

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 212 OF 2020

IN

CRIMINAL APPEAL NO. 20 OF 2020

Nirmala Prakash Kale

...Applicant

V/s.

The State of Maharashtra

....Respondent

* * * *

Mr. Rajendra Bidkar, Advocate for the applicant.

Ms. Veera Shinde, APP for State.

PSI, Mr. Kapse, Marine Drive Police Station present.

CORAM : SANDEEP K. SHINDE, J.

Wednesday, 27.1.2021.

P.C. :

1. Heard.

2. Pending Appeal, accused no.2 in POCSO Special Case No.314/2014 is seeking suspension of sentence and her enlargement on bail. Applicant was tried under Section 17 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act” for short) and sentenced to suffer rigorous imprisonment for 15 years and pay fine of Rs.15,000/-, in default, to suffer further rigorous imprisonment for three months in the subject sessions case by judgment and order dated 7.11.2019 passed by the Special Judge, POCSO. It may be stated that, pending trial, the applicant was on bail.

3. Victim is daughter of the applicant born from her first wedlock. She performed second marriage with the co-accused, out of which two

children were born. Accused no.1 (second husband of the applicant) is stepfather of the victim. At the relevant time, the victim was 14 year old. She was subjected to, “aggravated sexual assault” by her stepfather in June 2013, July 2013 and August, 2013. Her maternal grandmother when learnt this fact, lodged the complaint.

4. I have perused the evidence of the victim; she did not support the prosecution.

5. Be that as it may, the applicant, mother of the victim has been convicted under Section 16 of the POCSO Act and sentenced to suffer 15 years rigorous imprisonment. Section 16 of the POCSO Act, provides that a person abets an offence, if he

instigates any person to do that offence; or engages with one or more other person or persons in conspiracy for the doing that offence, if an Act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or intentionally aids, by an act or illegal omission, the doing of that offence.

6. Explanation-II appended to the third clause of Section 16, clarifies that whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that Act and thereby facilitates the commission thereof, is said to aid the doing of that act.

7. Learned Prosecutor has relied on the third clause of Section 16 to contend that, mother of the victim was aware that the victim was subjected to sexual assault by her stepfather, but she knowingly and intentionally did not disclose the incident, nor she prevented her husband from indulging into this Act. It is therefore submitted that, it amounts to “illegal omission”.

8. The deposition of prosecution witnesses, do not suggest that the applicant facilitated her husband to commit the alleged sexual assault on the victim and/or she instigated to that act. In order to constitute abetment, the abettor must be shown to have “intentionally” aided commission of crime. Evidence is silent on this aspect. Infact, prosecution’s

case suggest, applicant was guilty of not reporting the offence under the Act; and therefore committed an offence punishable under Section 21 of the said Act.

9. That even otherwise, the victim who was examined as a witness no.1, did not support the prosecution case at all. Infact, she stated that, she is living with her stepfather.

10. Thus, taking into consideration the evidence on record, in my view, the applicant has made out a case for releasing her on bail during the pendency of Appeal. For the reasons stated hereinabove, the application is granted. Hence, the following order :

ORDER

(i) The applicant is directed to be released on bail on the same terms and conditons, as was granted pending trial, but with fresh sureties. However, the learned trial Judge shall ascertain and verify the permanent address of the applicant.

11. The application is allowed and disposed off.

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Sawant
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signed by
Neeta S.
Sawant
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(SANDEEP K. SHINDE, J.)