

INTERIM APPLICATION NO.418 OF 2020
IN
CRIMINAL APPEAL NO.120 OF 2020

Nabiulla @ Babalu Jaysulla Samani	Applicant
versus	
The State of Maharashtra and another	Respondents

Mr.Gautam J. Jain h/for N.J.Bhatt for applicant.
Mr.Y.Y.Dabake, APP, for State.

DATE : 10th August 2021

PC :

1. This is an application for suspension of sentence of imprisonment imposed vide judgment and order dated 8th January 2020 passed by District Judge-2 and Additional Sessions Judge, Thane in Special Case (POCSO) No.59 of 2015.
2. The case of prosecution is that the accused and others were working in the house of victim. The applicant-accused was doing polish work. He touched private part of the victim.
3. The Trial Court has convicted the applicant for the offence u/s.8 of POCSO Act and sentenced him to suffer imprisonment of three years and to pay fine of Rs.2,000/-.
4. The sentence was suspended till 7th February 2020 by the Trial Court considering the fact that applicant has been sentenced to

undergo imprisonment of three years. Learned counsel for applicant, on instructions, submitted that the applicant has surrendered before Trial Court today and he has been remanded to custody.

5. Learned counsel for applicant submits that sentence awarded by Trial Court is of three years. The appeal would not come up for hearing immediately. The applicant was on bail during trial. He has not misused the facility of bail. There are contradictions and discrepancies in the evidence of victim and her mother. There is discrepancy with regards to the identity of accused who has committed the alleged crime.

6. Learned APP submitted that the victim has categorically stated that accused who was doing polish work had subjected her to sexual assault. The evidence is required to be appreciated at appropriate stage.

7. It is noted that the applicant was on bail during trial. The sentence awarded is of three years imprisonment. The Trial Court has suspended the sentence after conviction for a temporary period. In the light of evidence and the sentence imposed by Trial Court and also considering the fact that applicant was on bail during trial, sentence of imprisonment can be suspended and bail can be granted to the applicant pending appeal against conviction preferred by applicant. Hence, I pass following order :

ORDER

- (i) Interim application is allowed and disposed of;
- (ii) The sentence of imprisonment awarded by District Judge-2

and Additional Sessions Judge, Thane vide judgment and order dated 8th January 2020 in Special Case (POCSO) No.59 of 2015, is suspended during pendency of Criminal Appeal No.120 of 2020 preferred by applicant and applicant is directed to be released on bail on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/- for eight weeks in lieu of sureties;

(iv) The applicant shall attend Trial Court once in six months till final disposal of Criminal Appeal No.120 of 2020.

(PRAKASH D. NAIK, J.)

MST