitted in the cross-examination that he has handled 7 to 8 cases under the provisions of Protection of Children from Sexual Offences Act, 2012. In fact, no reason is assigned as to why statement of the victim and her mother was not recorded under section 164 of the Code of Criminal Procedure, 1973. There is violation of section 25 of the Protection of Children from Sexual Offences Act, 2012. Section 25 reads as follows :

25. Recording of statement of a child by Magistrate.-

1. If the statement of the child is being recorded under

section 164 of the Code of Criminal Procedure, 1973 (herein referred to as the Code), the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child:

Provided that the provisions contained in the first proviso to sub-section (1) of section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.

2. The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under section 207 of the Code, upon the final report being filed by the police under section 173 of that Code.

5 There is utter violation of the mandatory provisions of the Act. The Commissioner of Police, Mumbai shall not entrust the cases under the Protection of Children from Sexual Offences Act, 2012 to officers who are insensitive to the facts of the case and to the fact that the act has been legislated for protection of minor child who is sexually abused and assaulted.

6 Besides that, the investigating agency has not placed any material on record to substantiate the allegations levelled against the appellant. It is the contention of the learned Counsel for the appellant, that the appellant has been falsely implicated to satisfy the personal vendatta of the mother of the victim and the conviction is recorded with the aid of section 10 of the Protection of Children from Sexual Offences Act, 2012.

7 Office to send a copy of this order to the Commissioner of

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Police, Mumbai.

8 Learned Counsel for the applicant submits that the sentence imposed upon the applicant is a short sentence. Hence, the applicant is entitled to release on bail during the pendency of appeal.

9 In view of the above, the applicant deserves to be granted bail during the pendency of the appeal. Hence, following order is passed:

ORDER

(i) The application is allowed.

(ii) The substantive sentence imposed upon the applicant vide Judgment and Order dated 5/1/2019 is hereby suspended. He be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more solvent local sureties in like amount.

(iii) The applicant be enlarged on bail subject to the condition that the fine amount is deposited in the court.

(iv) Upon being enlarged on bail, the applicant shall furnish his contact number such as land line number cell phone numbers, his present address and his permanent address i.e. address of residence in Madhya Pradesh. The applicant shall furnish copy of Adhar Card.

(v) The applicant shall attend the Special Court under the provisions of POCSO Act once in 3 months on the date assigned by the

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learned Special Judge. Upon failure to attend any two consecutive dates, the learned Special Court shall report to the High Court and the prosecution is at liberty to move for cancellation of bail.

10 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]