

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.718 OF 2022
IN
CRIMINAL APPEAL NO.1302 OF 2019

Khalid Nisar Ahmad Choudhary
versus
The State of Maharashtra

Applicant

Respondent

Ms.Lisa Shaikh i/by Mr.Shantanu R.Phanse, Advocate for applicant.
Mr.S.V.Gavand, APP for State.
Ms.Priyanka Chavan, Advocate for respondent nos.2 and3.

CORAM : PRAKASH D. NAIK, J.

DATE : 30th March 2022

PC :

1. This is an application for suspension of sentence and grant of bail. The applicant is convicted for offences under Section 354-A(1)(i) of Indian Penal Code and sentenced to suffer imprisonment of three years. He is further convicted for the offence under Section 7 punishable under Section 8 of Protection of Children from Sexual Offences Act and sentenced to suffer rigorous imprisonment of four years. Both the sentences were directed to run concurrently.

2. The case of prosecution is that on 15th May 2015 while the victim girl was returning home from attending class, the accused followed her. He hugged her from backside and touched her inappropriately. The victim girl informed the incident to her mother. Since they were not knowing the person who misbehaved with the victim, they did not lodge the complaint with police station. On 17th May 2015 the father of victim tried to trace the accused. He found that accused was sitting in a garden and looking at the girls playing

in garden. Enquiry was made with the accused. The victim girl identified the accused as the same person who had misbehaved with her.

3. Previous application for suspension of sentence preferred by applicant was rejected by this Court vide order dated 8th November 2019.

4. Learned advocate for applicant submitted that maximum sentence awarded by Trial Court is of four years. The applicant is in custody for a period of 2 years and 8 months. He has already undergone more than half the sentence imposed by Trial Court. There are no criminal antecedents against applicant. He was on bail during trial. The facility of bail was not misused by him. Learned counsel for applicant, on instructions, submit that the victim has changed her residential address and she is not residing in the locality where the alleged incident had occurred.

5. Learned APP submitted that applicant has been convicted on the basis of evidence adduced by prosecution. This is second application for suspension of sentence. The previous application was rejected by this Court.

6. Learned advocate representing respondent nos.2 and 3 submitted that applicant had misbehaved with the victim girl while she was returning home and entered in her residential building. There is sufficient evidence to support conviction. The victim and accused are residents of same locality.

7. It is relevant to note that applicant is in custody for a period of about 2 years and 8 months. The maximum sentence imposed by Trial Court is of 4 years. The appeal has been admitted and pending for final disposal. The appeal may not come up for final hearing shortly. Considering the factual aspects of the matter, sentence of imprisonment can be suspended on certain conditions.

ORDER

- (i) Interim Application is allowed and disposed of;
- (ii) The sentence of imprisonment imposed vide judgment and order dated 11th September 2019 passed by District Judge-1 and Special Judge (POCSO Act), Thane in Special Case (Child Protection) No.100 of 2016, is suspended and 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 eight weeks in lieu of sureties;
- (iv) The applicant shall not approach victim girl or her relatives;
- (v) The applicant shall not cause any harassment to victim;
- (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.)