

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.51 OF 2022
IN
CRIMINAL APPEAL NO.8 OF 2022

Sunil Tukaram Rokade

Applicant

versus

The State of Maharashtra and another

Respondents

Mr.Shantanu R. Phanse i/by Mr.Nilesh Navade, Advocate for applicant.

Ms.Priyanka Chavan with Ankita Ved, Advocate for respondent no.2

Ms.S.V.Sonawane, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 25th March 2022

PC :

1. The applicant is seeking suspension of sentence and grant of bail during pendency of Criminal Appeal No.8 of 2022.

2. The applicant is convicted by Special Judge under POCSO Act vide judgment and order dated 22nd November 2021 for offences under Section 354 of Indian Penal Code and under Sections 7 punishable under Section 8, Section 9(f)(m) punishable u/s.10 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). For the offence u/s.9(f)(m) punishable u/s.10 of POCSO Act, the applicant has been sentenced to suffer imprisonment for five years with fine of Rs.5,000/-. In view of sentence imposed for the aforesaid offence, no separate sentence was imposed for the offence u/s.354 of IPC and for the offence u/s.7 punishable u/s.8 of POCSO Act.

3. The case of prosecution is that the accused had subjected the victim to sexual assault in the nature of outraging her modesty in school. The victim is a student. During P.T period the accused approached her and touched her inappropriately. The complaint was lodged. Investigation proceeded. Charge sheet was filed.

4. The applicant was on bail during trial. On the date of conviction applicant has been taken in custody for undergoing sentence.

5. Learned advocate for applicant submitted that the applicant was on bail during trial and there is no misuse of facility of bail. The sentence imposed by Trial Court is of short term. The appeal would not come up for hearing shortly. In the event sentence is not suspended, the appeal would become infructuous. There are discrepancies in the evidence of witnesses. The incident had allegedly occurred on the P.T ground where sports activities were in progress. Several other students were present at the place of incident. It is difficult to believe that accused could have committed such act at such place. Independent witnesses including other students were not examined during trial. Investigation is defective. Reliance is placed on the decision of Supreme Court in case of **Kiran Kumar Vs. State of Madhya Pradesh**¹ and decision in case of **Angana and another Vs. State of Rajasthan**².

6. Learned APP and learned advocate representing the victim (respondent no.2) have submitted that although the sentence is of

1 (2001)9-SCC-211

2 (2009)3-SCC-767

short term, the nature of act committed by appellant-accused is required to be considered. The victim was a minor student. The accused was a teacher in the school. He was subjected to sexual assault by touching her inappropriately. There is no reason to discard the evidence of victim. The offences are proved by cogent evidence. Assuming that there are lapses in investigation, that cannot be a ground to discard evidence of victim. Reliance is placed on the decision of Supreme Court in case of **Karnel Singh Vs. State of Madhya Pradesh**³.

7. Undisputedly the applicant was on bail during trial. There is no adverse report about misuse of the facility of bail. He has been sentenced to suffer imprisonment of five years. Thus, the sentence is of short term. The applicant has urged that there are discrepancies in the evidence. Considering the aforesaid facts, the sentence can be suspended. Hence, I pass following order :

ORDER

- (i) Interim Application is allowed and disposed of;
- (ii) The sentence of imprisonment imposed vide judgment and order dated 22nd November 2021 by District Judge-6 and Special Judge (POCSO Act) in Special Case (POCSO) No.65 of 2017 is suspended and the 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 cash bail in the sum of Rs.25,000/- for eight week in lieu of sureties;
- (iv) While on bail, the applicant shall not approach the victim or the relatives and shall not cause harassment to victim in any manner;

- (v) The applicant shall attend Trial Court once in six months on First Saturday of the month till disposal of the Criminal Appeal;
- (vi) In the event there are two consecutive defaults in attending the Trial Court, the Trial Court shall submit report to this Court;
- (vii) 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.)

MST