

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1763 OF 2018

IN

CRIMINAL APPEAL NO.1240 OF 2018

Sachin Suresh Patole

...Applicant

V/s.

The State of Maharashtra

...Respondent

Ms. Jayshree Tripathi, Advocate for the Applicant.

Mr. S.V. Gavand, APP for the Respondent/State.

CORAM : A.M.BADAR J.

DATED : 11th FEBRUARY 2019

P.C. :

1. This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him. The applicant/accused is convicted of the offences punishable under Section 377 of the Indian Penal Code as well as under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act' for the sake of brevity). For the offence punishable under Section 6 of the POCSO Act, he is sentenced to suffer rigorous imprisonment for 10 years apart from imposition of fine of Rs.25,000/-. No separate

sentence was awarded to him for the offence punishable under Section 376 of the Indian Penal Code.

2. Heard the learned Counsel appearing for the applicant/accused. She argued that the applicant/accused has already undergone 1/4th sentence imposed on him. He has no criminal antecedents. The learned Counsel further argued that First Informant/mother, so also the alleged victim of the crime in question have turned hostile to the prosecution. Medical evidence adduced by the prosecution is not supporting and corroborating the case fully. The doctors examined by the prosecution has stated that injury on the alleged victim was superficial and simple. They had not given their independent opinion. Their opinion is based on history. It is further argued that internal examination of the victim was not conducted. With this, it is submitted that the applicant/accused is entitled for bail.

3. The learned APP opposed the application by drawing my attention to evidence of First Informant/PW-1/Vidya as well as that of the victim child who is examined as PW-2 and contended that by cross examining both these witnesses, the prosecution has

brought on record the fact that the applicant/accused was the perpetrator of the crime in question.

4. I have considered the rival submissions and perused the material placed on record. That part of evidence of hostile witness which supports prosecution can be relied upon by the Court for passing its judgment. Cross-examination of the First Informant/mother shows that the applicant/accused belongs to Ramoshi Caste and as persons of that caste indulged in riot, she is afraid of them. This indicates the reason for turning hostile to the prosecution. Further cross-examination of this witness shows that she heard narrations of her child regarding penetrative sexual assault on him. She admitted in cross-examination that when she saw anus of her son, it was swollen having tear and radish in colour. She admitted contents of the FIR lodged by her. In a similar way, in his cross-examination, the victim child has accepted the entire case of prosecution. He has even admitted that he had disclosed the entire incident to her mother i.e. PW-1.

5. At this backdrop, it is in evidence of PW-4/Dr. Priya Rambacchan Gupta, PW-5/Dr. Chhaya Vinayakrao Patil and PW-

6/Dr. Akash Kacharu Dolase that they had seen redness at the anus of the victim. PW-4/Dr. Priya Gupta had noticed abrasions on the anal examination of the victim. Section 3 of the POCSO Act defines penetrative sexual assault and penetration of any extent amounts to offence of penetrative sexual assault. Therefore, at this stage, it cannot be said that non-examination of internal parts creates shadow on doubt of case of prosecution.

6. In the light of this evidence, judgment in the matter of *Mohan Ambadas Meshram Vs. State of Maharashtra*¹ is of no assistance to the applicant/accused at this stage. Similarly, mentioning history of sexual assault by unknown persons is also of no consequence at this stage.

7. Considering the nature of offence, the applicant/accused is not entitled for bail.

8. The application, is therefore, rejected.

9. Hearing of the appeal is expedited.

(A.M.BADAR J.)

¹ 2018 ALL. MR (Cri.) 4562