

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.920 OF 2021
IN
CRIMINAL APPEAL NO.211 OF 2021

Shriram s/o Vitthal Walke = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.VP Raje,Advocate h/for Mr.RB Ade, for Applicant;

Mr.AM Phule,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. By 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.23/2019, who has been convicted and sentenced by learned Additional Sessions Judge, (Special POCSO COURT),Nanded vide judgment and order dated 17.3.2021, thus, -

a) For the offence under Section 354(A) of IPC, and sentenced to suffer R.I. for

(2)

one year and to pay fine of Rs.2,000/-,
in default, S.I. for fifteen days;

b) For the offence under Section 11(i)
(iv) punishable under Section 12 of POCSO
Act, and sentenced to suffer R.I. for two
years and to pay fine of Rs.2,000/-, in
default, S.I. for fifteen days;

. Both the sentences are ordered to run
concurrently.

4. It is vehemently submitted on behalf of
the applicant that the impugned judgment and order
of the Trial Court is erroneous and suffers from
non-application of mind to the facts and
circumstances of the case. The FIR is lodged on
the basis of the alleged incident, which took place
before one year in which there is no truth and the
alleged second incident is also not reliable. The
informant has specifically admitted that there were
two groups in the village and due to political
rivalry the offence is registered against the
applicant. There are material omissions and
contradictions in the admissions given by the
victim. The entire prosecution story is doubtful
and not trustworthy. The prosecution did not prove
the spot panchanama. The conviction is based on
surmises and conjectures. The applicant has
deposited the fine amount and he was on bail and
has not misused the said liberty in any manner. The
applicant is old aged person, suffering from
various ailments. He is only Karta of his family

(3)

and his family depends on him. 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.

5. Per contra, learned APP strongly resisted the application and supported the reasons assigned by the learned Sessions Judge while convicting and imposing the sentences against the applicant. The entire evidence of the victim, her mother and other material witnesses would go to show that the acts done by the accused do come within the ambit of offence punishable under Section 354(A)(1)(ii) of IPC. Further, the evidence of the victim also covers the offence under Section 11(i)(iv) punishable under Section 12 of the POCSO Act. At the time of alleged incident, age of the victim was 8 years which has been duly proved. The learned Sessions Judge has properly scanned scrutinized the

(4)

evidence brought on record. It is, therefore, submitted that the application being sans merit, deserves to be dismissed and it be dismissed accordingly.

6. As it appears from the impugned judgment of the learned Sessions Judge, particularly the sentences, that have been awarded against the applicant for the offences, are the short-term sentences. 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. Further, the applicant was on bail, has not misused his liberty and he had also deposited the fine amount. As aforesaid, the applicant is old aged suffering from various ailments and pandemic situation still continues. In view of the matter, it can be said that a case is definitely made out for releasing the applicant on bail by suspending the substantive sentence during pendency and final disposal 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 (Special POCSO Court), Nanded vide judgment and order dated

(5)

17.3.2021 in Special (POCSO) Case No.23/2019, is hereby suspended till hearing and final disposal of the appeal.

iii. The applicant - be released on executing PR and SB of Rs.30,000/ with two sureties of Rs.15,000/- 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 he tenders bail papers and, thereafter, the Trial Judge to fix dates for their subsequent appearances.

vi. In case of two consecutive defaults on the part of the applicant to remain present before the Trial Court, the Trial 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