

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2681 OF 2021
IN
CRIMINAL APPEAL NO.102 OF 2022

Irshad Mukhtar Shaikh

Applicant

versus

The State of Maharashtra and another

Respondents

Ms.Farhana Shah, Advocate for applicant.

Mr.Sushan Mhatre, Advocate for respondent no.2.

Mr.Arfan Sait, APP, for State.

PSI Devidas Labade, Colaba Police Station, Mumbai, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 6th May 2022

PC :

1. The applicant is convicted vide judgment and order dated 18th January 2020 passed by Special Court for POCSO Act for offences under Section 376(d) and Section 354 of Indian Penal Code and Sections 4 and 8 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). The applicant has been sentenced to suffer imprisonment of 20 years with fine of Rs.10,000/- for the conviction u/s.376(d) of IPC and imprisonment of 10 years for conviction u/s.4 of POCSO Act.

2. The prosecution case is that the victim and the informant (mother of victim) are footpath dwellers. The victim is 13 years old girl residing on footpath. The victim and her mother are acquainted with both the accused. Accused nos.1 and 2 are working in tourist vehicles. Victim and accused were known to each other. The FIR

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was registered by mother of victim. On 21st March 2015 the victim girl went near Lion Gate public toilet. On 22nd March 2015 the victim came crying. She disclosed that hawker lady Laji near museum threatened her to send her to Dongri Shelter Home and hence she did not come home. Accused nos.1 and 2 met her near museum where accused no.1 told her that Laji is searching her and she should not go there. Victim kept on wandering with him near museum and accused no.2 went away from there. At about 1.30 am accused no.2 (applicant) came there and coaxed the victim to sit in taxi. Other accused was also in taxi. They told her that they would drop her to dockyard. The accused no.1 had forcible sexual intercourse with her and thereafter accused no.2 (applicant) also committed similar act. Accused then left the victim girl in front of Lion Gate and threatened her not to disclose the incident to anyone.

3. Learned advocate for applicant submitted that applicant is in custody for seven years. There is delay in filing the complaint. Mother of victim has not been examined. The chemical analyzer report does not support prosecution case. There are serious discrepancies in the evidence. People from crime scene were not examined. Friend of the victim girl to whom victim girl went to meet has not been examined. The FSL report was submitted after three years. There was no sign of gang rape. The appeal may not reach for hearing immediately. The applicant is young boy. Hence, sentence may be suspended and bail may be granted.

4. Learned APP and learned advocate for respondent no.2 submitted that specific overt act has been attributed to the applicant. Medical evidence supports prosecution case. There is no reason to

falsely implicate the applicant. Evidence of victim girl cannot be discarded. There is no cross examination. The FSL report supports prosecution case.

5. The victim is minor girl aged about 13 years. Mother of the victim could not be examined. Her death certificate is produced on record. The victim has been examined as PW-4. She has deposed that applicant had subjected her to sexual intercourse. There is evidence to show involvement of applicant. PW-7 is the medical officer. He has stated that he examined the victim girl. The victim gave history that she was a street dweller. She gave history of sexual assault by two known persons. She gave their names. She has stated that she was sexually assaulted by accused. There were fresh abrasions on her back. On her internal examination hymen injury was found. Minimal bleeding was present. Provisional opinion was given that evidence of sexual intercourse or assault could not be ruled out. On 29th November 2018 FSL report was received and on its basis final opinion was given that abrasions on the back and injuries on the private part of the victim girl suggest sexual intercourse/assault.

6. In the light of the nature of evidence as stated above, no case is made out for suspension of sentence and grant of bail. Hence, I pass following order :

ORDER

- (i) Interim Application No.2681 of 2021 is rejected;
- (ii) Hearing of appeal is expedited;
- (iii) Preparation of paper book is expedited;

(iv) In the event appeal is not heard within a period of one year, the applicant/appellant is at liberty to prefer fresh application for bail.

(PRAKASH D. NAIK, J.)

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