

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.515 OF 2021
IN
CRIMINAL APPEAL NO.144 OF 2021

Govind Harishchandra Manchekar

Applicant

versus

The State of Maharashtra and another

Respondents

Mr.Harshad Bhadbhade, Advocate for applicant.

Ms.Grishma Lad, Advocate for respondent no.2.

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

CORAM : PRAKASH D. NAIK, J.

DATE : 24th February 2022

PC :

1. This is an application for suspension of sentence and grant of bail. The applicant is convicted vide judgment and order dated 25th January 2021 for the offence under Section 376(A), 376(B) of Indian Penal Code and sentenced to undergo imprisonment of 20 years. He is also convicted for the offence u/s.3 r/w 4 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') and sentenced to undergo imprisonment of 7 years. For conviction u/s.5(m) r/w 6 of POCSO Act, the applicant is directed to undergo imprisonment of 10 years and for conviction u/s.7 r/w 8 of POCSO Act he has been sentenced to suffer simple imprisonment for three years.

2. The case of the prosecution is that on 16th March 2019 the victim, was sexually assaulted by the accused when she visited the house of accused. The grandmother and mother of the victim then approached police and the FIR was registered.

3. Learned counsel for applicant submitted that the applicant is aged about 80 years. At the time of incident he was aged about 77 years. The case of the prosecution is false. There is delay in lodging the FIR. The applicant was on bail during trial. There is no misuse of the facility of bail. The appeal may not come up for hearing immediately. There are contradictions and omissions in the evidence of witnesses. The victim was tutored by her mother. There are discrepancies in the medical evidence. The applicant is in custody for more than one year. The oral evidence and medical evidence is contradictory to each other. The victim did not make any complaint to the grandmother or mother after the incident. The conduct of the victim indicate that no such incident had occurred. The applicant is the neighbour of complainant. On account of dispute between the families due to electricity pole installed in between their houses, the applicant has been falsely implicated in this case.

4. Learned APP submitted that there is clear evidence to establish the charges against accused. The victim was a child. She was subjected to sexual assault by the accused by fingering her private part. The evidence of the witnesses as well as medical evidence supports the prosecution case.

5. Learned counsel for respondent no.2 has reiterated the submissions of learned APP. It is submitted that the victim was a minor child. Her evidence supports the charge against accused. There is no reason for the victim and other witnesses to depose falsely against accused. The evidence of witnesses inspires evidence. Hence the sentence of imprisonment may not be suspended and this application may be rejected.

6. On perusal of the evidence it is apparent that the alleged incident had occurred on 16th March 2019 at about 11.45 am when the victim had allegedly visited house of accused. It is the case of prosecution that the victim and various other children used to visit the house of accused on account of swing installed in his house. The victim had returned home within 15 minutes. She did not make any grievance to her mother and grandmother. The mother of victim then left for work. She returned home at about 6.00 pm.. In between the grandmother had noticed some abrasions/swelling over the body of the victim. When the mother of victim returned home in the evening, she disclosed it to her. The mother of victim visited police station at about 8 pm. The FIR has been registered at about 11.00 p.m..

7. PW-1 is the mother of victim. She has stated that on 16th March 2019 the victim had gone to the house of accused. She returned home after about 15 to 20 minutes. She was calm. After lunch PW-1 left for work. The victim did not make any complaint to her. She did not notice abnormal behaviour of victim. The complainant returned home in the evening at about 6.00 pm.. At that time the grandmother of the victim had disclosed her about the incident. In the cross-examination PW-1 had admitted that after returning from playing, the victim had never complained about the behaviour of the accused and his family members. The victim did not say that she will not go to the house of accused and PW-1 did not feel at any point of time that she should not allow the victim to go for playing at the house of accused. In usual course the victim used to go to the house of accused and return home as usual after playing.

When the victim returned home, PW-1 did not find anything suspicious in her behaviour. After returning the victim did not complain to her about anything. After seeing her calmness she did not feel any suspicious behaviour. In the FIR it is not stated that the victim was found calm when she returned from the house of the accused. She admitted that in the afternoon she was at home with victim. She had noticed all the activities of the victim and after noticing the activities she did not find any abnormal things in her behaviour. The victim had gone out for playing after the incident and she returned home. At about 5.30 p.m the victim went for toilet. The witness did not feel that such incident is possible in the house of accused. She also stated that the accused was told to admit his guilt in the temple situated near house and if he had pleaded guilty, the complainant would not have proceeded against him. She admitted that there is one electric pole between her house and the house of accused. She has denied the suggestion that on account of wiring of electricity, there is dispute between both the families.

8. PW-2 is the grandmother of the victim. From her evidence it is apparent that although there was blood on the clothes, she did not hand over the clothes to police and police did not seize them. PW-3 is the victim. She admitted that she would speak as per say of her mother, father and grandmother. Her grandmother had told her to speak as per their say. Her mother had told her to speak as per their say. She was told to depose as directed by her. The victim disclosed the incident of sexual assault.

9. PW-4 is the medical officer. She has referred to injuries on the private part of victim. In the cross-examination it is stated that it is

natural response of the victim to make hue and cry in the event of fall, trauma, abrasion, injury etc. If such type of incident has happened, then immediately or after some time, the child could not continue social normal behaviour like playing, having food, not to make any complaint to the parents and again to go for play. The victim would not tolerate the violations which are noted in the medical report.

10. The aspects as stated above which are reflected in the evidence of victim will have to be gone into at the time of final hearing, however, considering the admissions of victim in the cross-examination and the other evidence on record and the fact that applicant is aged about 80 years and he was on bail during trial, sentence of imprisonment can be suspended. Hence, I pass following order :

ORDER

- (i) Interim Application is allowed and disposed of;
- (ii) The sentence and imprisonment imposed vide judgment and order dated 25th January 2021 passed by Extra Joint District Judge and Additional Sessions Judge, Ratnagiri in Criminal Special Case No.5 of 2019, is suspended and the applicant is directed to be released on executing PR bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- (iii) The applicant is permitted to furnish cash bail in the sum of Rs.20,000/- for a period of eight weeks in lieu of sureties;
- (iv) The applicant shall attend Trial Court once in six months on First Saturday of the month till disposal of the Criminal Appeal;
- (v) In the event there are two consecutive defaults in attending the Trial Court, the Trial Court shall submit report to this Court;

(vi) In the event of default committed by the applicant in attending the Trial Court, the prosecution will be at liberty to prefer application for cancellation of bail.

(PRAKASH D. NAIK, J.)

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