

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.819 OF 2022
IN
CRIMINAL APPEAL NO.274 OF 2022

Khalid Abubakar Baig
versus
The State of Maharashtra

Applicant

Respondent

Mr.Vivek B. Pandey, Advocate for applicant.

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

Mr.Nikhil Kunal Chaudhari, Advocate for respondent no.2.

CORAM : PRAKASH D. NAIK, J.

DATE : 4th May 2022

PC :

1. This is an application for suspension of sentence and grant of bail during pendency of Criminal Appeal No.274 of 2022. The applicant has been convicted for the offence under Section 354 of Indian Penal Code and sentenced to suffer imprisonment for 3 years and pay fine of Rs.2,000/-.

2. The case of prosecution is that the victim girl had approached the accused Doctor for treatment. The accused had allegedly outraged modesty of the victim girl during her medical examination when the victim's mother had gone out of clinic for answering phone call. The complaint was lodged. The FIR was registered. On completing investigation charge sheet was filed.

3. Learned advocate for applicant submitted that maximum sentence of imprisonment imposed by the Trial Court while

convicting the applicant is for a period of 3 years. The applicant has undergone custody of about 2 years and 1 month. Evidence of witnesses examined by the prosecution suffers from serious infirmities. Independent witnesses examined by the prosecution has not supported the prosecution. She was cross examined. Her evidence discloses that no such incident had occurred. The victim's mother had never gone out of the cabin of doctor and therefore it is submitted that prosecution case suffers from serious doubt.

4. Learned APP submitted that there is no reason to disbelieve the evidence of victim girl. The prosecution has proved that incident had occurred.

5. Learned counsel for respondent no.2 submitted that evidence of victim girl as well as her mother establishes the prosecution case. Section 29 of POCSO Act relates to the presumption which has not been rebutted by victim in any manner. The applicant has not examined any witness to support his defense. There is no reason to disbelieve the version of victim and her mother. The accused is doctor who has taken undue advantage of the situation. The victim was aged around 14 years at the time of incident. The Trial Court has shown leniency while convicting the applicant and imposed sentence of 3 years. The maximum sentence provided under the law is up to 5 years.

6. The applicant is in custody for a period of about 2 years. The maximum sentence imposed by Trial Court is of 3 years. Vide order dated 31st March 2022 by way of interim relief this Court has suspended sentence of imprisonment.

7. The prosecution is relying on the evidence of complainant (mother of victim girl) and PW-2 (victim girl). It is alleged that the accused has outraged victim girl's modesty by touching her inappropriately while examining her. This incident had occurred when victim's mother had gone out of doctor's cabin. The prosecution has examined PW-3 as an independent witness. She did not support prosecution case. The prosecution sought permission to put leading questions to her, which was granted and prosecutor had put questions to the said witness. In her evidence, in the cross-examination the witness had stated that there was lady compounder with the doctor. The compounder used to come in the cabin of doctor along with patient. The doctor used to check the patient and thereafter the lady compounder went out of cabin with patient. The cabin of doctor and compounder are open and adjacent to each other. The clinic of the doctor is transparent i.e. glass are fixed. The defence has urged that evidence of victim girl, her mother are contradictory to evidence of PW-3. However, considering the nature of evidence and fact that applicant is in custody for more than 2 years and maximum sentence imposed by the Trial Court is of 3 years, sentence of imprisonment can be suspended.

ORDER

- (i) Interim Application is allowed and disposed of;
- (ii) Interim order dated 31st March 2022 is confirmed;
- (iii) The sentence of imprisonment imposed vide judgment and order dated 11th November 2021 by Additional Sessions Judge, Borivali (Division) Dindoshi, Goregaon, Mumbai in Special POCSO Case No.292 of 2020 is suspended and applicant is directed

tobe released on bail on executing PR bond in the sum of Rs.20,000/- with one or more sureties in the like amount;

(iv) The applicant is permitted to furnish cash bail in the sum of Rs.20,000/-;

(v) The applicant shall not contact the victim and harass her in any manner;

(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