

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1490 OF 2021
IN
CRIMINAL APPEAL NO.333 OF 2021

Datta Alingan Dhavare
versus

Applicant

The State of Maharashtra and another

Respondents

Mr.Vikrant V. Phatate, Advocate for applicant.

Ms.Shraddha Sawant, 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.333 of 2021. The applicant is convicted vide judgment and order dated 24th February 2021 passed by Additional Sessions Judge, Pune in Special POCSO Case No.322 of 2017. The applicant has been convicted for the offence u/s.5(1) punishable u/s.6 of POCSO Act r/w Section 376(2)(n) of Indian Penal Code and Section 363 of IPC. He has been sentenced to suffer rigorous imprisonment for ten years and one year respectively. He was acquitted for the offences u/s.7 r/w 8 of POCSO Act.

2. The case of prosecution is that the victim was aged about 15 years at the time of incident. She left the house on 14th February 2017 and did not return till late evening. On 14th April 2017 FIR was lodged against unknown persons alleging kidnapping. The victim returned home on the next day and informed that accused took her

along with him. They went to temple. Accused had committed forcible sexual intercourse with her on two occasions under the pretext of marriage.

3. Learned counsel for applicant submitted that applicant was on bail during trial. There is no misuse of facility of bail. The relationship was of consensual nature. There are contradictions in the evidence before Court and the statements of victim recorded u/s.161 and 164 of Cr.P.C. History provided to the medical officer states that relationship was with the accused. She had left her house voluntarily. There is dispute about age of victim.

4. Learned APP submitted that victim has given explanation about her version reflected in statement u/s.164 of Cr.P.C. The prosecution has established that victim was minor at the time of incident. Since victim was minor, consent, if any, was immaterial. The prosecution has established that the victim was subjected to forcible sexual physical relationship.

5. Learned counsel for respondent no.2 supported the submissions of learned APP. She submitted that victim was minor and there is no reason to doubt her version.

6. It is noted that applicant was on bail during trial. There is no adverse report about misuse of facility of bail. In the statement u/s.164 of Cr.P.C the victim had stated that she had left her house on 14th April 2017. She was with accused and they had joined the rally. The accused left the rally and the victim continued with the rally. There was no physical relationship between them on that day. In the

history provided to the medical officer it was stated that she was in relationship with the accused. The Investigating Officer was cross-examined by defense with regards the age of victim. The age of victim is under challenge. In light of nature of evidence on record, case for suspension of sentence is made out.

ORDER

- (i) Interim Application is allowed and disposed of;
- (ii) During pendency of Criminal Appeal No.333 of 2021, the sentence of imprisonment imposed vide judgment and order dated 24th February 2021 passed by Additional Sessions Judge, Pune in Special POCSO Case No.322 of 2017 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 a period of ten weeks in lieu of sureties;
- (iv) The applicant shall not approach the victim and harass her;
- (v) The applicant shall not contact the victim 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.)