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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1672 OF 2020
IN
CRIMINAL APPEAL NO.510 OF 2020

Subhash Harchand Mahajan = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT

Mr.Joydeep Chatterji, Advocate for Applicant;
Mr.AM Phule, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 28th October, 2020.

PER COURT:-

1. Heard Shri Joydeep Chatterji, learned Advocate for applicant and Shri AM Phule, learned APP appearing for Respondent-State.

2. In this Criminal Application, the applicant, who is the original accused, prays for suspension of substantive sentence imposed by learned Additional Sessions Judge, Jalgaon in Special (POCSO) Case No.9/2017 on 17.9.2020 and releasing him on bail during pendency and final hearing of the Criminal Appeal.

3. The applicant is the original accused in

(2)

Special Case (POCSO) No.9 of 2017, who has been convicted by learned Additional Sessions Judge, Jalgaon, vide judgment and order dated 17th September, 2020. The applicant has been convicted, thus, -

a) Under Section 376(2)(i) of IPC and sentenced to suffer R.I. for fourteen years and to pay fine of Rs.5,000/-, in default, S.I. for two months.

b) Under Section 5(m) read with 6 of POCSO Act and sentenced to suffer R.I. for fourteen years and to pay fine of Rs. 5,000/-, in default, S.I. for two months;

The substantive sentences are order to run concurrently.

. Out of the fine amount, an amount of Rs. 8,000/- was ordered to be given to the victim as compensation under Section 357(A) of Cr.P.C after the appeal period is over and remaining amount of Rs.2,000/- is ordered to be credited to the State.

4. It is submitted on behalf of the applicant that, while convicting the applicant learned Special Judge has not appreciated the evidence in right perspective. Though there was

(3)

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 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. Lastly, learned counsel submits that final adjudication in the appeal is likely to take considerable time and considering his prolonged custody, the applicant may be enlarged 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

(4)

occurrence of the incident is quite natural and believable. The prosecution has proved the panchanama on record. The clothes of the accused and victim are identified before the Court. There is sufficient evidence to prove the guilt of the accused beyond reasonable doubt. The learned Special Judge has properly scanned the evidence brought on record. It is, therefore, submitted that the application being sans merit, deserves to be dismissed and it be dismissed accordingly.

6. It is to be noted that the learned Special Judge, after having taken into consideration the evidence brought on record and properly scanning the same, has awarded fourteen years' rigorous imprisonment to the applicant-accused, which cannot be said to be a small sentence and, therefore, the benefit, set out in the decision in the case of Kiran Kumar Vs. State of M.P.-(2001) 9 SCC 211, cannot be given to the applicant-accused, as the said authority cannot be made applicable to this case. Further, at the time of the alleged incident, the victim was 11 years old and at the time of deposition she was 13 years old;

(5)

whereas the accused was 46 years of age. Her date of birth has been extracted in the cross. Therefore, at this stage, no adverse inference can be drawn that her age is not proved. Further, the victim, who is minor, has stated that, she was kidnapped by the accused by saying that she should marry him. While it is true that prolonged custody of applicant of almost fourteen years is a relevant consideration for examining his prayer for suspending the substantive sentence and releasing him on bail, but then serious criminal delinquencies proved against him coupled with the nature of offence, cannot be altogether overlooked else a wrong signal would go to the society. The manner in which the offence has been committed by the applicant is heinous and, therefore, no sympathy deserves to be shown to him. Resultantly, the application deserves to be dismissed and it is accordingly dismissed.

(SMT. VIBHA KANKANWADI,J.)

BDV