

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2143 OF 2021
IN
CRIMINAL APPEAL NO. 714 OF 2021

Ravindra Alias Pappu Walu More ..Applicant/Appellant

Versus

The State of Maharashtra and Anr. .. Respondents

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Mr. Satyajeet Dighe - for the Appellant.

Mr. S. V. Gavand, APP for the State.

Ms. Ameeta Kuttikrishnan for Respondent No. 2.

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CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 21st OCTOBER,2021

P.C:-

1. This is an Application under Section 389 of the Code of Criminal Procedure, 1973 for suspension of substantive sentence imposed by judgment dated 18th August 2021 in Sessions Case (POCSO) No. 320 of 2017 and to enlarge the Applicant on bail.

2. By the impugned judgment, the learned Additional

Sessions Judge and Special Judge (POCSO), Nashik has held the Applicant guilty of offence under Section 376(1) of the Indian Penal Code read with Section 3 r/w Section 4 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. The Applicant has been sentenced to undergo rigorous imprisonment for period of 10 years with fine of Rs. 5,000/- in default to undergo simple imprisonment for a period of three months.

3. Heard, Mr. Satyajeet Dighe, learned counsel for the Applicant, Mr. S. V. Gavand, learned APP for the Respondent-State and Ms. Ameeta Kuttikrishnan, learned counsel for the Respondent No. 2-Victim. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

4. The case of the prosecution in brief is that on 29th September 2016 at about 11 a.m., the Applicant committed rape on the prosecutrix who was below 18 years of age. The prosecutrix has not produced the birth certificate. The

prosecution has relied upon the extract of the school records wherein the date of birth of the prosecutrix is recorded as 21.11.2001. PW4, the in-charge-Principal of the school has deposed that the birth date was recorded on the basis of the affidavit filed by the mother of the victim. She has admitted in the cross-examination that the affidavit is not attested. The records prima facie indicate that the birth date is recorded on the basis of unverified and unattested affidavit. Hence on the basis of such affidavit, the prosecutrix cannot prima facie be considered as a child within the meaning of Section 2(d) of POCSO Act.

5. The records indicate that in the FIR lodged on 29.09.2016, the prosecutrix had alleged that the Applicant had outraged her modesty. There are no allegations of rape/penetrative sexual assault in the F.I.R. Such allegations were made only in the supplementary statement recorded on 29.09.2016. The evidence of the prosecutrix as well as of PW2- the brother of the prosecutrix, prima facie, reveals that allegations of rape were made as an afterthought after

discussing the matter with her family members. The medical evidence does not prima facie refer to any fresh injuries on the body of the prosecutrix. The doctor had taken vaginal and urethral swab. The CA report reveals that no semen was found on the vaginal swab.

6. Thus there is no prima facie evidence to suggest that the prosecutrix was subjected to rape or that the Applicant had committed penetrative sexual assault. Considering the nature of the accusation as well as the nature of the evidence in support thereof, in my considered view, this is a fit case to suspend the substantive sentence pending hearing and disposal of the Appeal. Hence, the Interim Application is allowed on following terms and conditions:-

- (i) The substantive sentence imposed vide judgment dated 18.08.2021 in Sessions Case (POCSO) No. 320 of 2017 is suspended pending disposal of the Appeal;
- (ii) The Applicant is ordered to be released on bail on furnishing PR bonds in the sum of Rs. 25,000/- with

one or two sureties in the like amount.

- (iii) The Applicant shall report to the Trial Court, once in three months on the day/date specified by the Trial Court, till the appeal is finally disposed of.
- (iv) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
- (v) 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.

7. The Application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)