

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 929 OF 2019****WITH****CRIMINAL APPLICATION NO. 930 OF 2019****IN****CRIMINAL APPEAL NO. 832 OF 2019**

Vasant Sakharam Gajmal

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

Mr. S.R. Pathak i/by S.M. Gaonkar for the Applicant.

Ms. Pallavi Dabholkar, APP for the Respondent/State.

CORAM: P. N. DESHMUKH, J.**DATED : 7th OCTOBER, 2019.****P.C:-**

1. None for Respondent No. 2 though appears to be served by private mode. Affidavit of service is taken on record.
2. Heard learned Counsel for the Applicant.
3. This is an application for suspension of sentence and for bail by accused who is convicted for the offence punishable under section 354 of IPC and Section 10 of POCSO Act. Maximum punishment imposed on the applicant is for the offence

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under section 10 of Protection of Children from Sexual Offences Act, 2012, whereby he is sentenced to suffer RI for five years and to pay fine of Rs. 5,000/-, in default to suffer SI for one month.

4. Learned Counsel for applicant submitted that evidence of prosecutrix as well as her mother and independent witnesses do not establishes applicant's involvement beyond reasonable doubt as their evidence is not convincing to be acted upon and thus contended that the applicant since is aged 68 years of his age on the date of the incident, application may be allowed.

5. It appears to be case of the prosecution that on the date of the incident when prosecutrix who is 8 years old girl had visited one grocery shop, applicant had inappropriately touched on her back side when she was buying articles. On her raising shouts P.W.3 Reshma M. Sarang, who was present near the said shop informed victim that applicant had touched her bum and further informed that applicant was in habit of doing such act. Victim informed this fact to her parents who visited the shop where they learnt name of the applicant and that he was residing nearby the shop. Accordingly, prosecutrix with her parents went to applicant's house where he was found present with his friend who was identified by the prosecutrix and thereafter report came
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to be lodged by P.W.1, victim's mother. In the background of above case of prosecution, perusal of evidence of prosecutrix about her identifying appellant to be the same person involved in the present case, prima facie do not appears to be convincing, as it is not case of prosecutrix that at any point of time she had either seen applicant inappropriately touching her bum or even proceeding from the shop from where she was buying articles. Evidence of prosecutrix is that P.W.3 was present near the shop and informed about the applicant, saying that he had touched her as he was in habit of doing such act and accordingly she had gone to her house and informed her parents. Evidence of P.W.3 is even silent about her giving physical description of applicant.

6. In that view also case of prosecutrix of her identifying applicant after reaching his house from amongst the persons who were found playing cards there, does not establish confidence. In fact, it has come in the evidence of P.W.1, mother of prosecutrix that P.W.3 Reshma Sarang was in habit of making any wrong statements involving persons. Similarly, P.W.1, mother also admits that on her reaching to the shop, P.W.3, on her own met her and voluntarily informed of the incident involving the applicant.

Having considered the nature of evidence as above and in view of
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admissions by PW.3 that on the date of incident, nobody had contacted her on that day nor had inquired about raising for cry of prosecutrix, prima facie there appears no evidence establishing applicant's involvement. Accordingly application is liable to be allowed as per following order.

ORDER

1. Applicant shall be released on bail on his executing P. R. Bond in the sum of Rs. 15,000/- with one surety in the like amount.
2. While on bail the Applicant shall mark his presence with Kanjur Marg Police Station between 10.00 a.m. to 1.00 p.m. on the first day of each month initially for the period of 6 months and thereafter quarterly on the first day of each such month pending the Appeal.
3. Applicant shall be released on cash bail of Rs. 15,000/-, provisionally, for a period of one month and shall furnish surety within one month period.
4. Application is disposed off as allowed in above terms.

(P. N. DESHMUKH, J.)

(this order is corrected as per speaking to minutes dated 6.11.2019)

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