

(1)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1656 OF 2020
IN
CRIMINAL APPEAL NO.504 OF 2020

Dnaneshwar Ravindra Garje = APPLICANT

VERSUS

The State of Maharashtra & Ors. = RESPONDENTS

Mr.PP More, Advocate for Applicant;
Mr.SW Mundhe, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 7th October, 2020.

PER COURT:-

1. Heard learned Advocate and learned APP appearing for respective parties.

2. In this Criminal Application, the applicant, who is the original accused, prays for suspension of substantive sentence and releasing him on bail during pendency and final hearing of the Criminal Appeal.

3. The applicant is the original accused in Special Case (POCSO) No.219 of 2019, who has been convicted by learned Additional Sessions Judge, Ahmednagar, vide judgment and order dated 5th March, 2020. The applicant has been convicted, thus, -

(2)

a) Under Section 11 punishable under Section 12 of POCSO Act and sentenced to suffer R.I. for one year and to pay fine of Rs. 5,000/-, in default, R.I. for one month.

b) Under Section 506 of IPC and sentenced to suffer R.I. for three months and to pay fine of Rs.1,000/-, in default, R.I. for fifteen days.

The substantive sentences are order to run concurrently.

. Though the accused has been held guilty for the offence punishable under Section 354(D) of IPC but in view of provisions of Section 42 of POCSO Act, no separate punishment is awarded. Out of the fine amount, amount of Rs. 5,000/- is directed to be given to the victim.

4. It is vehemently submitted on behalf of the applicant that, though there was material contradictions in the evidence of the witnesses, they have been brushed aside by the learned Special Judge while convicting the appellant-applicant and, therefore, the conviction is unwarranted. The applicant was on bail amid the trial and he has already deposited the fine amount. The sentences awarded to the applicant by the learned Special

(3)

Judge are short term sentences. The learned Advocate further submits that the appeal involves other legal issues, which the applicant/appellant wants to agitate and address them at the time of final hearing of the appeal and the applicant has every hope of success in the appeal. Consequently, the applicant prays for enlarging him on bail by suspending the substantive sentence awarded by the learned Special Judge on such terms and conditions as this Court may deem fit and proper.

5. Per contra, learned APP resisted the application and supported the reasons assigned by the learned Special Judge while convicting and imposing the sentence against the applicant. The evidence of the informant on the point of occurrence of the evidence is quite natural and believable. The informant has specifically stated the overt act of the accused. There is no enmity between the family of accused and the victim as such, there was no reason for the victim to lodge false FIR and depose falsely against the accused. There are no material contradictions and omissions in the evidence of the informant. The evidence of the victim has been well corroborated from her FIR

(4)

as well as the statement recorded under Section 164 of Cr.P.C. The learned Special Judge has properly scanned the evidence brought on record. It is, therefore, submitted that the application being devoid of merit, deserves to be dismissed and it be dismissed accordingly.

6. As it appears from the impugned judgment of the learned Special Judge, particularly the sentence, that has been awarded against the applicant for offences, in question, is the short-term sentences. In view of the decision in the case of Kiran Kumar Vs. State of M.P. - (2001) 9 SCC 211, benefit will have to be extended to the applicant-appellant when he has demonstrated that the material and significant points raised by him in the appeal are required to be considered at the time of final hearing of the appeal. Further, the applicant was on bail throughout the trial and he has not misused his liberty and he had also deposited the fine amount. In view of the matter, it can be said that a case is definitely made out for releasing the applicant on bail by suspending the substantive sentence during pendency and final disposal of the appeal. Hence, following order,-

(5)

ORDER

i. The Criminal Application stands allowed.

ii. The substantive sentence imposed on the applicant by learned Special Judge, vide judgment and order dated 5th March, 2020 in Special Case (POCSO) No.219/2019, is hereby suspended till hearing and final disposal of the appeal.

iii. The applicant be released on executing PR and SB of Rs.15,000/ (Rupees fifteen thousand) each.

iv. The applicant shall not commit any criminal activity.

v. The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and, thereafter, the Trial Judge to fix dates for their subsequent appearances.

vi. In case of two consecutive defaults on the part of the applicant to remain present before the Trial Court,

(6)

the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

vii. Bail before the Trial Court.

(SMT. VIBHA KANKANWADI,J.)

BDV