

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1242 OF 2021
IN
CRIMINAL APPEAL NO. 361 OF 2021

1. Saurabh Sanjay Borate
2. Vishal Sanjay Borate
3. Rushikesh Sanjay Hazare ...Applicants

Versus

State of Maharashtra and Anr. ...Respondents

Mr. Tanaji Mhatugade for the Applicants.

Mr. S.V.Gavand, A.P.P for the Respondent No.1-State.

Ms. Saili Dhuru appointed as an *Amicus Curiae* for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.
DATE : 26th APRIL, 2021
(Through Video Conferencing)

P.C. :

1. Pursuant to the order dated 23/04/2021, learned Counsel for the applicant has served the respondent No.2 and has filed an affidavit of service to that effect.

2. Learned A.P.P was also directed to inform the respondent No.2

of today's date. Accordingly, learned APP submits that the Officer of the concerned Police Station has informed the respondent No. 2 of today's date. Accordingly, learned APP has tendered a report dated 24/04/2021. The same is taken on record. It appears that the respondent No. 2 has requested that an advocate from the Legal Aid Panel be appointed to espouse her cause.

3. Accordingly, Advocate Ms. Saili Dhuru is appointed to espouse the cause of the respondent No. 2.

4. Learned Counsel for the applicant to serve a soft copy of the aforesaid application and appeal memo on the learned appointed Advocate, during the course of the day.

5. At her request, Kept back.

6. The aforesaid application was taken up for hearing at 1.45 p.m.

7. Heard learned Counsel for the parties.

8. By this application, the applicants seek suspension of their

sentence and enlargement on bail, pending the hearing and final disposal of their appeal.

9. The applicants, vide judgment and order dated 31/03/2021 passed by the learned Special Judge (POCSO), Kolhapur, in POCSO Special Case No.25 of 2019, have been convicted and sentenced as under:-

- for the offence punishable under Section 354 of the Indian Penal Code, to suffer rigorous imprisonment for one year and to pay fine of Rs.5,000/- each, in default to undergo further rigorous imprisonment for 2 months;
- for the offence punishable under Section 354-D of the Indian Penal Code and Section 12 and 8 of the Prevention of the Children from the Sexual Offence Act, 2012, to suffer rigorous imprisonment for 3 years and to pay fine of Rs.5,000/- each, in default, to undergo further rigorous imprisonment for 2 months;

All the substantive sentences were directed to run concurrently.

4. Learned Counsel for the applicant submits that the applicants were on bail, pending trial and that they have not abused or misused their liberty. He submits that there are several discrepancies in the evidence of

the prosecution witnesses and that no offences, as alleged, have been proved by the prosecution as against the applicants. He further submits that a false complaint was registered as against the applicants for an alleged incident which took place one month prior to the lodging of the FIR. He submits that the prosecution has also failed to examine two friends of the victim girl and one Ms. Poonam Hajare who allegedly disclosed the name of the appellants to the victim girl. The appeal has been admitted by a separate order passed on 23/04/2021. The sentence is a short term sentence and the appeal is not likely to be heard in the immediate near future. Even otherwise, arguable questions have been raised by the learned Counsel for the applicants.

5. Considering the aforesaid, the application is allowed and the applicants' sentence is suspended and they are enlarged on bail, pending the hearing and final disposal of their appeal, on the following terms and conditions :-

ORDER

- i) The applicants be released on cash bail in the sum of Rs.5,000/-, for a period of eight weeks;
- ii) The applicants shall within the said period of eight weeks,

furnish P.R. Bond in the sum of Rs.5,000/- each, with one or two sureties in the like amount;

iii) The applicants shall report to the trial Court, once in four months on the day/date specified by the trial Court, till their appeal is finally disposed of;

iv) The applicants shall not contact the witnesses/victim girl/complainant or any other witnesses concerned with the said case.

v) The applicants shall keep the trial Court informed of their current addresses and mobile contact numbers and/or change of residence or mobile details, if any, from time to time;

vi) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

6. The High Court Legal Services Committee to pay the fees as per Rules, to Ms.Saili Dhuru, learned appointed Advocate, who has

espoused the cause of the respondent No.2.

7. Copy of this order be forwarded to the High Court legal Services Committee, for information and necessary action.

8. The application is accordingly disposed of.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.