

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.165 OF 2019
IN
CRIMINAL APPEAL NO.167 OF 2019

Mahadev Balu Kasale
versus
The State of Maharashtra and another

Appellant
Respondents

Mr.Satyavrat Joshi, Advocate for applicant.
Ms.Priyanka Chavan, Advocate for respondent no.2.
Mr.S.V.Gavand, APP for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th February 2022

PC :

1. This is an application for suspension of sentence and grant of bail during pendency of Criminal Appeal No.167 of 2019.

2. The applicant has been convicted for the offence under Section 367(f) of Indian Penal Code and sentenced to suffer rigorous imprisonment for 20 years and pay fine of Rs.30,000/-. He is also convicted for the offence u/s.4 of POCSO Act, Section 354(B), Section 8 of POCSO Act and Section 506(II) of IPC. No separate sentence has been imposed on the aforesaid counts. The judgment of the Trial Court was delivered on 4th December 2018.

3. The prosecution case is that the victim was below the age of 12 years. She was subjected to sexual assault by accused in May-2014 and December-2014. The incident was disclosed by the victim to her mother on 3rd January 2015 and the FIR was registered on 5th

January 2015. The applicant was arrested. Pending trial he was granted bail. On completing investigation charge sheet was filed. Thereafter the trial had commenced and prosecution examined several witness which resulted in conviction of applicant-appellant.

4. Learned counsel for applicant submitted as follows :

- (i) The applicant was on bail during trial;
- (ii) The applicant has not misused facility of bail;
- (iii) There is unexplained delay in lodging the FIR. The alleged incident had occurred in May-2014 and December-2014. Disclosure was made by victim on 3rd January 2015. Hence there substantial delay in lodging the FIR on 5th January 2015;
- (iv) The evidence of the victim suffers from serious discrepancies. There is motive to falsely implicate the applicant in the crime. Medical report is contrary to the version of victim. There were no injuries on the person of victim. The medical examination report does not show sign of sexual assault;
- (v) The evidence of medical officer indicate that medical examination of victim does not support prosecution case.

5. Learned APP submitted that victim was below 12 years of age. The accused subjected the victim with sexual assault. Considering the age of victim, reporting of incident in January-2015 is not fatal to prosecution. The medical officers have deposed that victim was subjected to penetrative sexual assault. It amounts to aggravated penetrative sexual assault. The offence is serious offence. No leniency should be shown to the accused. The motive for false implication has not been established.

6. Learned counsel for respondent no.2 submitted that the victim was child below 12 years of age. There is no reason for the victim to depose against applicant. The age of applicant was around 50 years. The victim used to call him 'Baba'. The accused has taken undue advantage of the relationship. The medical evidence supports prosecution case.

7. On perusal of the evidence on record it appears that the victim was between 11½ to 12 years of age. In her evidence she has referred to the incidents of sexual assault occurred in May-2014 and December-2014. The incidents were disclosed to her mother by her on 3rd January 2015. Looking at the nature of incidents, the age of the victim, at this stage it is not possible to discard the evidence of victim. The issue relating to medical officers evidence and medical report will have to be looked at the stage of final hearing. Prima facie, the deposition of medical officer refers to opinion of penetrative sexual assault. From the evidence of victim it is apparent that she used to call applicant as 'Baba'. The case of prosecution is that the applicant has misused fiduciary relationship with victim. Considering these circumstances, no case for suspending the sentence is made out. Criminal Application is rejected. Hearing of appeal is expedited.

8. It is made clear that these observations are prima facie made only for considering the application for suspending sentence of imprisonment and grant of bail during pendency of criminal appeal.

(PRAKASH D. NAIK, J.)