

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 1118 / 2020
IN
CRIMINAL APPEAL NO. 360 / 2020**

Mahadu Sayabu Deokar

.....Applicant

V/s.

State of Maharashtra

....Respondent

* * * *

Mr. Atul R. Patil, advocate for the appellant.

Mr. R.M. Pethe, APP for State.

CORAM : SANDEEP K. SHINDE, J.

Monday, 8th March, 2021.

P.C. :

1. Heard learned Counsel for the Applicant and learned APP for State.

2. Applicant-accused no.1 in Special Case No.5/2017 is a convict of offences punishable under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act” for short) and under Section 363 of the Indian Penal Code. He has been sentenced to suffer rigorous imprisonment for 10 years for an offence punishable under

Section 4 of the POCSO Act vide judgment and order dated 16th December, 2019.

3. Pending Appeal, applicant is seeking suspension of the impugned sentence.

4. Co-accused no.3-a convict under Sections 363 and 366A of the Indian Penal Code and under Sections 3 read with Section 4 read with Section 17 read with Section 8 of the POCSO Act, has been granted bail by this Court, pending his Appeal No. 345/2020. The maximum sentence awarded to co-accused was 7 years rigorous imprisonment.

5. This applicant has undergone sentence of four years and 10 months, out of 10 years.

6. I have perused the evidence. At the material time, the victim was 16 year old. Prosecution had examined Headmaster of Zilla Parishad Primary School. He testified that, as per the register, birth date of victim was 19th June, 2001. The School Leaving Certificate is produced on record. It shows, the victim had left the school in the Ist Standard. It shows, she was admitted in the School in June, 2008. In cross-examination, the Headmaster would admit that the victim was admitted in the school on the information given by her parents. It appears that, prosecution had made no efforts to place on

record her birth certificate. The evidence of the Headmaster does not show, any document as to on whose information, victim's birthdate was recorded in the Register. It appears, this aspect has been overlooked by the learned trial Court. Be that as it may, the victim was examined at Primary Health Center, Vairag, Taluka-Barshi. While narrating the incident to the Medical Officer, victim stated, she was sexually assaulted on 9th November, 2016 at 8:00 p.m. and number of assailants were three in number. However, victim's maternal uncle had lodged the complaint wherein the complainant narrated that the victim was abducted at 8:00 p.m. on 9th November, 2016 and the applicant-accused no.1 committed sexual assault at Sudarshan Dhaba while accused no.2 was guarding the Dhabha. Therefore, the narration of the incident by the victim to the Medical Officer and of complainant (victim's uncle) is not consistent. This aspect has not been analysed by the learned trial Court.

7. Be that as it may, the alleged spot of incident as cited was a Sudarshan Dhabha. However, the prosecution has not taken efforts to examine owner of the Dhabha to probablize its case, that at the relevant time, Dhabha was not operational/functional. Be that as it may, the report of the Chemical Analyser also does not support the prosecution's case that the victim was sexually assaulted by the accused no.1.

8. In consideration of the evidence on record and additionally that the applicant has undergone sentence of four years and ten months, prima facie, I am of the view that there are fair chances of appeal being finally allowed. As a result, application is allowed and he is directed to be released on bail on the following terms and conditions :

ORDER

(i) During the pendency of the present Appeal, the substantive sentence imposed on the applicant is suspended.

(ii) The applicant arrested in Crime No. 280/16 registered at Vairag Police Station, Taluka-Barshi shall be released on bail on executing P.R. bond for the sum of Rs.15,000/- (Rs. Fifteen Thousand only) with one or two sureties in the like sum.

(iii) Before his actual release from jail, the applicant shall deposit the entire fine amount imposed upon him by the impugned judgment and Order in the Registry of the trial Court.

(iv) After his release from jail and during the pendency of the present Appeal, the applicant shall not enter the

territorial jurisdiction of Barshi Taluka except, for marking his presence as directed hereinbelow :

(v) After his release from Jail and during the pendency of the present Appeal, the Applicant shall attend Vairag Police Station, on every first Monday of the month between 10.00 a.m. and 12.00 noon, initially for a period of one year.

. After end of one year, the Applicant shall attend Vairag Police Station, on every first Monday of the every 3rd Month between 10.00 a.m. and 12.00 noon. The Applicant thus, shall attend Vairag Police Station, 4 times in a year during the pendency of the present Appeal.

(vi) If the Applicant commits two consecutive defaults in complying with condition No.(v) above, in that event, the prosecution will be at liberty to file an Application for cancellation of bail.

(vii) Before his actual release from Jail, the Applicant shall furnish all relevant documents of his prospective residential address where he intends to reside, to Vairag Police Station.

(viii) Applicant shall not contact the prosecutrix and her relatives.

(xi) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

9. The application is accordingly allowed and disposed off.

10. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of granting bail only and the same shall not, in any way, influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)