

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.507 OF 2022
IN
CRIMINAL APPEAL NO.137 OF 2022

Anand Amarnath Singh

Applicant

versus

The State of Maharashtra and another

Respondents

Mr.Dharmesh Gogri, Advocate for applicant.

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

Ms.Savita Yadav, appointed 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 Criminal Appeal No.137 of 2022.

2. Notice was issued to respondent no.2. Learned APP has tendered report dated 5-3-2022 which indicate that intimation about hearing of this application was given to respondent no.2. Request was made for providing legal aid. The report is taken on record.

3. In view of the request of respondent no.2 for providing legal aid, Advocate Ms.Savita Yadav is appointed to represent respondent no.2. Copy of Interim Application is served upon her. She was permitted to go through the papers and make her submissions.

4. Learned counsel for applicant submit that sentence of imprisonment imposed by the Trial is of four years. The applicant

was on bail during trial. He is taken into custody on the date of conviction. He has undergone custody for a period of about four months. The applicant has good case on merits. The evidence is not sufficient to convict him for the offence u/s.354 of IPC and Section 8 of POCSO Act.

5. Learned APP and learned counsel for respondent no.2 submit that specific overt act has been attributed to the applicant-accused. On the basis of evidence adduced before Trial Court, he has been convicted for the offence.

6. The case of prosecution is that the victim and her friends were travelling by bus on 1-9-2013. The accused was sitting on rear side. There was gap in seat of cushion in the bus. The applicant allegedly touched waist of the victim. The victim scolded him and assaulted him. The accused apologized. The victim and the passengers from the bus handed over him to police. He was arrested. Investigation proceeded. Charge sheet was filed.

7. The defence of the accused is that there was no incident of sexual assault. The accused had not touched the victim. There were many speed breakers on the road. The victim had admitted that the applicant never misbehaved previously. There was no intention for sexual assault. Nobody saw the applicant touching the victim.

8. The applicant was on bail during trial. There is no adverse report of misuse of facility of bail. The sentence of imprisonment is of short term. The applicant has urged that there are discrepancies in the evidence. Hence, case for suspension of sentence is made out.

ORDER

- (i) Interim Application is allowed and disposed of;
- (ii) The sentence of imprisonment imposed by judgment and order dated 30th December 2021 by learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai in Special Case (POCSO) No.15 of 2013 is suspended and the applicant is directed to be released on bail 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 ten weeks in lieu of sureties;
- (vi) The applicant shall attend Trial Court once in six months on First Saturday of the month till disposal of the Criminal Appeal;
- (vii) In the event there are two consecutive defaults in attending the Trial Court, the Trial Court shall submit report to this Court;
- (viii) 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