

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 840 OF 2020

ALONG WITH

INTERIM APPLICATION NO. 841 OF 2020

IN

CRIMINAL APPEAL NO. 278 OF 2020

Sagar Dnyaneshwar Dhotre

... Applicant/Appellant

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr.A.B. Tajane for Applicant/Appellant.

Mr.Amit Palkar, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 6th November 2020.

PC. :

These are applications for suspension of sentence and releasing the applicant on bail.

2. Heard Mr.Tajane, learned counsel for the applicant and Mr.Palkar, learned A.P.P. for the respondent-State.

3. Applicant is convicted under Section 376 of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, "POCSO Act") and is sentenced to suffer maximum rigorous imprisonment of 7 years and to pay a fine of Rs.25,000/-, in default of

payment of fine to further suffer imprisonment for six months by the learned Additional Sessions Judge, Solapur in Sessions Case No. 90 of 2018 by its Judgment and Order dated 22nd January 2020.

4. The prosecutrix was aged about 11 years on the date of commission of alleged offence by the applicant. It is alleged that, on 24th January 2018 when the victim was alone in her house, the applicant called her in a tin shed, closed its door and thereafter committed penetrative sexual assault on her. The cries of prosecutrix were heard by her mother, who along with other neighbours, rushed to the spot and knocked the door of the said tin shed. The applicant opened the door, however could not give any satisfactory explanation of the presence of victim girl inside the said tin shed. The Trial Court has convicted applicant under Section 376 of the Indian Penal Code and under Section 4 of the POCSO Act and is sentenced to suffer maximum rigorous imprisonment of 7 years and to pay a total fine of Rs.25,000/- as noted earlier.

5. Learned counsel for the applicant submitted that, the prosecution has failed to examine Medical Officer who conducted medical examination of the prosecutrix on 25th January 2018. He further submitted that, the Medico Legal Certificate issued by Medical Officer, which is at Exhibit-34 does not corroborate the version of either prosecutrix or her mother (PW-1).

Prima-facie I find substance in the contention of learned counsel

for the applicant.

6. Learned counsel for the applicant further submitted that, the applicant has undergone approximately 2 years and 9 months of imprisonment out of 7 years of sentence imposed upon him by the Trial Court. He further on instructions submitted that, the applicant till today has not deposited fine amount in the Trial Court, however the same will be deposited before his actual release from jail. The said statement is accepted.

7. In view thereof, I am inclined to suspend the sentence imposed upon the applicant and to release him on bail on certain conditions.

8. Hence, the following Order :-

- (i) During the pendency of the present Appeal, the substantive sentence imposed upon the applicant is suspended.
- (ii) Applicant be released on bail in Sessions Case No. 90 of 2018 on his furnishing P.R. bond of Rs.20,000/- with one or two local sureties in the like amount.
- (iii) After his release from Jail and during the pendency of the present Appeal, applicant shall not enter territorial jurisdiction of MIDC Police Station Solapur and Sadar Bazar Police Station, Solapur, except for marking his presency at MIDC Police Station as directed herein below.
- (iv) After his release from Jail and during the pendency of present Appeal, the applicant shall attend MIDC Police Station on every first Monday of every 3rd Month between 10:00 am and 12:00 noon and mark his presency.

The applicant thus shall attend MIDC Police Station 4 times in a year during the pendency of the present Appeal.

- (v) If the applicant commits even a single default in complying with condition No.(iii) above, the prosecution will be at liberty to file an application for cancellation of bail.
- (vi) Applicant shall not contact the prosecutrix or her mother (PW-1).

9. Both the Applications are allowed in the aforesaid terms.

10. This Order will be digitally signed by the Personal Assistant of this Court. All the concerned will act on production by fax or e-mail of a digitally signed copy of this Order.

[A.S. GADKARI, J.]

Omkar S.
Kumbhakarn

Digitally signed
by Omkar S.
Kumbhakarn
Date: 2020.11.06
15:59:40 +0530