

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.504 OF 2021
IN
CRIMINAL APPEAL NO.737 OF 2021

Kisan Suryabhan Ingale
versus
The State of Maharashtra

Applicant

Respondent

Ms.Grishma N. Lad, Advocate for applicant.
Ms.Megha Bajoria, Advocate for respondent no.2.
Mr.Arfan Sait, APP, for State.
API Mr.Yamgar, Vashi Police Station, Navi Mumbai, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 8th February 2022

PC :

1. This is an application for suspension of sentence and grant of bail pending Criminal Appeal No.737 of 2021. The applicant is convicted for the offence under Section 377 of Indian Penal Code and sentenced to suffer imprisonment for one year. He is also convicted for the offence under Sections 4 and 8 of Protection of Children Sexual Offences Act, 2021 and sentenced to suffer imprisonment for seven years and three years on each count.

2. The case of prosecution is that the victim boy was sexually assaulted by the applicant-appellant on 18th January 2017 by subjecting him to unnatural sex. The FIR was registered on 18th January 2017. The victim and his relations went in search of the accused and the victim had allegedly pointed out the accused on the street. He was arrested. Investigation proceeded. Statements of

witnesses were recorded and on completing investigation charge sheet is filed.

3. Learned advocate for the applicant submitted that the applicant is aged about 76 years. He is in custody from 19th January 2017. The case of the prosecution suffers from serious discrepancies. This is case of mistaken identity. The accused was identified on the basis of colour of T-shirt. The medical evidence does not support prosecution case. There were no injuries on the person of victim.

4. Learned APP submitted that the applicant has been convicted for the offence under Section 377 of IPC and under the provisions of POCSO Act. The discrepancies in the evidence will have to be looked at the time of final hearing. In all fairness learned APP tendered report of Police Inspector of Shegaon Police Station, District Buldhana. From the said report it appears that the officer has taken efforts to find out whereabouts of relations of the applicant. This enquiry is made considering the fact that the applicant was found residing on the street. The report dated 26th January 2022 is taken on record. The said report furnishes the information of the wife, children and sister of applicant who are residents of District Buldhana. The sister of applicant has stated that the applicant has been arrested by Vashi Police Station and since then he is in jail. The report is taken on record.

5. Learned advocate for Respondent no.2 submitted that the victim boy is aged about seven years. Specific role has been attributed to applicant. The accused was pointed out by the victim himself. There is sufficient evidence against applicant.

6. The applicant is aged about 76 years. He is in custody from 19th January 2017. The case of prosecution is that the victim was subjected to unnatural sexual assault by the accused. The victim has admitted that the victim was identified on the basis of colour of T-shirt. Prima facie, the identification is doubtful. The medical officer has stated that there were no injuries on the person of victim. It also appears from the evidence that the applicant-appellant was represented by State appointed advocate. On most of the occasion the concerned advocate was absent. Some of the witnesses were not cross-examined. Prima facie it appears that there are discrepancies in the evidence recorded during trial. Considering these circumstances, the sentence of imprisonment can be suspended.

ORDER

- (i) Interim Application No.504 of 2021 is allowed and disposed of;
- (ii) During pendency of Criminal Appeal No.737 of 2021, sentence of imprisonment imposed vide judgment and order dated 9th September 2019 by Special Judge (POCSO), Thane in Special Case No.72 of 2017, is suspended, and the applicant is directed to be released on bail on executing personal bond in the sum of Rs.10,000/- with one or more sureties in the like amount;
- (iii) The applicant is permitted to furnish cash bail in the sum of Rs.10,000/- for a period of ten weeks in lieu of sureties;
- (iv) The applicant shall report Shegaon Police Station, District Buldhana, once in three months on every first Saturday of the month between 11 am and 1 pm till conclusion of Criminal Appeal No.737 of 2021;
- (v) The Trial Court shall furnish report to this Court within four

weeks indicating whether applicant has furnished bail bond;

(vi) Copy of this order be forwarded to Shegaon City Police Station with a view to communicate the same to the relatives of the applicant.

(PRAKASH D. NAIK, J.)

MST