

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2116 OF 2021
IN
CRIMINAL APPEAL NO.48 OF 2022

Rizwan Haniff Shaikh

Applicant

versus

1. State of Maharashtra

2. Senior Police Incharge,
Ghatkopar Police Station.

3. Mehjabeen Shaikh,

4. Nazma Begum Mohd,. Yusuf Kalan Khan

Respondents

Mr.Satish R Mishra, Advocate for applicant.

Mr.Arfan Sait, APP, for State.

Ms.Priyanka H. Chavan, Advocate for respondent no.3

PSI Devhare, Ghatkopar Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 25th April 2022

PC :

1. This is an application for suspension of sentence and grant of bail during pendency of Criminal Appeal No.48 of 2022.

2. The applicant is convicted vide judgment and order dated 9th January 2020 for the offences under Section 8 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') and sentenced to suffer imprisonment for five years. He was acquitted for the offence u/s.4 of POCSO Act.

3. The prosecution case is that daughters of accused were friends of complainant's daughter (victim). The daughter of complainant

was student in 6th standard. Her friend was also student in 6th standard and residing in same area. Both victims were attending private tuition class. On 26th December 2013 the tuition teacher of the victim informed the complainant that the accused who is residing close to her house committed some wrong act with her daughter. The complainant made inquiry with the victim no.1 and it was revealed that the accused used to call victim girls to his house and commit objectionable acts. The FIR was registered. Charge sheet was filed.

4. Learned advocate for applicant submitted that applicant is in custody for a period of about two years. The applicant was on bail during trial. He has not misused the facility of bail. The sentence is of short term. The appeal may not reach within short span of time. The applicant has been falsely implicated in this case. There is delay in lodging the FIR. There are discrepancies in the evidence of victims. The case of prosecution is that the victim had informed the alleged sexual assault to the tuition teacher who disclosed it to the first informant. However, the teacher has not been examined by the prosecution.

5. Learned APP submitted that there are two victims in this case. There are no contradictions in the evidence of victims. PW-1 and PW-2 are the victims who have attributed specific overt act to the applicant. The nature of act attributed to the applicant-accused is required to be taken into consideration. This is not the case of false implication. There is sufficient evidence against applicant. Presumption under Section 29 of POCSO Act is not rebutted by accused.

6. Learned advocate for respondent no.2 submitted that accused is the neighbour of the victim girls. The victim no.2 has referred to the date of incident. Both the victims were minor. The offence is of serious nature. Hence sentence may not be suspended.

7. The sentence imposed by the Trial Court is of five years. The applicant has already undergone imprisonment of about two years. The applicant was on bail during trial. There is no adverse report that he has misused the facility of trial. There are two victims in this case. PW-1 is victim no.1 and PW-2 is victim no.2. PW-1 has stated that accused did something with PW-2. The accused molested her. The accused exhibited his private part. Thereafter on another day similar act was committed by accused. She did not disclose incidents to her friends. They used to visit house of accused when her friends were available. Her mother was not in talking terms with accused. Even thereafter they used to visit house of accused. She do not recollect date when she had disclosed the incident to the tuition teacher. Even prior to the incident they had visited the house of accused. No such incident had occurred in past. On the first day of incident they did not disclose the incident to anybody. PW-2 (victim) stated that accused is her neighbour. On 23rd December 2013 accused called her and PW-1. They tried to search daughter of accused. He committed sexual assault on PW-1. He molested her. The accused did similar act on next day. They informed incident to tuition teacher. They used to visit house of accused. Daughter of accused were attending tuition class. She do not recollect date of incident. She did not disclose incident to any one before disclosing it to tuition teacher. She did not disclose incidents to mother since she

was scared. The daughters of accused were found in the house. PW-3 is the mother of victim. She has stated that she do not recollect the date of incident. Distance between the house of accused and her house is very short. The tuition teacher has disclosed the incident after few days. The accused used to leave house and return in the evening. The accused used to pick up quarrel on account of use of open space and people in the area are annoyed. The accused did not run away after she questioned him. Police did not read over her statement to her. The tuition teacher did not accompany them to Police Station. Police did not call the tuition teacher. Police did not visit their house. The tuition teacher was having quarrel with the accused.

8. The tuition teacher is not examined. The accused was on bail during trial. Accused is in custody since last two years. Considering the above aspects, sentence of imprisonment can be suspended.

ORDER

- (i) Interim Application is allowed and disposed of;
- (ii) During pendency of Criminal Appeal No.48 of 2022, the sentence of imprisonment imposed vide judgment and order dated 9th January 2020 passed by Special Judge under POCSO Act, Greater Bombay in POCSO Special Case No.84 of 2014, is suspended and applicant is directed to be released on bail on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of sureties;
- (iv) The applicant shall not approach the victim and harass her;
- (v) The applicant shall not stay in the vicinity where the victim girls reside;

- (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.)

MST