

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1989 OF 2021
IN
CRIMINAL APPEAL NO.426 OF 2021

RAMESH GABAJI KAISAI
VERSUS
THE STATE OF MAHARASHTRA AND ANR.

Mr.S.J. Salunke, Advocate for the applicant.
Ms.R.P. Gaur, APP for the respondent/State.
Mr.S.M. Pandit, Advocate for respondent No.2.

CORAM : N.R.BORKAR, J.
DATED : 14.10.2021

PC :-

01. This is an application for suspension of substantive sentence and to release the applicant on bail.

02. The applicant came to be convicted for the offences punishable under Section 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, so also under Section 354 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for four years and to pay fine of Rs. 15,000/- (Rs. Fifteen Thousand) in default of payment of fine to suffer simple imprisonment for six months.

03. I have heard the learned counsel for the applicant, learned APP for the respondent State and learned counsel for respondent No. 2.

04. Learned counsel for the applicant submits that the trial Court has failed to appreciate the evidence on record in its correct perspective and arrived at the wrong findings. It is submitted that there is delay in lodging FIR. It is further submitted that the applicant was on bail during the trial and he did not misuse the liberty granted to him. It is further submitted that as on today the applicant is aged about 62 years. It is submitted that considering these facts and circumstances, substantive sentence be suspended and applicant be released on bail.

05. On the other hand, learned APP for the respondent State so also learned counsel for respondent No. 2 submit that the accused is involved in the serious crime of sexual assault. It is submitted that on the date of incident the victim was aged about 5 years. It is submitted that considering the nature of offence the substantive sentence may not be suspended.

06. I have perused the evidence of PW-1, the mother of the victim. In para 7 of her cross-examination she

has admitted that at the time of lodging of FIR she did not disclose to the police that accused No.1/present applicant committed alleged act of sexual assault, however, she cannot assign any reason as to why the said fact is not there in the FIR. Apart from it, the applicant appears to be 62 years of age. Admittedly, the applicant was on bail during the trial. Considering these facts and circumstances, I am inclined to suspend the substantive sentence imposed upon the applicant by the Trial Court and to release him on bail. Hence the following order is passed :-

O R D E R

1. The application is allowed.
2. The substantive sentence imposed upon the applicant by the Trial Court is suspended.
3. The applicant be released on bail, on executing PR bond of Rs.25,000/- (Rupees Twenty Five Thousand) with one surety in the like amount.
4. Bail before the Trial Court.

[N.R.BORKAR, J.]