

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLIATION NO.419 OF 2022
IN
CRIMINAL APPEAL NO.103 OF 2022

Mobin Samad Khan

Applicant

versus

The State of Maharashtra and another

Respondents

Mr.Kapil Patil i/by Ms.Saili Dhuru, Advocate for applicant.

Mr.Arfan Sait, APP, for State.

Ms.Savita Yadav, Advocate for respondent no.2.

CORAM : PRAKASH D. NAIK, J.

DATE : 11th March 2022

PC :

1. This is an application for suspension of sentence and grant of bail pending appeal preferred by applicant challenging conviction. The applicant has been convicted vide judgment and order dated 16th December 2021 passed by learned Special Judge under POCSO Act, City Sessions Court, for Greater Bombay in POCSO Special Case No.292 of 2016 for the offences under Section 354 of Indian Penal Code and Section 8 of Protection of Children from Sexual Offences Act, 2012. He has been sentenced to undergo imprisonment of five years. The applicant has been acquitted for the offence under Section 376(2) of Indian Penal Code and under Section 6 of POCSO Act.

2. The case of prosecution is that the victim was sexually assaulted by the accused. The victim and the accused are neighbours

and charge against applicant is that he applied oil around the neck and private part of the victim.

3. Learned counsel for applicant submitted that the applicant was on bail during trial. He has not misused the facility of bail. The Trial Court has disbelieved the allegations qua charge u/s.376 of IPC and applicant has been acquitted. The victim has admitted that relationship between the family of victim and the applicant were not cordial. There is discrepancy about the oil on the body of the victim, as alleged by the prosecution. The medical evidence does not support prosecution case. There is discrepancy about seizure of cloth.

4. Learned APP and learned counsel for respondent no.2 submitted that offence u/s.354 of IPC and Section 8 of POCSO Act have been proved. The victim is minor child. The accused and victim are neighbours. The victim was not tutored by her family. Her deposition inspires confidence.

5. The applicant was charged for the aforesaid offences as well as for the offence u/s.376 of IPC. Apparently for lack of evidence he has been acquitted u/s.376 of IPC. The evidence of victim reveals that relationship between both the parties were not cordial. There were quarrels. They were not in talking terms. The victim and other family members were not in visiting terms in the house of accused. The medical evidence is silent. Sentence is of short term. There is no adverse report regarding misuse of facility of bail granted to the applicant. Hence, case for suspension of sentence and grant of bail is made out. 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 16th December 2021 passed by learned Special Judge under POCSO Act, City Sessions Court, for Greater Bombay in POCSO Special Case No.292 of 2016 is suspended and 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 a period of eight weeks in lieu of sureties;
- (iv) The applicant shall not approach the victim and/or her family members 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