

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.1371 OF 2019
IN
CRIMINAL APPEAL NO. 1603 OF 2019

Krishna Jalindar Pisal ... Applicant/Appellant

V/s.

The State of Maharashtra and Anr. ... Respondents

Mr. Kuldeep Patil for the applicant/appellant.

Ms. P.P. Shinde-APP for the State.

**CORAM : SMT. SADHANA S. JADHAV &
N.J. JAMADAR, JJ.**

DATED : 3rd DECEMBER 2020.

P.C. :

1. This is an application for suspension of sentence and to enlarge the applicant-appellant on bail till final disposal of the appeal under section 389 of Criminal Procedure Code, 1973 (The Code).

2. The applicant has been convicted for the offence punishable under Section 307 of Indian Penal Code, 1860 (the Penal Code) for having attempted to commit the murder of the victim and sentenced to suffer imprisonment for life and pay fine of Rs. 1000/- (Rupees One Thousand only), with default stipulation, by judgment and order dated 30th September 2019 in

POCSO Case No. 55 of 2018 passed by the learned Additional Sessions Judge, Sangli.

3. The indictment against the applicant was that the applicant was pestering the victim, then a minor girl, who was pursuing school education in 9th standard, to marry him. As the victim did not reciprocate the advances of the applicant and the latter also learnt that the marriage of the victim was settled with another boy, the applicant accosted the victim on 7th April 2018, while she was returning from school. The applicant again proposed the victim to marry him. On refusal of the victim, the applicant took out a blade and assaulted the victim on her neck. The victim sustained bleeding injuries. The victim was shifted to hospital and was operated upon. The Crime was registered against the accused at Jath Police Station at Crime No. 78 of 2018 for the offences punishable under section 307, 354 (A) and 354 (D) of Indian Penal Code and Section 11 r/w 12 of Protection of Children from Sexual Offences Act, 2012.

4. At the conclusion of the trial, the learned Sessions Judge was persuaded to enter the finding of the guilt against the applicant for the offence punishable under section 307 the Penal Code and sentence him to suffer imprisonment for life. The applicant was, however, acquitted of the offences punishable under section 354 (A) of the Penal Code and section 12 of the Protection of Children from Sexual Offences Act, 2005. The applicant is thus in appeal.

5. We have heard Mr. Patil the learned counsel for the applicant and Ms. Shinde, the learned APP for the State.

6. Mr. Patil urged that the testimony of the victim which constitutes the linchpin of the prosecution case suffers from the vice of unreliability. The victim has initially disowned the prosecution case to the extent that the victim blamed her memory for her inability to state as to whether the applicant ever pestered her for marriage, and met and assaulted her on the day of occurrence. She attempted to feign ignorance as to whether the applicant inflicted blows on her neck with the blade. After the victim gave material admissions which reflect upon the veracity of her claim, the victim was again cross examined by the prosecution. Yet, the testimony of the victim, in the circumstances of the case, could not have been relied upon unhesitatingly to return the finding of guilt. It was further submitted that the applicant was on bail during the pendency of the trial.

7. In opposition to this, Ms. Shinde the learned APP submitted that the multiple injuries on the neck of the victim clearly reveal the intention of the applicant to cause the death of the victim. In the backdrop of the evidence of the victim, coupled with the medical evidence, according to the learned APP, the learned Sessions Judge was justified in returning the finding of guilt.

8. We have perused the evidence, especially the deposition of the victim (P.W.3), who was then 17 years old. The submission on behalf of the applicant that the victim had initially not supported the prosecution wholeheartedly appears to have some substance. In the cross examination on behalf of the accused, the victim fared in such a manner that an inference that the victim did not subscribe to the prosecution version fully becomes justifiable. The place of occurrence, i.e. Datta Nagar was shown to be at a distance from the school. To add to this, the letters (Exhs.40 to 44 and 46 to 53) with which the victim was confronted during the course of her cross examination, (of which the learned Additional Sessions Judge took note in paragraph 52 of the impugned judgment) indicate that there was something more than unrequited love emanating from the applicant, as the prosecution professed to establish. The testimony of Mr. Daulappa Koli (P.W.6) further shows that on the very day of occurrence the applicant had allegedly attempted to cause harm to himself and was shifted to Civil Hospital, Miraj in an injured condition.

9. Thus, the question as to whether the prosecution witnesses had disclosed an unvarnished truth warrants consideration. In the backdrop of the evidence, especially the testimony of the victim, the question of complicity of the applicant for the offence punishable under section 307 of the Penal Code and the aspect of proportionality of the punishment imposed by the learned Sessions Judge upon the applicant to the

gravity of the offence would also warrant consideration, even if the conviction is upheld.

10. In the totality of the circumstances, in our view, it would be expedient in the interest of justice to suspend the sentence and release the applicant on bail till the disposal of the appeal. Hence, the following order :-

ORDER

- i) The application is allowed.
- ii) The substantive sentence imposed by the learned Special Judge in POCSO Case No. 55 of 2018 on the applicant stands suspended till the final disposal of appeal.
- iii) The applicant-Krishna Jalindar Pisal be released on bail on furnishing a PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) and a surety in the like amount to the satisfaction of learned Additional Sessions Judge, Sangli.
- iv) The applicant shall not contact the victim and her relatives.
- v) The applicant shall attend the Court of learned Additional Sessions Judge, Sangli once in every four months on the dates to be specified by the learned Additional Sessions Judge, to mark his presence only.

vi) In the event of two consecutive defaults, the learned Additional Sessions Judge, Sangli shall make a report to this Court and thereupon the prosecution would be at liberty to seek cancellation of bail.

11. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order.

(N.J. JAMADAR, J)

(SMT. SADHANA S. JADHAV, J)