

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

**CRIMINAL APPLICATION NO.1381 OF 2018
IN
CRIMINAL APPEAL NO.1003 OF 2018**

Shivaji Ramchandra Kardekar Applicant

Vs.

The State of Maharashtra & Anr. Respondents

Mr. Sachin R. Pawar for the applicant.

Mr. S.H. Yadav, APP for State.

Ms. Monali Patil appointed advocate for respondent no.2.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 16th January 2019

P.C.:

1 Heard the respective counsel.

2 This is an application under Section 389 Code of Criminal Procedure. The applicant herein is convicted by the Additional Sessions Judge and Special Judge, Mangaon-Raigad in Special Case (POCSO) No. 11 of 2014 vide judgment and order dated 22nd June 2018. The applicant is convicted for the offence punishable under

Section 354-A of Indian Penal Code and sentenced to suffer rigorous imprisonment for one year. The accused is also convicted for the offence punishable under Section 506 of Indian Penal Code and sentenced to suffer rigorous imprisonment for one year. The accused is also convicted for the offence punishable under Sections 7 and 8 of Protection of Children from Sexual Offences Act and sentenced to suffer rigorous imprisonment for three years and fine of Rs.5,000/-, in default rigorous imprisonment for three months. He is also convicted for the offence punishable under Sections 3(1)(xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and sentenced to suffer rigorous imprisonment for six months and fine of Rs.5,000/-, in default to suffer rigorous imprisonment for three months.

3 The appeal is admitted.

4 This Court (Coram : A.M. Badar, J.), by an order dated 21st August 2018 had permitted the applicant to join the first informant/victim of the crime in question as a party-respondent.

Notice was issued to the added respondent, returnable on 3rd October 2018. Clause 6 of the order dated 21st August 2018 reads as follows:

“In the meanwhile, order suspending the substantive sentence imposed on the applicant by the learned trial Court shall continue to operate until further orders”.

5 This Court by an order dated 26th November 2018 had requested Ms. Monali Patil to espouse the cause of respondent no. 2-original complainant and the interim relief was extended.

6 Heard the respective counsel at length. Perused the notes of evidence. In the present case, the learned counsel for the applicant submits that the applicant was in love with the elder sister of the victim. There was a love affair. Therefore, the parents of victim, to seek their personal vendetta have falsely implicated the applicant in the present case. There is denial of the entire incident. It is also submitted that there is no independent witness who had actually heard the remarks made by the applicant or the act committed by the applicant.

7 The learned counsel appointed for the complainant has submitted that in fact the present applicant was in habit of harassing young girls, molesting them. The villagers of Mauje Chikhlap were fed up with the behaviour of the present applicant and therefore finally they had filed a written report to the Police Inspector of Shrivardhan-Raigad stating therein the incidence in which the applicant had harassed and molested young girls in the village. They had also pointed out the incident dated 16th February 2012, in which the applicant had threatened the parents of the victim. Crime number 13 of 2012 was registered at Shriwardhan police station for the offence punishable under Sections 504 and 506 of Indian Penal Code. A non-cognizable case was registered. However, he had indulged into similar activities and therefore on 15th February 2012, the Special Executive Magistrate had also cancelled the personal bond furnished by the present applicant. The application was signed by not less than 60 to 70 villagers. The application is also tendered before this Court.

8 Learned counsel for the complainant has also submitted that in respect of the present incident in which he is presently convicted had taken place on 15th February 2013. On 17th November 2014, the victim in the present case had lodged a report at the police station that the sister of the present applicant had been to the School of the victim and had assaulted her with fist and kicks blows, as she was aggrieved by lodging of the complaint. Learned counsel further submits that the victim in the present case is a brilliant student. She had appeared and passed scholarship examination. She was a good Sportsman and an Artist and she had also been awarded for writing best essays in State level competition. That due to the threat and fear of the present applicant, the parents of the victim were constrained to get her married at the age of 17 years and her education was discontinued. Learned counsel, Ms. Monali Patil further submits that the applicant has no fear of law. The conviction or any other conditions imposed upon him will not be a deterrent and therefore she prays that the interim relief granted by the order dated 21st August 2018 deserves to be vacated. The compilation is

taken on record and marked “X” for identification.

9 In fact, it was incumbent upon the police authorities to take appropriate action against the present applicant at the appropriate time. The girls in the village are being exposed to social obloquy because of the activities of the present applicant. Moreover, the victim belongs to scheduled caste. The family was leading a peaceful life. However, since they had no safety and security, the only alternative before the helpless parents was to get their daughter married. It is in these circumstances that this Court is of the opinion that the interim relief granted on 21st August 2018 deserves to be vacated. This would not amount to cancellation of bail, since the substantive sentence was suspended only to enable the applicant to file an appeal. That order was extended.

10 At this stage, learned counsel for the applicant has prayed for protection to the family of the victim. The complainant shall make an appropriate application to the Police Inspector of Shrivardhan-Raigad Police Station alongwith copy of this order. The Police shall consider the application and take appropriate steps.

11 The applicant shall surrender before the Special Judge, Mangaon-Raigad on/or before 19th January 2019 before 5.00 pm.

12 The applicant is granted liberty to renew his prayers for bail after 30th March 2019.

13 The application is dismissed and stands disposed of.

14 Parties to act on authenticated copy of this order.

15 Learned counsel, Ms. Monali Patil has put in the best of efforts, in the interest of justice to espouse the cause of the complainant. It would be difficult to part with the order without appreciating her efforts and hence, she is entitled to the fees as per law to be paid by High Court Legal Aid Committee.

(Smt. Sadhana S. Jadhav, J)