

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

INTERIM APPLICATION NO.2145 OF 2021
WITH
INTERIM APPLICATION NO.2146 OF 2021
IN
CRIMINAL APPEAL NO. 715 OF 2021

Mr. Anwar A. Idrisi .. Applicant.
v/s.
The State of Maharashtra & Another .. Respondents.

Mr. Satyendra Kumar Pandey, for the Applicant in both the Appeals..
Mr. H. J. Dedhia, APP for Respondent No.1-Staten in both the Appeals.
Ms. Savita Yadav, for Respondent No.2 in both the Appeals.

CORAM: PRAKASH D. NAIK, J.
DATED : 25th FEBRUARY, 2022.

PER COURT:

These applications are preferred by the Applicant, seeking suspension of sentence and grant of bail, pending Criminal Appeal No.715 of 2021. Applicant is convicted vide judgment and order dated 26th February, 2021 passed by Special Judge, under POSCO Act. Applicant has been convicted for the offences punishable under Section 376 of Indian Penal Code read with Sections 4, 8 & 12 of Protection of Children from Sexual Offences Act, 2012 (POSCO Act). He is sentenced to undergo imprisonment for 3, 10 and 5 years respectively.

2 The alleged incident had occurred on 27th October, 2017. Victim is a minor child. She went to the cycle shop for repairs of the cycle. Accused was sitting in auto-rickshaw. Accused called the victim in the

auto-rickshaw and subjected her to sexual assault. Victim returned home and informed about this to the complainant and her mother. Complainant went to the spot along with the victim. One person was running from the place of incident. Member of public informed the complainant that he is the accused. Accused was taken to the police station. FIR was registered. Accused was arrested. On completing the investigation, charge-sheet was filed.

3 Learned Advocate for the Applicant submitted that, case is false. Applicant is not a person who allegedly subjected the victim to sexual assault. There is no evidence of identification. Incident had occurred in the public place which is un-believable that such incident can happened at the public place.

4 Evidence of PW-1 & 2 is contradictory. Accused was identified on the basis of photographs. There was no identification parade. There is no medical examination. Member of public who has informed the complainant that Accused is present who had subjected the victim for sexual assault, was not examined. Mother of victim was not cross examined. Medical Officer does not support the prosecution case. Medical examination report indicates that there are no signs of the sexual assault. Applicant is in custody for a period of four years. There are no criminal antecedents against the Accused.

5 Learned APP submitted that in the nature of act attributed to the Accused, there can't be any medical evidence. Trial Court has considered this aspect. Trial Court has observed that medical evidence has given reference to the possibility of touching her private part. There is no evidence to dis-believe the version of victim and the complainant.

6 Learned Advocate for Respondent No.2 supported the submissions of learned APP. Accused has been convicted for the serious offence.

7 The alleged incident had occurred on 27th October, 2017. Victim had allegedly visited cycle shop for repairing cycle. One person was sitting in auto-rickshaw, who had subjected her to sexual assault. According to PW-1 (Complainant), victim had disclosed her about the fact that Accused had touched her private part. Complainant and the victim then went to the place of incident. Victim is a daughter of her brother-in-law. The member of public stated that Accused is running from the place of incident. She further stated that Accused then brought to the Police Station. Although there is reference of member of public gathered at the spot and the accused was running from the place of incident, the record indicates that the prosecution has not examined the said person. The evidence of victim is contradictory to the version of PW-1. The description of the act attributed to the Accused is differ from the version of PW-1. Victim has stated that Accused has licked her private part. Victim does not state that after the incident, act was disclosed to the Complainant. She had accompanied the Complainant to the spot and identified the accused. One person was caught and brought to the Police Station. From the evidence of PW-2, it appears that, accused was not present in the Court. One photograph was shown to the victim which was identified by her as accused. It is not clear that which photograph was shown to the victim. It is also not clear why the accused was not present in the Court for the identification. Thus, there is discrepancy about the identification of the accused.

8 PW-4 is the Investigating Officer. He has stated that Complainant, the accused and some persons came to the Police Station. Victim had not given description of the accused. It was not stated that accused was running from the place of incident. Statement of persons, who had accompanied the accused were not recorded. Applicant is in custody for 4 years.

9 Hence, the following order:-

ORDER

- (i) Interim Application Nos.2145 of 2021 and 2146 of 2021 are allowed.
- (ii) During the pendency of Criminal Appeal No. 715 of 2021, the sentence of imprisonment imposed vide judgment and order dated 26th February, 2021 passed by Special Judge under POSCO Act in POSCO Case No.46 of 2018 is suspended and the Applicant is directed to be released on bail on furnishing P R. Bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- (ii) Applicant shall attend the Trial Court once in six months on first Saturday of the month till the final disposal of the Appeal;
- (iii) In the event, there are two consecutive default in attending the trial Court, the said fact may be brought to the notice of this Court and in such eventuality, the prosecution will be at liberty to prefer an application for cancellation of bail.
- (iv) The applicant is permitted to furnish cash bail in the sum of Rs.20,000/- for a period of eight weeks in lieu of surety;
- (v) Both Interim Applications stand disposed of.

(PRAKASH D. NAIK,J.)