

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.228 OF 2022
IN
CRIMINAL APPEAL NO. 124 OF 2022

1. Manisha Arvind Patil ... Applicants/Appellants
2. Bhanubai Chandrakant Kini

V/s.

The State of Maharashtra and Anr. ... Respondents

Mr. Yogesh Rawool I.by Mr. S.S. Redekar advocate for
applicants/appellants.

Ms. Shraddha Sawant, advocate for respondent no.2.

Ms. P.N. Dabholkar-APP for the State.

CORAM : PRAKASH D. NAIK, J.

DATED : MARCH 21, 2022.

PC. :

1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal No. 124 of 2022.

2. Applicants are convicted for the offence under section 17 of PCOSO Act and sentenced to suffer imprisonment of 10 years.

3. The case of the prosecution is that victim girl was residing with her grandmother (accused no.3/applicant no.2). On weekend she used to go to her fathers house at Khardi. Accused no.2 (applicant no.1), the maternal aunt of victim and her husband (accused no.1) were residing with accused no.3. The informant notices some tablets in

the bag of victim. On enquiring with her, she told that she is not getting menstruation. Her grandmother took her to doctor and tablets were given to her. Informant took victim to doctor. It was noticed that victim was pregnant. The victim disclosed that accused no had sexual intercourse with her. She was threatened. F.I.R. was registered. The applicants did not do anything despite complaint by victim. Both of them abetted the crime.

4. Learned advocate for the applicant submitted that both the applicants are ladies. They were on bail during the trial. There is no misuse of the facility of bail granted. There is no evidence to substantiate the charge under section 17 of the POCSO Act. The applicants could have been at the most convicted under section 19 read with 21 of POCSO Act. The applicants are in custody for a period of 3 years. The charge was framed against the accused stating that he had instigated the co-accused in commission of crime. There is no evidence to prove that the applicants were involved in any act.

5. Learned advocate for the applicant has relied upon the order passed by this Court in the case of **Asha Patil vs. State of Maharashtra** reported in 2019 SCC online Bom 2056.

6. Learned APP submitted that the evidence disclose involvement of applicants. The applicants have participated in crime. There was willful concealment of offence by them. Explanation I and explanation II of section 16 of POCSO Act is proved. Although the incident was disclosed to the applicant, no action was initiated against them. Both the applicants are related to the victim child. The gravity of

offence is required to be taken into consideration.

7. Learned advocate for the respondent no.2 supported submission of learned APP. It is submitted that the accused were aware about acts of accused no.1. They were deliberately silent. They have instigated the co- accused in commission of crime. Complaints were made to them by the victim.

8. The applicants were on bail during trial. There is no adverse report of misuse of facility of bail. Both the applicants are ladies. Applicant no. 1 is aged about 42 years whereas applicant no.2 is aged around 60 years. Both the applicants are now in custody. They have undergone sentence about 3 years. The question which arises whether applicants have committed offence under section 17 of POCSO Act. Section 16 of PCOSO Act relates to the offence of abetment whereas section 21 of PCOSO Act relates to punishment for failure to report case. The charge was framed against the applicants that they have abetted commission of offence by instigating accused no.1 to commit offence.

9. F.I.R. was lodged by PW.1. She is the step mother of victim. According to victim (PW.2) she was residing with her grandmother. Accused No.1 and 2 were residing with her grandmother. Victim was aged around 15 years. Accused No.1 initially played pranks on victim. Accused no.1 committed sexual intercourse with her in absence of applicants. Victim told them about acts of accused no.1. They did not respond. She missed her menstruation. She was taken to hospital by accused no.3. Medicines were given. Her mother took her to doctor.

Thus information was given to applicants after the incidents. The charge is of instigation. It is doubtful whether the acts attributed to applicant would amount to abetment.

10. The applicants were on bail during trial. They are in custody for three years. Considering all the aspects sentence of imprisonment can be suspended and bail can be granted to applicants.

ORDER

- i) Interim Application is allowed and disposed of;
- (ii) The sentence of imprisonment imposed vide judgment and order dated 13th February 2019 passed by learned Additional Sessions Judge in Special Case (POCSO) Case No. 14 of 2014 is suspended and applicants are directed to be released on bail on executing PR bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iii) The applicants are permitted to furnish cash bail in the sum of Rs.25,000/-each for a period of ten 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 of 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.

(vii) The applicants shall not contact victim.

(PRAKASH D. NAIK, J)