

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

924 CRIMINAL APPLICATION NO.2924 OF 2022
IN
CRIMINAL APEAL NO.636 OF 2022

AMOL BABASAHEB GITE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant : Mr Hange Rajendra G.
APP for Respondent 1 : Mr. S W Munde
Advocate for Respondent 2 : Mr. D K Dagadkhair

...

CORAM : KISHORE C. SANT, J.
Dated: December 15, 2022

...

PER COURT :-

1. This is an application seeking suspension of the sentence and release of the applicant on bail.

2. The applicant is an accused convicted in a case bearing Special Case (Pocso) No.512 of 2020. He is held guilty for the offence punishable u/s 4(1) of the POCSO Act. He is acquitted from the offence punishable under section 376(2)(n) of the IPC. The judgment is dated 17.8.2022 passed by the Special Courts for Cases under POCSO Act and Additional Sessions Judge, Ahmednagar.

aaa/-

3. The learned Advocate for the applicant has produced on record notes of evidence. Main witness prosecutrix has deposed in the chief-examination and stated details about the offence. However, in the cross-examination, she accepted that, accused present in the court hall is not the same, who committed rape on her. She deposed that, there was complete darkness at the time of the incident and there are many persons having similar name of that accused. The mother of the victim, who has allegedly seen the victim immediately after the incident has also been declared as hostile. Medical examination shows that there are injuries suggesting sexual intercourse. However, no other injuries were found on the person of the victim except abrasion on her chest. There is no CA report produced in the evidence though some articles were sent for CA examination.

4. The learned Judge of the Trial Court has convicted the applicant on the basis that in the examination-in-chief, the prosecutrix has clearly given all the details about the offence. So far as cross-examination is

aaa/-

concerned, it is observed that, there is a vast gap between the examination-in-chief and cross-examination of the victim. She was examined on 19.11.2021 and thereafter she was cross-examined on 24.3.2022 and thus there were sufficient chances for the applicant to contact other witnesses. Evidence of the mother of the victim was also recorded on 22.4.2022. She is declared as hostile as she did not support the case of the prosecution at all. Advocate for the applicant submits that there is absolutely no evidence to prove the guilt of the accused.

5. Learned APP vehemently argued that turning of the witnesses hostile clearly shows that the accused has brought pressure on the witnesses and it is for this reason the witnesses have turned hostile. He prayed that the application be rejected.

6. Heard learned Advocate Mr. Dagadkhair appearing for respondent no.2. He submitted that, there are various offences registered under the various acts against the applicant. He is a habitual offender. He has

aaa/-

given the list of the cases pending against the applicant. All the offences are under section 379 of the IPC and one is under section 498-A, 323, 504, 506 of the IPC, which is filed against the applicant by his wife. It is further stated in the affidavit that, the victim and the applicant are the residents of the same locality. It is stated specifically that because of the threats given to her and her mother, informant was compelled to give admissions in favour of the accused in the cross-examination and it is because of those threats they have given these admissions. If these admissions are taken into consideration, then it shows that the applicant has used influence over the witnesses and has pressurized and threatened the witnesses for giving evidence in his favour.

7. Considering the above aspect, it is seen that prima facie, on one hand there is no sufficient evidence to prove the guilt of the accused and on the other hand, there are allegations by the victim in the affidavit that accused had given threats to her. However, there is

aaa/-

nothing on record showing that she has immediately lodged the complaint with the police station when he had allegedly given threats. Considering the above, this Court finds that a prima facie case is made out to release the applicant on bail by suspending the sentence, however, certain conditions are required to be imposed to see that there is no threats to the victim or witnesses and there is no such occurrence in future. Hence, the following order.

O R D E R

- i. The application is allowed.
- ii. The applicant - Amol Babasaheb Gite be released on bail in connection with his conviction in Special Case (POCSO) No.512 of 2020 on furnishing PR Bond in the sum of Rs.15,000/- (Rs. Fifteen Thousand) and two solvent sureties of the like amount pending and final disposal of the appeal, on following conditions :-
 - a. The applicant shall not enter the area of Pathardi Taluka. He shall not contact any of the witnesses in this case. In case of breach of conditions, respondent no.2 as

aaa/-

well as the prosecution is free to take proper action for cancellation of his bail.

- b] The applicant shall give an undertaking to this Court that he will not indulge in any illegal activities and if he is found indulging in illegal activities, he shall be liable for the consequences.
- iii] Bail before the trial court.
- iv] Application is disposed off.

(KISHORE C. SANT, J.)

...