

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 943 OF 2019

IN

CRIMINAL APPEAL NO. 649 OF 2019

Mohammed Shakim Mohammed Nasim Khan ...Applicant

Versus

The State of Maharashtra ...Respondent

.....

Mr. Amir Shaikh, Advocate for the Applicant.

Mr. A. R. Kapadnis, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 9th OCTOBER, 2020

PC :

1. The applicant is convicted for the offences punishable under Sections 341, 376 of Indian Penal Code, 1860 (“IPC” for short) and Section 4 of Protection of Children from Sexual Offences, 2012 Act. (“POCSO” for short). He has been sentenced to suffer rigorous imprisonment for seven years for the offence punishable under Section 4 of POCSO Act and imprisonment for one month for the offence punishable under Section 341 of IPC. No separate sentence was awarded for the offence punishable under Section 376 of IPC.

2. The applicant has challenged the Judgment and Order of conviction dated 28th March, 2019 passed by learned Additional Sessions Judge, Thane in Special Case POCSO No. 41 of 2013 by preferring appeal, which has been admitted by this Court by Order dated 2nd May, 2019. The applicant seeks suspension of sentence of

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rigorous imprisonment during pendency of his appeal.

3. Learned Advocate for the applicant submitted that there is no evidence to convict the applicant for the offences punishable under Sections 376, 341 of IPC and Section 4 of POCSO Act. There is delay in lodging First Information Report ("FIR" for short). Medical evidence does not support. Applicant was aged about 19 to 20 years at the time of incident. Applicant has so far undergone imprisonment for period of about 02 years and 04 months. Applicant was on bail during trial and he had not misused the facility of bail.

4. Learned APP submitted that the victim was minor. There is evidence to prove that the accused had subjected the victim to sexual assault. The Trial Court has convicted the applicant on the basis of evidence. The age of the victim was proved to be 14 to 15 years at the time of incident.

5. The complaint was lodged on 4th May, 2013. The alleged incident of sexual intercourse had occurred somewhere in December, 2011. Accused was arrested on 4th May, 2013. The victim was sent to remand home by the Investigating Officer. After she returned from remand home, she committed suicide on 17th June, 2013. At that time, the applicant was in custody. Applicant was tried for the aforesaid offences with offence under Sections 306 and

506 of IPC. The Trial Court has acquitted the applicant for the offences punishable under Sections 306 and 506 of IPC. The Trial Court has observed that the applicant was in jail on 17th June, 2013 and the victim was in remand home after registration of crime. She committed suicide after returning from remand home. The incident of sexual intercourse has occurred in December, 2011. Hence, the said incident cannot be said to be direct cause of victim committing suicide. There is no direct nexus between the accused and the suicide of the victim. In the report Exh. 16 filed by PW-01, it was stated that she has no doubt and complaint against anyone. With these observations Trial Court acquitted applicant for the offence under Section 306. He was also acquitted for offence under Section 506 of IPC. The FIR was lodged after a period of 18 months. PW-8 Dr. Sachin Rajput has stated that the history was provided by the victim that sexual assault was by known person whom she was knowing since 02 years. The last sexual intercourse was about 18 months prior thereto. There was no evidence of forceful sexual intercourse. The FIR was lodged after the mother of victim learnt that the victim was sexually abused by the accused and that she is likely to elope with accused. The applicant was on bail during trail. It is not reported that the facility of bail was misused by him. He is in jail for period of about 02 years 04 months. Appeal may not come up for hearing within short span of time. In the facts and

circumstances of this case, the sentence of imprisonment can be suspended.

6. Hence, I pass the following Order:

ORDER

- i) The sentence of imprisonment awarded by Judgment and Order dated 28th March, 2019 passed by Additional Sessions Judge, Thane in Special Case POCSO No. 41 of 2013, is suspended during pendency of the appeal against conviction, preferred by the applicant before this Court. The applicant is directed to be released on bail on furnishing P.R. 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 a month on every first Saturday between 11.00 am. to 1.00 pm. till further order;
- iii) Criminal Application No. 943 of 2019, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)