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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.651 OF 2021
IN
CRIMINAL APPEAL NO.123 OF 2021

Shailesh @ Sailu Hiranman Thakare
(Bhil) = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT

Mr.RS Wani, Advocate for Applicant;

Mr.NT Bhagat, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

RESERVED ON : 06/05/2021

PRONOUNCED ON : 08/06/2021

PER COURT :-

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

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

3. The applicant is the original accused in Sessions Case No.6/2018, who has been convicted and sentenced by learned Additional Sessions Judge, Nandurbar, vide judgment and order dated 4.2.2021, thus -

a) For the offence punishable under Section

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7 of POCSO Act and sentenced to suffer R.I. for four years and to pay fine of Rs.1,000/-, in default, S.I. for three months each;

4. It is vehemently submitted on behalf of the applicant that the entire story of the prosecution that the victim was sexually assaulted is false. The Trial Court erred in convicting the applicant as there was not a single injury on the person of the victim. The doctor in his cross examination stated that there was no evidence of any forcible sexual intercourse. The prosecution has failed to prove the age of the victim. If the statement of the victim before the police recorded under Section 164 of Cr.P.C., her chief and cross are perused, it can be seen that her evidence is full of contradictions and omissions and her testimony creates doubts as to factum of the alleged incident. The incidence took place on 30.12.2014, however, no plausible explanation has come forward from the prosecution as to why the FIR was lodged after two days. There is absolutely no independent corroboration from the witnesses to the testimonies of the victim, her father and mother. The prosecution did not examine any other independent witness except the family members of the complainant. The prosecution failed to prove beyond all reasonable doubts that the victim has been sexually ravished. The applicant is aged 19 having no criminal antecedents. The learned Sessions 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 the charges levelled against the applicant 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

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involves other legal points/issues, which the applicant/appellant intends to agitate and address them at the time of final hearing of the appeal and he is having every hope of success in the appeal. Consequently, the applicant prays for releasing him on bail by suspending the substantive sentence awarded by the learned Sessions Judge on such terms and conditions as this Court may deem fit and proper.

5. Per contra, learned APP strongly resisted the application and supported the reasons assigned by the learned Sessions Judge while convicting and imposing the sentence against the applicant. The applicant-accused has committed heinous crime against the victim, who is a minor and thereby the accused has spoiled the life of the victim. The learned Sessions Judge has properly scanned and scrutinized the evidence brought on record and no interference is warranted. It is, therefore, submitted that the application being sans merit, deserves to be dismissed and it be dismissed accordingly.

6. It appears from the record that is produced that the victim was admittedly fifteen years of age and that fact is not seriously challenged by the accused. Though the victim was seen that she was wet and sexually ravished, yet the learned Trial Judge has held that the medical evidence is not supporting to the extent of penetrative sexual assault and, therefore, it has been held that the case is covered under Section 7 of the POCSO Act within the definition of "sexual assault". Therefore, taking into consideration this aspect and the other points, which the applicant/appellant intends to raise at the time of final hearing of the appeal, so also taking into

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consideration the quantum of punishment, so awarded, it can be said that a case is definitely made out for releasing the applicant on bail by suspending the substantive sentence. Further, in view of the decision in the case of Kiran Kumar Vs. State of M.P. - (2001) 9 SCC 211, benefit will have to be extended to the applicant-appellant when he has demonstrated that the material and significant points raised by him in the appeal are required to be considered at the time of final hearing of the appeal. Hence, following order,-

ORDER

i. The Criminal Application stands allowed.

ii. The substantive sentence imposed on the applicant by learned Additional Sessions Judge, Nandurabar, in Sessions Case No. 6/2018 vide judgment and order dated 4.2.2021, is hereby suspended till hearing and final disposal of the appeal.

iii. The applicant be released on his executing PR and SB of Rs.50,000/ (Rupees fifty thousand) with two sureties of Rs.25,000/- each.

iv. The applicant shall not commit any criminal activity.

v. The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date they tender bail papers and, thereafter, the Trial Judge to fix dates for their subsequent

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appearances.

vi. In case of two consecutive defaults on the part of the applicant to remain present before the Sessions Court, the Sessions Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

vii. Bail before the Sessions Court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV