

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.655 OF 2020
IN
CRIMINAL APPEAL NO.116 OF 2021

Noor Jamal Akbar Shaikh
versus
The State of Maharashtra and another

Appellant
Respondents

Mr.Aniket Vagal, Advocate for applicant.
Ms.Janhavi S. Karnik, Advocate for respondent no.2.
Mr.S.V.Gavand, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd March 2022

PC :

1. This is an application for suspension of sentence and grant of bail pending Criminal Appeal No.116 of 2021.

2. The applicant has been convicted by Special Judge under POCSO for Greater Bombay by judgment and order dated 23rd July 2019 passed in POCSO Special Case No.513 of 2017.

3. The case of the prosecution is that the victim girl aged about 6 years was sexually assaulted by the applicant by fingering her private part. The incident had occurred on 7th September 2017. It was reported to police on 8th September 2017.

4. Learned advocate for applicant submitted that applicant is in custody for a period of four and half years. There is delay in lodging the FIR. The evidence of witnesses suffers from infirmities. There is

ambiguity in medical evidence. The initial history provided to medical officer does not indicate alleged sexual assault. The second medical officer did not examine the victim. The second medical officer who had examined the victim, is not sure whether there was penetration. The medical officer has admitted that hymen can torn due to fall. There was no effective cross-examination of witness by the defence advocate. The accused was not defended properly. There is no fair trial. This is a case which requires to be remanded to the Trial Court for fresh trial. The applicant is aged around 48 years.

5. Learned APP submitted that version of the victim aged about 6 years at the time of incident cannot be overlooked. No discrepancy was brought on record in her evidence. She has categorically deposed that she was sexually assaulted by the accused. He is the father of her friend. He also tried to kiss her. There is sufficient evidence to convict applicant. The Trial Court has examined evidence. The medical officer has categorically stated that hymen can get torn if adult person inserts finger in vagina. Hence this application may be rejected.

6. Learned counsel for respondent no.2 submitted that evidence of victim and evidence of medical officers supports prosecution case. There was no suggestion of false implication. There was no evidence u/s.313 of Cr.P.C. History provided to the medical officers was in consonance of oral evidence of witness. The victim was aged about six years at the time of evidence. Considering the age of accused he was supposed to look after the victim. She relied upon the case Supreme Court in case of Nawabuddin Vs. State of Uttarakhand (Criminal Appeal No.144 of 2022, decided on 8th February 2022)

and submitted that Supreme Court has dealt with similar case and on analysing the evidence, conviction was confirmed. The Supreme Court has also dealt with the scope of POCSO Act and the responsibility cast upon person who is senior by age and is supposed to look after it.

7. I have perused the evidence. Prima facie on analyzing the evidence prima facie it can be seen that victim was six years of age at the time of incident. She has deposed against applicant about sexual assault. The medical evidence is on record. In the light of aforesaid circumstances no case is made out for suspension of sentence and grant of bail. However, considering the fact that applicant is in jail for about four and half years, hearing can be expedited.

ORDER

- (i) Interim Application is rejected;
- (ii) Hearing of Criminal Appeal is expedited;
- (iii) If the appeal is not heard within six months, the applicant will be at liberty to move application for fixing date of hearing of the appeal.

(PRAKASH D. NAIK, J.)

MST