

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.725 OF 2021
IN
CRIMINAL APPEAL NO.183 OF 2021**

Sampa Vishwas Roy

.. Applicant/ Appellant

Versus

State of Maharashtra and Anr.

.. Respondents

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Ms.Anjali Patil, Advocate for the Applicant/Appellant.

Mr.S.V. Gavand, APP for the Respondent – State.

Ms.Saili N. Dhuru, Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATED : JANUARY 21, 2022.

P.C. :

This is an application for suspension of sentence and grant of bail pending Criminal Appeal No.183 of 2021, preferred by the applicant/appellant challenging the impugned judgment and order dated 24th December, 2020, passed by the Special Court under the POCSO Act. The applicant has been convicted for the offence under Section 370(2), 370 A (2), 376 read with 109 of Indian Penal Code (“IPC”, for short) read with Section 5 of Prevention of Immoral Trafficking Act (“PITA Act”, for short). She has been sentenced to suffer imprisonment of five years for the

offence under Section 5 of PITA Act, 7 years for the offence under Section 370(2) of IPC, 5 years for the offence under Section 370 A(2), and, 12 years for the offence under Section 376 read with 109 of IPC. The applicant is acquitted for the offences punishable under Section 370 A, 370(4) of IPC and Sections 4 and 6 of POCSO Act read with Section 4 of PITA Act.

2 Learned counsel for the applicant submitted that the applicant is in custody for a period of about six years seven months. She is a lady. There are discrepancies in the evidence of the witnesses. The evidence of the victim suffers from serious omissions and contradictions. The medical evidence does not support the version of the victim/complainant. The Appeal preferred by the applicant/appellant has been admitted by this Court, and, pending for final disposal. The Appeal has been admitted recently, and, it may not come up for hearing within short span of time. Learned advocate pointed out the evidence of the witnesses and submitted that most of the part of the version reflected in the evidence of victim is in the nature of omissions. The medical evidence as spelt out in the deposition of P.W.4, does not support the version of the victim. The sentence of 12 years imposed for conviction under Section 376 read with 109 of IPC is arbitrary.

3 Learned APP submitted that on perusal of the FIR lodged by the victim and her evidence would indicate that there are no serious omissions. The specific role has been attributed to the applicant/appellant and the co-accused. The victim was subjected to illicit trafficking. The evidence adduced before the trial Court supports the prosecution case. The husband of applicant had sexually assaulted the victim and the applicant has aided accused no.2 in committing the said act.

4 Learned advocate for respondent no.2 supported submissions of learned APP. It is submitted that victim was brought to Mumbai and subjected to illicit trafficking. The accused no.2 has sexually assaulted victim with the aid of applicant.

5 The applicant/appellant and her husband (accused no.2) were prosecuted for the offence punishable under Sections 376(2)(i)(j)(k)(n), 376 (1) read with 34 of IPC, Section 3(a), 4, 5(p) of POCSO Act and Sections 4 and 5 of the PITA Act.

8 The prosecution case is that the victim was a minor. Her neighbour used to visit the house of victim. She offered the

victim to go to Mumbai for a job with salary of Rs.30,000/-. The victim came to Mumbai from Delhi on 21st May, 2015. She stayed with accused no.1. The husband of accused no.1 committed sexual intercourse with the victim. Accused no.1 (applicant) aided and abetted the co-accused in commission of the said offence. The victim was subjected to illicit trafficking. She managed to leave the house of accused and lodged the complaint on 22nd June, 2015.

7 During the trial, the prosecution has examined about 12 witnesses. The victim has deposed that her neighbour Sita Buva had induced her to visit Mumbai for job. On 23rd May, 2015, she left Delhi with accused and came to Mumbai. The husband of applicant (accused no.2) committed sexual intercourse with victim. She stated that she was not taken to Delhi for making inquiry about Sita Buva. She could not disclose details of train from Delhi to Mumbai. The role attributed to applicant in the evidence, that she removed her clothes and caught her legs is not reflected in her FIR. Her version before Court, that she was taken to Hyderabad is omission. The investigating officer had not made any attempts to find out the whereabouts of the neighbour of the victim, who persuaded her to come to Mumbai. From the

evidence of P.W.4, Medical officer who examined the victim stated that hymen of victim was not intact. There was no evidence of any tear bleeding or injuries. There is no mention of hymen tears. Accused no.2 is the husband of the applicant/appellant. He had allegedly subjected the applicant/appellant to sexual intercourse. He is also convicted for similar offences and sentenced to the maximum sentence of 12 years imprisonment for offence under Section 376 of IPC.

8 It is noted that the applicant/appellant is in custody for six years and seven months. Thus, she has almost undergone the imprisonment which is awarded to the offence under Section 370(2) and 270 (A)(2) of IPC. The judgment of the trial Court also indicate that it is not proved that, victim is minor. The applicant has been acquitted for the offences under POCSO Act. The applicant is acquitted for the offences under the POCSO Act and Section 370 A and 370(4) of IPC read with Section 4 of PITA Act. The applicant is in custody for more than six years.

9 Considering the aforesaid facts and circumstances, the sentence of imprisonment can be suspended.

10 Hence, I pass the following order:

:: ORDER ::

- (i) Interim Application No.725 of 2021, is allowed;
- (ii) During the pendency of Criminal Appeal No.183 of 2021, the applicant/appellant be released on bail on executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant/appellant is permitted to furnish cash bail security of Rs.25,000/-, for a period of eight weeks, in lieu of surety;
- (iv) The applicant/appellant shall attend the trial Court once in six months on first Saturday of the month between 11:00 a.m. to 01.00 p.m.;
- (vi) In the event of two consecutive defaults in attending the trial Court, the prosecution is at liberty to move an application for cancellation of bail;
- (vi) Interim Application No.725 of 2021, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)