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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.584 OF 2021
IN
CRIMINAL APPEAL NO.111 OF 2021

Satish s/o Vasant Mantre = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.UL Telgaonkar, Advocate for Applicant/s;

Mr.NT Bhagat, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 27th April, 2021.

PER COURT :-

1. Heard learned Advocate and learned APP appearing for respective parties.

2. In this Criminal Application, the applicant prays for suspension of substantive sentences and releasing him on bail during pendency and final hearing of the Criminal Appeal.

3. The applicant is the original accused in Special POCSO Case No.08/2017, who has been convicted and sentenced by learned Additional Sessions Judge, Ambajogai, vide judgment and order dated 15.2.2021, thus, -

a) For the offence under Section 307 of IPC and sentenced to suffer R.I. for ten

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years and fine of Rs.30,000/-, in default, S.I. for three months.

b) Out of the fine amount, an amount of Rs.25,000/- is ordered to be paid to the victim as compensation.

4. The prosecution story is that on 23.1.2017, one Prabhakar Lahudas Karad (PW) lodged report to the Parli City police station, where in alleged that on that day he had been to morning walk. At about 7.30 am to 8.00 am, he received a phone call of his relative Yashwant Madhavrao Karad, who informed him that his cousin sister Siddhi was inflicted blow of knife by someone and is admitted in the hospital of Dr.Kale. He immediately went by his vehicle to the hospital of Dr.Kale and his relative Vasant Gitte who was present in the hospital told him that, one lane-ate Satish Mantre inflicted knife blows on Siddhi with intention tokill her and in the said assault, Siddhi had sustained grievous injuries. The doctor treating Siddhi told him that she was having grievous injury on her stomach. On the same day he visited Parli City police station and lodged the FIR, based on which the alleged offence has been registered.

5. It is vehemently submitted on behalf of the applicant that the applicant has deposited the

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fine amount and he was on bail during the course of the trial and has not misused the liberty. He is earning member in his family. The applicant is insane and he requires proper care and medication. The Trial Court ignored the material contradictions and omissions in the evidence. The delay caused in lodging the FIR is not explained by the prosecution. The FIR is based on hearsay information. Non-examination of eye witnesses, though available, is serious fatal to the prosecution. The learned Trial Judge has misread and misconstrued the evidence brought on record and erred in convicting and sentencing the applicant. The prosecution has utterly failed to prove charge levelled against the applicant/s by a cogent and reliable evidence on record and the conviction is not sustainable in law and facts of the case. The learned Advocate further submits that the appeal involves other legal points/issues, which the applicant/appellant wants to agitate and address them at the time of final hearing of the appeal and the applicant has every hope of success in the appeal. Consequently, the applicant prays for releasing him on bail by suspending the substantive sentences awarded by the learned Sessions Judge on such terms and conditions as this Court may deem fit and proper.

6. Per contra, learned APP vociferously resisted the application and supported the reasons assigned by the learned Sessions Judge while convicting and imposing the sentences against the

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applicant. The accused in this case has admitted the fact of assault on the victim, a school going girl, but he has taken the defence of insanity. Though it was the defence of the accused that at the time of the alleged crime he was suffering from mental disorder, viz. Schizophrenia, however, as regards the origin of the mental disorder of the accused, no documentary evidence is placed on record. The conduct of the accused, at the time of incident and after the incident, clearly indicates his intention to assault the victim. If the accused was in schizophrenic attack, he would not have taken a knife with him and would not have travelled on his Luna. The conduct of the accused shows that he was not suffering from unsoundness of mind at the time of the alleged incident and only to escape from his criminal acts, false defence is taken by him, which is not reliable and believable. The prosecution has proved its case beyond reasonable doubt. The learned APP submitted that the case is based on the direct as well as other evidence. The learned Sessions Judge has properly scanned scrutinized the evidence brought on record. It is, therefore, submitted that the application being sans merit, deserves to be dismissed and it be dismissed accordingly.

7. In the present case, though the sentence, that has been awarded to the applicant for the offence under Section 307 of IPC, to undergo ten years' R.I., which may be, in view of the decisions in the case of Kiran Kumar Vs. State of Madhya

Pradesh [2001(9) SCC 211] and Bhagwan Rama Shinde Gosai Vs. State of Gujraath - (1999) 4 SCC 421, is a short term sentence; yet it can be said that in both the aforesaid cases, the Hon'ble Apex Court has not laid down that it should be a rule to suspend the sentence and release the applicant/accused on bail when the appeal is admitted, though it has been observed, - "when a person is convicted and sentenced to a short term imprisonment, normal rule is that when his appeal is pending, the sentence should be suspended and rejection is only by way of exception and be put forward for such rejection." That means, rejection is permissible subject to the fact that reasons should be assigned therefor.

8. In this case, the present applicant was, in fact, prosecuted for the offence under Section 307, 326, 354-A, 341, 504 of IPC and Sections 8 and 12 of the POCSO Act. The prosecution story has already been stated, therefore, it is not repeated. The victim girl was going on to school along with her friend and without any reason, the present applicant-appellant had come running, pushed the victim on ground and after abusing, he had took out the knife and assaulted the girl on the left side of her navel; left wrist, thumb of right hand and on palm of right hand. Further, two blows were given on left side of the chest and upper lip below the nose. Perusal of the cross of the girl would show that except denials, there is nothing. There is no suggestion that the accused had ever talked

to the girl. Same is the case of the testimony of her friend, who was the eye-witness. Even at this prima facie stage, it can be said that there is nothing in the cross-examination of these two witnesses, which could express any kind of doubt as regards their veracity. Further, there is supporting medical evidence.

9. It appears that the present applicant had tried to raise defence of insanity. He has led the evidence and according to learned Advocate representing the applicant-accused, that evidence has not been appreciated properly by the learned Trial Judge. The documents, which he had produced before the learned Trial Judge, have been produced on record here also. The evidence of the defence witnesses, who are the medical practitioners, would show that the applicant had visited the concerned medical practitioner lastly on 6.3.2016 and at that time, he had made the complaint of forgetfulness. It appears that the applicant intended to project that the illness, which he is suffering, is schizophrenia. For schizophrenia, it should be proved that at the relevant time, i.e. when the blows were inflicted or the alleged offence was committed, he was under that schizophrenic attack. The defence witnesses have also stated that he found the applicant on self medicating basis since last six months. It also appears that the medical practitioner had asked him to take regular follow up treatment, but, the applicant had not visited him. Therefore, with this kind of evidence, it

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appears that the learned Trial Judge had not believed in the said evidence. Unless there would have been concrete evidence, this Court cannot suspend the sentence, as of right, when the evidence, that is produced by the prosecution appears to be more strong and convincing. Taking into consideration the age of the applicant-appellant and other aspects, at the most, the appeal can be expedited and that can be taken up for hearing. Therefore, the Criminal Application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV