

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

**CRIMINAL BAIL APPLICATION NO.1731 OF 2019
IN
CRIMINAL APPEAL NO.1735 OF 2019**

Dhonduram Bhiku Tambe
(At present in Arthur Road Central Prison)
Age : 65 Yrs. Occ : Retired,
Residing at Room No.430, Laxmi
Pooja Apartment, Dhobighat,
Saatrasta, Mumbai.

... Applicant

Versus

The State of Maharashtra

... Respondent

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Ms. Anjali Patil, Advocate for the Applicant.

Mr. A. R. Kapadnis, APP for Respondent No.1 – State.

Ms. Deepa S. Amati, Amicus appointed for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATE : 28th OCTOBER, 2020.

PER COURT:

1. This is an application for suspension of sentence and grant of bail during the pendency of appeal preferred by applicant challenging the Judgment and order dated 3rd December, 2019 passed by the Special Judge under P.O.C.S.O. Act, Gr. Bombay, in POCSO Special Case No. 298 of 2018. The applicant has been convicted for offences punishable under Sections 6, 10 and 12 of Protection from Sexual Offences Act, 2012 (for Short “POCSO Act”).

He is sentenced to suffer rigorous imprisonment for Twenty years, Five years and Three years, respectively on each count. The sentences were directed to run concurrently.

2. The prosecution case is that, the accused, victim and complainant are residing on the same floor in the building. On 18th April, 2018, the complainant went to the house of her neighbour. She was returning to her house saw accused inserting finger in the vagina of victim. The complainant disclosed the incident to her mother-in-law. Thereafter, the said fact was informed to neighbour Sushma Gadge. The victim was called and inquiry was made with her by Sushma Gadge. The victim disclosed her the incident. The complainant brought the said fact to notice of aunt of victim. The matter was reported to police. The complaint was lodged by the neighbour of victim. Charge-sheet was filed.

3. The complainant was impleaded as Respondent No.2 in this application. Notice was issued to the complainant. Notice was served. On the previous date of hearing, the complainant was present in the Court. She requested for providing legal aid to represent the complainant and victim. The father of victim was also present in the Court on 21st October, 2020. Learned Advocate Ms. Deepa S. Amati was appointed to represent the victim and complainant.

4. Learned advocate for the applicant submits that, the applicant has been falsely implicated in this case. The applicant is senior citizen, aged about 65 years. PW-1 is the complainant. She is having dispute with the applicant's family on the pretext of fixing Air Conditioner in the common verandah for which the applicant had taken objection and she was required to remove the Air Conditioner. Hence, she has falsely implicated the applicant in this case. Victim girl has stated that, the person called as 'Baba' committed the alleged act with her. She was not called at the police station. She was not referred to medical examination. In the cross examination she stated that the portion marked as 'A' in her statement is not true and correct. The statement does not bear her signature. It is further submitted that, there are variations in evidence of PW-1 and PW-3. The age of victim was not disclosed. The date of birth was not referred by witnesses. Birth certificate was not produced in evidence. Nail clippings were sent for opinion. However, the report does not support the prosecution.

5. Learned APP submitted that the offence is serious. The victim has resiled from her statement. She was a minor child. The date was reflected in the birth certificate. The medical evidence supports the prosecution case. The contradictions were minor in

nature. The evidence of witnesses proved the charge against accused.

6. Learned appointed advocate submits that, the victim was minor at the time of incident. Medical evidence supports the prosecution case. She was subjected to sexual assault by the accused. History given to Medical Officer supports the prosecution case.

7. PW-1, complainant is the neighbour of victim. FIR was registered on her complaint. According to her on 18th April, 2018 when she had gone to house of Kanade and while returning she noticed accused committing the alleged act with victim. The victim was aged about 11 years. Complainant disclosed the incident to her mother-in-law. The matter was reported to police. She admitted in cross examination that, her family had installed Air Conditioner in passage. Due to complaint by accused, they removed their Air Conditioner. In each room family of 5 to 7 persons are residing. Victim has not supported prosecution case. She stated that, family members of complainant had installed Air Conditioner in the passage. There was quarrel between Tambe Baba and complainant for removal of Air Conditioner. Thereafter, they removed Air Conditioner and installed it outside. She denied that the accused have committed the alleged act. PW-3 is the Medical Officer, who had examined the victim has stated that, history of penetration was given

by victim. There was old tear of hymen. PW-4 Mangal Salunkhe is acquainted with Sushma Gadge. She is the neighbour of victim. She stated that, on 18th April, 2018, her daughter-in-law found that, the accused was fondling the breast of victim. She was disclosed the incident by her daughter-in-law. However, her version is contradictory to PW-1, who is her daughter-in-law. She admitted that, she had installed Air Conditioner in hall. The accused objected for installation of AC. PW-5 - Vanita Murudkar has stated that, on 18th April, 2018, PW-1 informed her that, she noticed accused taking slacks of victim down. The version depicted by this witness is contrary to evidence of PW-1 and PW-4. She stated that Salunkhe family had installed AC in the passage. There was quarrel between the accused and Salunkhe family. PW-6 is the father of victim. He made inquiry with victim after 2 to 3 days. However, she submitted that no such incident took place. PW-7 - Investigating Officer has stated that, the complainant had come to police station with victim. Name of accused is not mentioned in the statement of victim. There is no endorsement available in the statement that, it was read over to victim and she found the same is correct. The supplementary statement of the victim was not recorded after pointing out the accused to her. It was not verified whether any stains are available on seized clothes. There were major omissions in the evidence of

witnesses which were proved through Investigating Officer. PW-4 did not disclose with her daughter-in-law noticed that, accused was fondling breast of victim and he exhibited his private part. She did not disclose that, victim personally disclosed to her that the accused have repeatedly done such things by offering eatable. She also did not disclose that PW-1 had disclosed to her that she noticed accused taking down the slack of victim. PW-6 did not disclose that her mother informed her that accused had inserted finger in the private part and made inappropriate touch to the victim.

8. The applicant is aged about 65 years. He is in custody from 19th April, 2018. Considering the aforesaid aspects, sentence of imprisonment can be suspended. Hence, I pass the following order.

ORDER

i) The sentence of imprisonment imposed vide Judgment and order dated 3rd December, 2019 passed by the Special Judge under P.O.C.S.O. Act, Gr. Bombay, in POCSO Special Case No. 298 of 2018 is suspended, during the pendency of appeal preferred by the applicant.

ii) 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 is permitted to furnish cash bail security in the sum of Rs.25,000/- for a period of twelve weeks in lieu of sureties.

iv) The applicant shall report concerned police station once in month on every first Saturday of the month between 11.00 a.m. to 1.00 p.m. till further order.

v) The applicant shall stay out of the jurisdiction of Agripada Police Station, Mumbai, till further order.

vi) Professional fees be provided to learned appointed Advocate as per rules.

vii) Application stands disposed of accordingly.

9. 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.)