

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 602 OF 2019
IN
CRIMINAL APPEAL NO. 677 OF 2019

Rambhai @ Ramu Vakilsingh @ Mahto ... Applicant

Versus

1. The State of Maharashtra
2. Mahesh Arvind Vaghela ... Respondents

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Mr. Omprakash A. Pandey i/b M/s. Pandey and Co, Advocate for the Applicant.

Ms. Saziya Mukadam, Advocate for Respondent No.2.

Ms. A. A. Takalkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 27th NOVEMBER, 2020.

PER COURT:

1. This is an application for suspension of sentence of imprisonment awarded vide Judgment and order dated 4th December, 2018 passed by learned Special Judge under POCSO Act in POCSO Special Case No. 71 of 2016. The applicant has been convicted for offence punishable under Section 8 of Protection of Children from Sexual Offences Act, 2012 (for Short 'POCSO') and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.2,000/-. The applicant is also convicted for offence punishable

under Section 363 of Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/-

2. Heard both sides. The prosecution case is that, the victim boy aged about 11 years was taken to secluded place and there the accused attempted penetration in the anus of victim. The statement of the complainant and the other witnesses were recorded. The victim was medically examined. Charge-sheet was filed.

3. Learned counsel for the applicant submitted that the appeal preferred by the applicant has been admitted. The applicant was on bail during the trial. He is in custody from 27th August, 2019. The maximum punishment imposed by the trial Court on convicting him is for a period of five years. The appeal may not come up for hearing in near future. There is discrepancy in respect to the date of offence. The FIR was lodged on 6th December, 2015. In the evidence the complainant had stated that the incident had occurred on Saturday which would fall on 5th December, 2015. The medical evidence does not support the prosecution case. Forensic report also does not corroborate the prosecution case.

4. Learned APP submitted that the evidence of the victim attributes specific role to the applicant. The offence has been clearly made out. The victim was minor. The evidence of the witnesses fully

establishes the charges against the applicant.

5. Learned counsel for the intervenor/respondent No.2 – original complainant opposed the application for suspension of sentence. It is submitted that the victim was boy aged about 11 years. The evidence on record establishes that the victim was taken to secluded place and the alleged act was committed by the accused. Since the victim escaped, further act could not be accomplished. The offence would be an attempt to commit aggravated penetrative sexual assault. The offence is of serious nature. The evidence of the witnesses is not shaken in any manner. There is no discrepancy in the date of incident as the complainant has not stated that the incident had occurred on 5th December. The evidence of the witnesses clearly supports the prosecution case. The medical evidence on record has been considered by the trial Court. Considering the nature of the act as stated by the victim, there could not be medical evidence as contended by the applicant. The ground raised in the application for suspension of sentence are false and misleading.

6. I have perused the evidence on record. The incident is of 2015. The appeal preferred by the applicant has been admitted. The applicant has been convicted for offence under Section 8 of POCSO Act and the maximum punishment of Five years has been imposed by

the trial Court. The sentence for the offence punishable under Section 363 awarded by the trial Court is of Three years. The charge was framed, section 8 of POCSO Act and Section 363 of Indian Penal Code and not as contended by the learned counsel for respondent No.2. The applicant was on bail during the trial. The appeal may not come up for hearing immediately. The applicant is in custody for more than year after the conviction. The conviction is under challenge on several grounds. Considering the circumstances, sentence of imprisonment can be suspended.

ORDER

- i) Criminal Application No. 602 of 2019 is allowed and disposed of.
- ii) The sentence of imprisonment awarded by the Judgment and order dated 4th December, 2018 passed by learned Special Judge under POCSO Act in POCSO Special Case No. 71 of 2016 is suspended and the applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- iii) The applicant shall not enter into the jurisdiction of Santacruz/Juhu Police Station till further order.

iv) The applicant shall report the trial Court once in three months on the first Saturday between 11.00 a.m. to 1.p.m.

v) The applicant is permitted to furnish Cash security in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.

7. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)