

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.689 OF 2022
AND
INTERIM APPLICATION NO.691 OF 2022
IN
CRIMINAL APPEAL NO.203 OF 2022

Altaf Jahagir Malik
versus

Applicant

The State of Maharashtra and another

Respondents

Ms.Nazneen Khatri, Advocate for applicant.

Ms.Bneerta H. Bajwa, Advocate for respondent no.2.

Mr.Arfan Sait, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th April 2022

PC :

1. Interim Application No.691 of 2022 is not on board. It is taken on board and heard with Interim Application No.689 of 2022.

2. The applicant in both these applications is seeking suspension of sentence and grant of bail during pendency of Criminal Appeal No.203 of 2022.

3. The applicant has been convicted vide judgment and order dated 12th January 2022 by Special Judge under POCSO Act, Greater Bombay, in POCSO Special Case No.330 of 2019 for the offence under Section 7 r/w 8 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') and directed to undergo imprisonment of 3 years with fine of Rs.25,000/-. He is also convicted for the offence u/s.354 of Indian Penal Code and sentenced to undergo

imprisonment for 1 year with fine of Rs.5,000/-. Both the sentences were directed to run concurrently.

4. The case of prosecution is that the first informant is the cousin of the victim. The victim was aged about 17 years at the time of incident. On 26th March 2019 the informant and victim left their residence as the victim wanted to prepare an affidavit for school purpose. When both of them were at back side of Sewree Court, the accused came there on scooter and touched victim inappropriately. When he was questioned about same by the first informant he abused them and quarrel with them. The police reached the spot. The FIR was registered under Section 354 of Indian Penal Code and Section 12 of POCSO Act. The accused was arrested. On completing investigation charge sheet was filed.

5. Learned advocate for applicant submitted that applicant has been falsely implicated in this case on account of enmity. Offences are not made out. The applicant was on bail during bail. He has not misused the facility of bail. The sentence of imprisonment was suspended on the date of imprisonment. Sentence of imprisonment is of short term. The appeal may not reach for hearing immediately. The sentence has been suspended by way of interim relief by order dated 16th March 2022.

6. Learned APP submitted that presence of accused at the scene of offence has been established. The victim and the first informant proved that accused has committed the offence.

7. Learned advocate for respondent no.2 submitted that accused

was not known to the informant or the victim. The defense of enmity has not been established. In the cross-examination itself the accused has given suggestion which supports the prosecution case.

8. The case of prosecution is that the first informant and the victim had visited the Court for preparing affidavit. It is alleged that the accused had touched the shoulder of victim and she got scared. The appeal is already admitted. The maximum sentence imposed by the Trial Court is of three years. The applicant was on bail during trial. There is no adverse report of misuse of facility of bail. The appeal may not come up for hearing within short span of time. By way of interim relief vide order dated 16th March 2020 the sentence was suspended by this Court. Hence, I pass following order :

ORDER

- (i) Interim Application No.689 of 2022 and 691 of 2022 are allowed and disposed of;
- (ii) Interim order dated 16th March 2022 passed by this Court is confirmed;
- (iii) Sentence of imprisonment imposed vide judgment and order dated 12th January 2022 by Special Judge under POCSO Act, Greater Bombay, in POCSO Special Case No.330 of 2019 is suspended and applicant is directed to be released on bail on executing PR bond in the sum of Rs.15,000/- with one or more sureties in the like amount;
- (iv) The applicant is permitted to furnish cash bail in the sum of Rs.15,000/- for ten weeks in lieu of sureties;
- (v) The applicant shall not approach the victim or her relatives;
- (vi) The applicant shall not cause harassment to victim in any manner;

- (vii) The applicant shall attend Trial Court once in six months on First Saturday of the month till disposal of the Criminal Appeal;
- (viii) In the event there are two consecutive defaults in attending the Trial Court, the Trial Court shall submit report to this Court;
- (ix) 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