

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.671 OF 2020
IN
CRIMINAL APPEAL NO.428 OF 2020

Sunil Vasant Waghmare, Age 29 years,
Occ.Nil, R/o.Nipani Mala, Post Ojhar,
District Nashik
(Presently lodged in jail)

Applicant

versus

The State of Maharashtra

Respondent

Mr.Tejesh Dande with Bharat Gadhavi i/by Tejesh Dande and Associates for applicant.

Mr.Vishal Navale i/by Grishma Lad for respondent no.2 and 3.

Mr.A.R.Kapadnis, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th October 2020

PC :

1. This is an application for suspension of sentence and grant of bail during pendency of Criminal Appeal No.428 of 2020 challenging the judgment and order dated 23rd July 2019 passed by learned Additional Sessions Judge, Niphad in Sessions Case No.28 of 2014.

2. The applicant has been convicted for offences punishable u/s 376(3), 201 of Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act and sentenced to suffer imprisonment for a term of 20 years and to pay fine of Rs.30,000/- for the offence u/s 376(3) of IPC. He is sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.20,000/- for the

offence u/s 4 of POCSO Act. He is also sentenced to suffer imprisonment for a term of three years and fine of Rs.5,000/- for the offence u/s 201 of IPC.

3. The case of the prosecution is that the victim girl was aged about 14 years at the time of incident. The accused resides in the same vicinity of the victim girl. The victim was pregnant. She delivered a baby. Thereafter the complaint was lodged with police alleging that she was sexually assaulted by the accused.

4. Learned advocate for applicant submitted that the applicant was on bail during trial. The DNA report was not proved in accordance with the provisions of law. Learned counsel representing respondent nos.2 and 3, on instructions, submitted that they are ready to file affidavit in support of the applicant. By order dated 5th August 2020 application was adjourned to enable them to file affidavit.

5. On 14th October 2020 the affidavit tendered by the victim who is presently major was taken on record. The mother of the applicant was present in the Court. In the affidavit filed by the victim it was stated that she is willing to perform marriage with the applicant. Learned counsel for applicant, on instructions, has submitted that the relation between both the families are cordial. The mother of applicant was present in Court on 14th October 2020. It was submitted that the applicant is also willing to marry with the victim girl without prejudice to the challenge to conviction. The application was then adjourned for filing affidavit of applicant.

6. The affidavit of applicant affirmed before the jail authorities where he is detained, is tendered in the Court. In the said affidavit dated 24th October 2020 it is stated by the applicant that both the families i.e. the applicant's family and the family of victim girl are having cordial relations till date. The applicant's family is considering the option of marrying with the victim girl once he is released on bail. The applicant is inclined to marry with the victim girl in near future. The victim girl is presently aged about 23 years and she has met the applicant in jail and both of them have unanimously agreed to marry with each other. It is also stated that the affidavit is filed voluntarily with free will and wish and without any coercion by applicant. The affidavit of victim dated 14th October 2020 mentions that the relationship between both the families is cordial and her family and herself is considering the option of marrying with the accused. Both the affidavits are taken on record. The appeal is admitted and pending for final hearing. It is submitted by learned counsel for applicant that the applicant has been convicted and the appeal is yet to be heard on merits.

7. Learned counsel for applicant submitted that on account of financial constraints and poor financial status the applicant is not in a position to deposit the entire fine amount. Considering the peculiar factual aspects as stated above in the present case, some relaxation can be given to the applicant qua deposit of fine.

8. Hence, I pass following order :

ORDER

(i) The sentence of imprisonment awarded by learned Additional Sessions Judge, Niphad, District Nashik vide judgment and order

dated 23rd July 2019 in Sessions Case No.28 of 2014, is suspended during pendency of the appeal preferred by the applicant and the applicant is directed to be released on bail on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(ii) The applicant shall report concerned Police Station once in three months on the first Saturday of the month between 11 am to 1 pm till further orders;

(iii) The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of twelve weeks in lieu of surety;

(iv) The applicant shall deposit 50% of the fine amount within a period of two months from the date of order.

9. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

MST