

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.976 OF 2019
IN
CRIMINAL APPEAL NO.1474 OF 2019

Arif Mohd. Rahilla ... Applicant

Versus

The State of Maharashtra ... Respondent

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Ms. Anjali Patil, Advocate for the Applicant.

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

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CORAM : PRAKASH D. NAIK, J.

DATE : 21th OCTOBER, 2020.

PER COURT:

1. This is an application for suspension of sentence and grant of bail during the pendency of appeal, challenging the Judgment and order dated 19th September, 2019 passed by the Special Judge under P.O.C.S.O. Act, Gr. Bombay, in POCSO Special Case No. 60 of 2017, convicting the applicant for offence punishable under Section 6 of Protection from Sexual Offences Act, 2012 (for Short “POCSO Act”) and sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.6000/-.

2. The prosecution case in short is that, on 2nd December, 2016 the victim girl aged about 4 years, wanted to have chocolate.

She went to the shop for bringing chocolate. After returning home, the victim complained to her mother about bleeding. The victim's mother checked the under garment of the victim and found blood. Victim's mother took her to Saint George Hospital. She was examined and the Doctor informed that there were scratches of nails over victim's private part and advised that the victim should be taken to J.J. Hospital. The victim's mother then took the victim to J.J. Hospital. Victim was examined. Nail scratches were noticed on her private part. The victim told her mother that one uncle having beard was present at chocolate shop and he removed her under garment and inserted finger in her private part. The report was lodged. Offences were registered under Section 376 of Indian Penal Code r/w Sections 4, 6, 8 & 12 of POCSO Act. On completing investigation, charge-sheet was filed.

3. After recording the evidence of witnesses, the trial Court convicted the applicant for the aforesaid offences. In view of Section 42 of the POCSO Act, the trial Court did not to punish him separately for the offences punishable under Section 376 of IPC and Section 8 of POCSO Act.

4. Learned advocate for the applicant submitted that, there are serious discrepancies in the evidence of witnesses. This is a case

of mistaken identity. The deposition of the victim child indicate that, the applicant was not person, who is allegedly committed the crime. It is submitted that, the mother of victim gave contradictory version with regards to the identification of the accused. In Paragraph 9 of her evidence she deposed that, on 12th January, 2017, victim was called for identification parade and accordingly she identified the accused. Whereas in Paragraph 14 of her evidence, she stated that the victim was called for identification parade at 12.30 to 1.00 p.m. when the accused was brought to J.J. Hospital for medical examination on 2nd December, 2016 at about 11.00 to 12.00 midnight. She also stated that, there are no blood stains on the pant. Except describing the accused being the person having beard, she did not give other specification. Learned counsel further submitted that, the evidence of the victim would indicate that, there was no fingering to the private part of victim. The accused was shown to the victim. Her evidence would disclose that, she was not sure about the identity of the accused. Learned counsel also pointed out the evidence of medical officer and submitted that there is no authenticated opinion about penetrative assault on the victim. There was delay in lodging the FIR. The applicant is in custody from 2nd December, 2016. He is student. There are no criminal antecedents against him. The offence would not fall under Section 6 of the

POCSO Act, as there is no evidence of penetrative sexual assault.

5. Learned APP submitted that, the victim was aged about 4 years at the time of incident. The evidence on record disclose that, the victim had identified the accused in test identification parade. The victim in the evidence has clearly stated about the sexual assault. The statement of the victim was recorded under Section 164 of Cr.P.C. The evidence of witnesses is corroborative in nature. The victim was examined by Medical Officer. The offence is of serious in nature. Hence, the sentence may not be suspended.

6. I have perused the evidence on record. It is pertinent to note that, the victim had informed to her mother about bleeding. The mother noticed bleeding and took the victim to Saint George Hospital. Thereafter, she was sent to J.J. Hospital. It is required to be noted that the victim was aged about 4 years at the time of incident. She had narrated the incident in her evidence. The submissions advanced by the learned counsel for the applicant are in the nature of appreciation of evidence. Taking into consideration the evidence of victim, mother of victim, Medical Officer and officer who conducted the test identification parade, I do not find that the case for suspension of sentence is made out. However, considering the fact that the applicant is in custody from 2nd December, 2016, the

hearing of appeal can be expedited. Hence, I pass following order.

ORDER

- i) Criminal Bail Application No.976 of 2019 is rejected.
- ii) Hearing of appeal is expedited.
- iii) After the paper book is ready, the applicant will be at liberty to apply for fixing the appeal for hearing.
- iv) The applicant is at liberty to prepare the private paper book.
- v) Application stands disposed of accordingly.

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.)