

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 724 OF 2019

IN

CRIMINAL APPEAL NO. 686 OF 2019

Pawankumar S. Mishra

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondent

...

Mr. Rahul Singh a/w Ajay Kumar Dubey for Applicant.

Ms. Jyoti Lohokare, APP for the Respondent/State.

CORAM: P. N. DESHMUKH, J.

DATED : 16th OCTOBER, 2019.

P.C:-

This application is filed by applicant for suspension of sentence and for grant of bail who is convicted by trial Judge for the offences punishable under section 10 of POCSO Act and is sentenced to suffer RI for 5 years and to pay fine of Rs. 1,000/- in default to suffer SI for 15 days.

Yugandhara patil

2. Heard learned counsel for applicant and learned APP Counsel for appellant also has placed on record copy of NC registered against father of prosecutrix by one Sushilkumar. By referring to this document, it is submitted that relations between complainant and accused are strained. Submissions advanced however are not at all convincing as admittedly appellant is not Sushilkumar and case of Appellant is that there are illicit relations between said Sushilkumar and complainant, mother of prosecutrix. It is further contended that there is no consistency in the evidence of witnesses with regard to the incident involved in this case and in fact it has come in the evidence of father of complainant that at no point of time, appellant visited his house. It is therefore submitted that application be allowed.

3. Learned APP opposed the application contending that there is direct evidence.

4. In the background of submissions advanced as above, from the evidence of P.W.7, father of victim, it has come on record that on 21st December 2016 he was informed by his wife that appellant was harassing their daughter while leaving and bringing

Yugandhara patil

her from her school in his car as he was causing inappropriate touches to her person. According to him, appellant was knowing him since was residing on the upper floor of their house as tenant.

5. Admittedly, victim's father had no personal knowledge as has been rightly admitted by him. Even, it is case of the prosecution that victim's father was informed by one Rambhau (not examined) to keep watch on children, said fact was informed to victim's father by Rambhau sometime in December 2016. He accordingly cautioned P.W.1 Aarti his wife, which fact is found corroborated by P.W.1 when she has deposed that said Rambhau was her husband's friend who had cautioned him to keep watch on their children and accordingly on 23rd December 2016 when her husband informed her as above and accordingly on the following day, she inquired from the victim, when she was informed that appellant took her in his vehicle at lonely place, beat her and outraged her modesty on extending threats to her. It is her further case that on one occasion, when prosecutrix went to accused to offer him sandwich, he inappropriately kissed on her private part and threatened not to disclose to her parents which fact was informed to her by her daughter on 24th December 2016.

Yugandhara patil

6. From the evidence of complainant, her husband and from prosecutrix it has come on record that since June 2016, appellant was residing on rental basis on the first floor in their house and was working as taxi driver and as such used to leave complainant's children including prosecutrix to Sai Baba School and use to bringing them back. Evidence of prosecutrix when perused would reveal that when she was studying in 6th standard, one day when appellant was bringing her back from school in his vehicle, he took his vehicle in a lonely place and when she was sitting next to him on the front seat, inappropriately touched to her private part and on her raising shouts, extended threats to inform her parents and in that event her parents would drive her out of house.

7. Prosecutrix thereafter deposed of the the incident when she was subjected to inappropriate touches to her private part when she visited appellant for giving him sandwich. Her further evidence corroborates case of prosecution of one one Rambhau informing her father to keep watch on their children and accordingly her father informing to her mother who asked her whether she was bothered by anyone when on gaining confidence she informed about acts of appellant who in turn were informed by her mother, to her father

Yugandhara patil

and thereafter she accompanied her parents to police when her statement is recorded and offence is registered.

8. Having considered above evidence, though there is no medical evidence, as according to Doctor's version and medical certificate, no external injuries were found on the person of the prosecutrix or on her private part, that by itself is not sufficient to consider when in fact it is the only case of prosecutrix that appellant had kissed her private part and was inappropriately touching her breast. In the background of above evidence, no case is made out for suspension of sentence.

9. Application is therefore disposed off as dismissed.

(P. N. DESHMUKH, J.)